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"Rummaging in the government's attic"

Description of document: Copies of request letters and interim response letters (if

any) for the 10 oldest pending Freedom of Information Act (FOIA) requests at the Bureau of Indian Affairs, 2018

Appeal date: 29-May-2018

Released date: 19-July-2018

Posted date: 24- September-2018

Source of document: U.S. Department of the Interior

Assistant Secretary - Indian Affairs Freedom of Information Act Office 1849 C Street, NW, MS-4660-MIB

Washington, DC 20240 Online FOIA Request Form

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### United States Department of the Interior

OFFICE OF THE SECRETARY Washington, DC 20240

July 19, 2018

IN REPLY REFER TO: BIA-2018-01300

The Indian Affairs Freedom of Information Act office received your Freedom of Information Act (FOIA) requests, dated May 29, 2018 and assigned it control numbers BIA-2018-01300. Please cite the number in any future communications with our office regarding your request.

In your request you requested "A copy of the request letter, the interim response letters (if any), for the 10 oldest pending FOIA requests at the Bureau of Indian Affairs."

We have classified you as an "other-use" requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of photocopies (or an equivalent volume) for free. See 43 C.F.R. § 2.39. If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected. See 43 C.F.R. § 2.37(g).

Your request falls into the Complex processing track. You have agreed to pay up to \$25.00 for the processing of your request. We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. See 43 C.F.R. § 2.37(g). Therefore, there is no billable fee for the processing of this request.

We are writing today to respond to your request on behalf of the Indian Affairs FOIA office. We have enclosed 10 files consisting of 57 pages, which are being released to you in its entirety.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See <u>5 U.S.C. 552(c)</u>. This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road - OGIS College Park, MD 20740-6001

> E-mail: ogis@nara.gov Web: https://ogis.archives.gov Telephone: 202-741-5770 Fax: 202-741-5769

Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. You also may seek dispute resolution services from our Acting, FOIA Public Liaison, George Bearpaw, 1849 C Street N.W. MS-4658-MIB, Washington, D.C. 20240; Telephone: (202) 208-3135 and Email: foia@bia.gov.

If you have any questions about our response to your request, you may contact Heather Garcia by phone at (202) 208-3135, by email at <a href="heather.garcia@bia.gov">heather.garcia@bia.gov</a>, or by mail at 1849 C Street N.W., MS-4658-MIB, Washington, D.C. 20240.

Sincerely,

Heather N. Garcia

Acting, Indian Affairs - FOIA Officer

Cashery Werthron Show (Mundo EFF) 2 Resistan Caster | 988 Farnar, Gate 2000 | Fredutos, TX 77610 163× | 166715 276 7660 | Tax 712,276 7673

> Amanda G. Halter (el 713.276,7665 amanda.halter@pillsburylaw.com

November 7, 2013

Via fav no. (202) 501-1516 U.S. Bureau of Indian Affairs (BIA) Attn: Freedom of Information Act Coordinator MS-3658-MIB 1849 C Street, NW Washington, DC 20240

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, on behalf of Teck Metals Ltd., 1 request the following documents for the time period from January 1, 1988 to the present:

- 1. Any and all applications or requests submitted to BIA, or any division or related agency thereof, by the Confederated Tribes of the Colville Reservation (CCT) or the Spokane Tribe of Indians (STI), or any individual members thereof, for grant funding for the cost of environmental litigation in connection with the alleged releases of hazardous substances at sites in the State of Washington, including specifically but not limited to, the Upper Columbia River/Lake Roosevelt Site.
- 2. Any and all applications or requests submitted to BIA, or any division or related agency thereof, by CCT or STI, or any individual members thereof, for grant funding for the cost of response activities or natural resource damages-related activities in connection with the alleged releases of hazardous substances at the Upper Columbia River/Lake Roosevelt Site in the State of Washington.
- 3. All correspondence, including notices of awards, related to the grant-applications or requests referenced in the foregoing paragraphs 2 and 3.

November 7, 2013 Page 2

- 4. All documents, including specifically payment and accounting records, pertaining to any grants awarded from January 1, 1988 to the present to CCT or STI to cover the cost of environmental litigation or to cover the cost of response activities or natural resource damages-related activities in connection with the alleged releases of hazardous substances at the Upper Columbia River/Lake Roosevelt Site, all documents showing the dates on which, in what amounts, and/or for what purposes the funds were allocated or distributed to CCT or STI.
- 5. All communications concerning the receipt, disbursement and allocation of any funds awarded by BIA to CCT or STI to cover the cost of environmental litigation and/or to cover the cost of response activities or natural resource damages-related activities in connection with the alleged releases of hazardous substances at the Upper Columbia River/Lake Roosevelt Site.

If any relevant documents are governed by access restrictions, I request that you waive these restrictions and/or sanitize the documents for our review. If there are restricted documents that you will not release, please identify any such documents by title, date, author, recipient(s), and subject matter.

Please provide responsive materials as soon as possible rather than waiting for all responsive documents to clear your review process. We agree to pay all reasonable and standard processing fees authorized by 5 U.S.C. 552 (a)(4)(A) and the applicable regulations up to \$250; please contact me for authorization if fees will exceed that amount. If feasible and cost-effective, we would prefer that the requested documents be provided to us on CD.

If you have any questions or require clarification of the request, please contact me. Thank you in advance for your prompt assistance.

Sincerely,

Amanda G. Halter

ee: Mark Elliott, Esq.

### ROTHSTEIN, DONATELLI, HUGHES, DAHLSTROM & SCHOENBURG, LLP

Attorneys at Law

APRIL E. OLSON

TEL: 480.921.9296

FAX: 480.921.9249

May 27, 2015



Ms. Laura Cloud FOIA Officer U.S. Department of the Interior Bureau of Indian Affairs – Central Office 1849 C Street, N.W. Mail Stop 3071-MIB Washington, DC 20240

Re: FOIA Request

Dear Ms. Cloud:

This request is made pursuant to the Freedom of Information Act (FOIA) and on behalf of our client, the Forest County Potawatomi Community (the "Community"). We would like to obtain all records obtained, created, received, or sent by the Bureau of Indian Affairs ("BIA") Central Office from May 1, 2013 to the present, concerning, directly or indirectly, the Menominee Tribe's application to the United States to acquire the Dairyland Dog Park in trust for gaming purposes and/or for a Secretarial Determination. This request covers all records concerning efforts by the Menominee Tribe to put a casino in Kenosha, Wisconsin. This request includes, but is not limited to, all records of communications with: a) the Menominee Tribe or its employees, agents, consultants or investors; b) Analytical Environmental Services ("AES"); c) Eric Olson; d) Rory Dilweg; e) the BIA and the Department of the Interior; f) any other local, state or federal agency; or g) any other individual, corporation, or entity.

This request does not include the August 23, 2013 letter from Assistant Secretary Kevin Washburn to Governor Scott Walker approving the Kenosha Casino Project. This request also does not include the attachments to the August 23, 2013 letter, except for Attachment III to the August 2013 Record of Decision. This FOIA request includes a request for a copy of Attachment III to the August 2013 Record of Decision.

We also request that BIA-Central provide us with a copy of the recommendation from BIA Midwest Regional Office approving the Kenosha Casino Project dated on or about November 12, 2012. This document was withheld by BIA-MWRO in response to FOIA request BIA-2013-001139. BIA-MWRO withheld this document as pre-decisional. Assistant Secretary Washburn issued his decision on the Kenosha Casino Project on August 23, 2013. Therefore, the rationale for withholding the document as pre-decisional no longer applies.

Ms. Laura Cloud FOIA Officer U.S. Department of the Interior Bureau of Indian Affairs – Central Office May 27, 2015 Page 2

To be clear, we seek all records from the BIA Central Office in Washington D.C. It is our understanding that previous FOIA requests by the Rothstein Law Firm directed to BIA Central Office were forwarded to the BIA Midwest Regional Office ("MWRO"). Please do not forward this request to the MWRO. This request specifically seeks records and files kept in the BIA Central Office in Washington, D.C. We have made several FOIA requests to the MWRO and based on partial responses received, it is apparent that the BIA Central Office maintains its own correspondence and files separate from MWRO. Further, the BIA Central Office is listed as a lead agency for the FEIS for the "Menominee Casino-Hotel 223-Acre Fee-To-Trust Transfer and Casino Project" (the "Menominee Casino Project") issued in April, 2012. Given its lead agency status, the BIA Central Office must have its own correspondence and files related to the Menominee Casino Project and the FEIS. This FOIA request seeks the records in those files.

We are willing to pay fees as a commercial-use requestor up to a maximum amount of \$2,000.00. If you estimate the fees will exceed this amount, please inform me first. In the interests of conserving resources, you may also send me electronic copies of documents on a CD or via email at <a href="mailto:aeolson@rothsteinlaw.com">aeolson@rothsteinlaw.com</a>. Thank you for your time and consideration. I can be reached at 480-921-9296 with any questions.

Very truly yours,

April E. Olson Attorney at Law



### **FOIA request**

Thomas Brown < DrThomasFBrown@hotmail.com>
To: "foia@bia.gov" < foia@bia.gov>

Fri, Nov 20, 2015 at 3:17 PM

Dear Indian Affairs FOIA Officer,

I am requesting copies of the following government records:

- 1. Petition for recognition (but not supporting documents) from Piscataway petitioners.
- 2. BIA letter(s) of technical assistance to Piscataway petitioners.
- 3. All correspondence between BIA and Piscataway petitioners.

"Piscataway" refers to any Indian entity in the state of Maryland. They go by several different names. I prefer electronic copies, but will accept whatever format is least expensive to produce. Thank you for your assistance.

Thomas Brown

1350 S Braden Cresc

Norfolk, VA 23502

tel. 757-751-0892

email: drthomasfbrown@hotmail.com

Fri, Feb 19, 2016 at 2:49 PM



FOIA Request Form from IBM address

1 message

FOIA Request Form <FOIAForm@opengov.ibmcloud.com>

Reply-To: FOIAForm@opengov.ibmcloud.com

To: foia@bia.gov

Submitted on Friday, February 19, 2016 - 2:49pm

Submitted by anonymous user: [10.156.8.131]

Submitted values are:

Your Name: Sheri Pais

Street Address: 700 13th Street, NW

City: Washington

State or Country: DC

Zip or Postal Code: 20005

Address Type: Business

Daytime Phone Number: 202-654-1735

Fax Number: 202-654-6211

Your Email Address: spais@perkinscoie.com

Your Organization: Perkins Coie LLP

Are you filing the request on behalf of another party? Yes

If so, who are you filing the request on behalf of? Town of Ledyard

Contact Information Certification: I certify that the above statement(s) concerning who I am filing the request on behalf of are true and correct to the best of my knowledge and belief. If I want to receive greater access to records about a person I represent, I will submit proof that the person consents to the release of the records to me, as discussed in 43 C.F.R. § 2.9.

Bureau/Office: Bureau of Indian Affairs (BIA)

Relevant park, refuge, site or other location:

Request Description:

Please provide copies of:

(1) any and all charters of incorporation, and all amendments thereto, approved and/or issued by the Department of the Interior ("Department") to the Mashantucket Pequot Tribal Nation ("Tribe") (listed in the Federal Register as the Mashantucket Pequot Indian Tribe), including, but not limited to, copies of any such charters, and any amendments thereto, for the Mashantucket Pequot Holding Corporation and/or the Mashantucket Pequot Housing Authority;

(2) all records related to (a) all such corporation charters or amendments, including any complete or partial copies of all such records in the custody or control of the Department, including, but not limited to, all records in the possession of the Bureau of Indian Affairs ("BIA"), the Central Office of the BIA in Washington, D.C., the Eastern Regional Office of the BIA located in Nashville, Tennessee, the Office of the Assistant Secretary for Indian Affairs, and the Office of the Solicitor; (b) the Department's consideration of any such charters or amendments, including, but not limited to (i) all application or pre-application materials related to any request for approval and/or issuance of such charters or amendments, (ii) any records relating to BIA's consideration of any such requests, (iii) BIA's final action with respect to any such requests, and (iv) BIA's compliance with any and all applicable statutory or regulatory requirements related to its consider

ation

of any such requests; and (c) any subsequent correspondence between the Department and the Nation or any such corporation of the Nation regarding such charters and amendments; and

(3) all records related to the Tribe's authority to lease land held in trust by the United States for the benefit of the Tribe, including any complete or partial copies of all such records in the custody or control of the Department, including, but not limited to, all records in the possession of the BIA, the Central Office of the BIA in Washington, D.C., the Eastern Regional Office of the BIA located in Nashville, Tennessee, the Office of the Assistant Secretary for Indian Affairs, and the Office of the Solicitor.

Desired Format of Disclosure: Electronic copies via CD

Select the applicable reason why you are requesting expedited processing: There is an urgency to inform the public concerning actual or alleged Federal government activity and the request is made by a person primarily engaged in disseminating information.

Expedited Processing Justification: The town kindly respectfully requests that these documents be processed and provided as soon as practical.

**Expedited Processing Certification:** 

Please select the appropriate statement: I am requesting a waiver or reduction of fees.

I agree to pay fees up to this particular amount:

In order to assist you in determining my requester category to assess fees, you should know that I am: affiliated with a private corporation and am seeking information for use in the company's business

News Media/Educational or Noncommercial Scientific Institution Affiliation: as described below.

Check the boxes to the right to confirm that you meet the Department's fee waiver criteria: Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.

Detailed Fee Waiver Justification:

The records requested concern the Tribe's authority to lease land held in trust by the United States for the benefit of the Tribe within the Town of Ledyard. The Tribe has cited federal statutes and its corporation charter as authority for it to lease such lands. The records will inform the Town, its constituents, and the public of the legal authority for that leasing of land. The Town intends to share the contents of these records with its constituents and the public, and to use the information to represent its constituents and the public more effectively. The records requested have not previously been made public. Should the Department deny this fee waiver request, the Town requests immediate notice of such denial and the grounds for denial, as well as an estimate of the costs associated with BIA's compliance with this request.

The results of this submission may be viewed at:

https://www.doi.gov/node/11498/submission/2021

### ROTHSTEIN, DONATELLI, HUGHES, DAHLSTROM & SCHOENBURG, LLP

Attorneys at Law

APRIL E. OLSON

TEL: 480.921.9296

FAX: 480.921.9249

May 27, 2015



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Ms. Laura Cloud FOIA Officer U.S. Department of the Interior Bureau of Indian Affairs – Central Office May 27, 2015 Page 2

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Very truly yours,

April E. Olson

Attorney at Law



### Confederated Tribes and Bands of the Yakama Nation

Established by the Treaty of June 9, 1855

February 26, 2016

### SENT VIA EMAIL AND U.S. CERTIFIED MAIL

Northwest Regional Office Bureau of Indian Affairs 911 Northeast 11<sup>th</sup> Avenue Portland, Oregon 97232-4169 Attn: Sean Johnson, FOIA Coordinator

E-mail: sean.johnson@bia.gov

Office of Trust Services
Bureau of Indian Affairs
1849 "C" Street, Mailstop 4620-MIB
Washington, DC 20240
Attn: Jonathon Begay, FOIA Coordinator

E-Mail: Jonathon.begay@bia.gov

### RE: Information Request - Bureau of Indian Affairs Records

Dear Mr. Johnson and Mr. Begay,

I am Chi' Qwax, Chairman of the Tribal Council of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), a federally recognized Tribe pursuant to the Treaty with the Yakamas, 12 Stat. 951 (June 9, 1855) of 1855. On a government-to-government basis or, in the alternative, pursuant to the Freedom of Information Act (5 USC 552), I write to request: historic information regarding Yakama Nation forest lands; Yakama Nation forest lands budget requests and allocations; and, comparison of Yakama Nation forest lands to other Tribal lands in the region. I also write to request records of communications between and among various components of the Bureau of Indian Affairs ("BIA"), as well as communications with non-BIA offices, with respect to: Yakama Nation concerns with funding and staffing allocations at Yakama; and, the recent (Summer 2015) "Cougar Creek Fire" that burned over 50,000 acres of Yakama Nation forest lands.

In respect of the Trust responsibility of the BIA to the Yakama Nation, and the public interests served by the release of this information, I am also requesting a waiver of any fees associated with this request.

### Information Requested:

Pursuant to 43 CFR, I am submitting a request for the following information from the Northwest Region for each federally-recognized Tribe in the Pacific Northwest Region, and for the years FY-2006 through and including FY-2016:

 Forest Development Program (Budget, Allocation, Appropriations), communications among and between BIA components and offices including but not limited to annual Forest Development Program Planned Projects Annual Submissions, Forest Development Accomplishment, Expenditures and Inventory Status Reports. In addition to the specified annual reports, please provide:

- Initial and add-on funding development requests, appropriation and allocations
- Funding sources for forest development
- Including, but not limited to, Forest Development, Commercial Forest Stand Improvement ("CFSI"), Forest Development Plans and Records, Project Ranking and Funding Priorities, Technical training, and Reports
- <u>Fire Management and Preparedness Program</u>, communications and budgets as allocated to each of the federally-recognized Tribes in the Pacific Northwest Region for the years FY-2006 through and including FY-2016.

In addition to the general programmatic communications and information requested, please also provide all written communications, in whatever form available, commencing on January 1, 2013 and through the date of this request for:

- Response to Yakama Nation Requests (Letter of May 2013, Meeting June 24-26, 2013 at Yakama Power facilities; Meeting on July 16, 2013; Letter of March 7, 2014) request for all written communications, in whatever form available, related to the referenced requests from Yakama Nation regarding serious staffing and budget shortfalls related to the Yakama Nation Forestry programs (letters attached for ease of reference). Specifically, please provide all written and electronic communications relating to the Yakama Nation concerns and the referenced letters and dates, from or through the following positions:
  - O Northwest Region, Regional Director
  - Northwest Region, Deputy Regional Director, Trust Services
  - Northwest Region, Regional Forester
  - O Northwest Region, Regional Timber Sales Forester/Forest Development Officer
  - Office of Trust Resources, Division of Forestry and Wildland Fire Management, Branch of Forest Resources Planning, Chief Forester
  - Office of Trust Services, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, Director
  - Office of Trust Services, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, Branch Chief
  - Office of Trust Services, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, Chief Forester
  - Office of Trust Services, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, Branch Chief Associate Director – Fuels
  - O Office of Trust Services, Deputy Bureau Chief
  - o Office of Trust Services, Associate Deputy Director for Operations

- Cougar Creek Fire (Summer 2015): all communications regarding the allocation of resources to respond to, or re-directing resources in the region, including communications between BIA representatives and all components of the Geographic Area Coordination Center ("GACC") (including the Multi-Agency Coordination group ("MAC")), and the National InterAgency Fire Center. Specifically, please provide all communications in whatever form available relating to the Cougar Creek Fire from or through individuals in, or Acting in, the following positions:
  - O Northwest Region, Regional Director
  - O Northwest Region, Deputy Regional Director, Trust Services
  - O Northwest Region, Regional Forester
  - Office of Trust Services, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, Director
  - Office of Trust Services, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, Branch Chief
  - Office of Trust Services, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, Chief Forester
  - Office of Trust Services, Division of Forestry and Wildland Fire Management, Branch of Wildland Fire Management, Branch Chief Associate Director — Fuels
  - Deputy Bureau Chief, Office of Trust Services

### Fee Waiver Requested:

Pursuant to Appendix D to Part 2, the Yakama Nation hereby requests a waiver of fees to obtain this information. The information being sought will not primarily serve a commercial interest, and will contribute significantly to the public understanding of governmental operations and activities.

As a federally recognized Tribe, the Yakama Nation serves the public interest in its representation of the enrolled members of the Yakama Nation, and services it provides to the non-Yakama residents of the Yakama Reservation.

The Yakama Nation is seeking information regarding the practical means by which the United States has made budgetary decisions, including resource allocations among competing interests, that meaningfully impact the continued health of BIA-protected Trust resources of the Tribe as an entity, and individual Tribal members. Disclosure of these records contributes to the public understanding by providing concrete examples of how budgetary decisions that impact Tribal members and other member of the public in their access to, and enjoyment of, Yakama forest resources.

The Yakama Nation has the ability and intent to properly disseminate information to our members, and other members of the public to increase the public understanding of forest management on Tribal lands in the Northwest Region. To the best of my knowledge this information has not been disclosed, and is not currently publicly available, and none are subject to the statutory exemptions.

I appreciate your timely consideration and response to both the request for information, and the associated request for a waiver of any fees. For further information, please contact: M. Patrice Kent, Lead Attorney, Yakama Nation Office of Legal Counsel via e-mail (<u>Patrice@yakamanation-olc.org</u>) or telephone: (509) 865-7268.

Sincerely,

Chi' Qwax (JoDe Goudy)

CHAIRMAN, CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

### Encl.:

- May 20, 2013 Letter (Concerns regarding funding and vacancy issues)
- March 7, 2014 Letter (Demand for Assistance)



## Confederated Tribes and Bands of the Yakama Nation

Established by the Treaty of June 9, 1855

May 20, 2013

Stan Speaks
USDOI BIA NWRO
Regional Director
911 N.E. 11<sup>th</sup> Avenue
Portland, OR 97232

Dear Mr. Speaks:

The Yakama Nation is disturbed by the current funding and vacancy problems within the BIA Branch of Forestry at the Yakama Agency. The current staff levels are inadequate to perform the necessary forestry operations within our forest. The Yakama Nation is demanding a stronger commitment from the federal government in meeting its trust obligation for forestry activities within the Yakama reservation. Specifically, we demand that the BIA fulfill its trust obligations by funding and filling 9 recent retirements within BIA Branch of Forestry and the 19 vacancies identified within the 2009 Workforce Analysis Report for BIA Branch of Forestry.

The Yakama Nation is concerned that the Bureau of Indian Affairs is not able to meet its obligations within the Yakama Nation Forest Management Plan nor capable of offering the annual allowable harvest. This becomes increasingly significant because it is severely impacting our tribal revenue and our tribal forest sector employment (loggers, mill jobs, and related forestry employment). Filling these vacant positions is critical in order to prepare timber sales to meet the standards in the National Indian Forest Resource Management Act, National Environmental Policy Act, the National Historic Preservation Act, and the Endangered Species Act. These positions are essential for the BIA to fulfill its trust obligation.

Currently only one timber sale has been approved this fiscal year (February) and this sale is still not active. The BIA also assured our leadership that there would be four additional sales ready for approval before June and it is less than two weeks away and we do not see any evidence that the BIA will have these sales ready. The inability of BIA Branch of Forestry to meet its trust responsibilities to the Yakama Nation is having a severe impact to employment, tribal government operations, tribal enterprises, and most importantly the people of Yakama Nation.

The Yakama Nation is requesting Government to Government Consultation meeting with the BIA in order to address the backlog of vacancies within our forestry section and the number of timber sales available for harvest. The Yakama Nation is requesting this consultation as soon as possible; please contact Philip Rigdon, DNR Deputy Director at (509)865.5121 extension 4655 to set up this meeting.

Sincerely,

Yakama Nation Tribal Council

Cc: **BIA Chief Forester** 

BIA NWRO Deputy Regional Director Trust Services, BIA Yakama Superintendent

BIA Yakama Agency Branch of Forestry

**Executive Committee Timber Committee** 



### Confederated Tribes and Bands of the Yakama Nation

Established by the Treaty of June 9, 1855

### Hand Delivered and sent via U.S. Certified Mail

March 7, 2014

Mike Black
Director, Bureau of Indian Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Demand for Assistance Regarding Yakama Nation Forestry Issues/and Request for Emergency Government-to-Government Consultation

#### Dear Director Black:

I am writing on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") to demand that the Bureau of Indian Affairs ("BIA") live up to its trust obligations under the Treaty of 1855 and federal law, and to honor BIA Official's verbal commitments by addressing the critical forestry issues facing our timberlands. Specifically, for years the BIA Branch of Forestry at the Yakama Agency has been dramatically understaffed, leaving the Yakama Nation without the maupower to meet the obligations necessary to carry out the federal governments trust responsibility as mandated in the 1990 National Indian Forest Resource Management Act. These vacancies are having a profound impact on our ability (1) manage our forest, (2) develop budget forecasts relating to forestry, fire, and fuels, (3) navigate the timber sale process, (4) timely and efficiently work through NEPA, (5) update and maintain our annual allowable cut calculation, and (6) address the inactivity of the Aliotments timber sales, and (7) to properly utilize the timber appraisal system, among other issues. The Yakama Nation has been trying to cooperate and work with the BIA to address these issues to no avail. Federal officials have repeatedly acknowledged these understaffing problems while promising to remedy the situation – and to date, have only ignored, reneged, and otherwise failed to honor the trust responsibilities and verbal promises. To address these issues, the Yakama Nation demands that the BIA works with Yakama Nation staff to reorganize the BIA Branch of Forestry at the Yakama Agency, to support efficiency and quality of work, and staffing of all vacant positions with qualified employees. On behalf of the Yakama Nation, I also respectfully request emergency governmentto-government consultation on the Yakama Nation's forestry issues to ensure that BIA will live up to its trust responsibilities moving forward.

As background, the Confederated Tribes and Bands of the Yakama Nation is a sovereign, federally recognized Indian Nation pursuant to the Treaty with the Yakamas of 1855. 12 Stat. 951. In the Treaty of 1855, our ancestors reserved the right to the exclusive use and benefit of our 1.3 million acre Yakama Reservation, which features some of the best timber in the United States. These forest resources are essential to the Yakama Nation's economy. The timber harvesting program creates economic opportunities and includes employment within the forestry and natural resource programs, tribal logging operations, and tribal enterprises such as the lumber mill, Yakama Forest Products (YFP), Yakama Nation Land Enterprise, Yakama Nation Credit, and Yakama Power. YFP is one of the last remaining lumber mills in Indian Country and alone employs over

200 people; over 90% are tribal affiliated. More than 2,000 jobs are directly related to the Yakama forest and an estimated five times that amount indirectly benefit. We are exercising our sovereign right, as supported by the Federal Government's Self-Determination policies, to use our resources to provide for and improve the economic well-being of our communities, but BIA is hindering our efforts by failing to live up to its trust obligations.

The Yakama Nation presented its ongoing forestry concerns to BIA Officials from the Northwest Regional Office and Central Office during the Yakama Nation Forestry Summit held in Toppenish, Washington this past June 24-25, 2013. Your employees assured us that they would honor the federal government's treaty and trust obligations to the Yakama Nation by addressing the Yakama Nation's forestry needs, that we would work together to address these issues, but communications appear to be severed and nothing is being accomplished. BIA Officials promised the Yakama Nation assistance in the advertising and filling of several key staff vacancies, but we have yet to fill a single vacant position. We were promised that we would get assistance through a re-hire of a recently retired and well-respected BIA employee, but no such assistance was provided. We were told that the BIA would provide us information on the savings we might gain when several BIA employees exercise their early buy-out option, but that information was not provided. It is the BIA's duty to take a lead but coordinate with Yakama Nation in the annual allowable timber cut calculations, yet this has not been done. By failing to support the Yakama Nation's timber-harvesting program, and in turn the Yakama economy, the BIA is directly impeding the Yakama Nation's ability to sustainably manage our forest resources, and to provide for the Yakama tribal membership.

Foremost, the BIA is failing to fill critical staffing positions in the BIA Branch of Forestry at the Yakama Agency, and has provided no assistance in reorganizing the BIA Branch of Forestry to ensure that those positions that are filled are as useful and efficient as possible. Based on information from Yakama BIA Agency staff, there are currently 22 active positions and 33 vacant positions within BIA Forestry. The current staff levels are simply inadequate to perform forestry operations within our forest, which is having a devastating impact on the Yakama Nation and tribal members. The Yakama Nation realizes that all 33 vacancies are not essential to the Yakama Nation's forestry operations, but reorganization is a necessary first step towards determining which positions are essential. BIA agreed to provide technical assistance to evaluate the forestry program, recommend organizational changes, assess the current workforce, identify and prioritize needed vacant positions, and to advertise and fill those positions. All of these activities were suppose to have been coordinated with our government. These actions would help the BIA meet the Yakama Nation's forest management needs, but no action has been taken. We are especially disappointed that the promise to get some additional technical assistance appears to have been ignored. It is still our desire to utilize additional technical expertise and we expect the BIA to follow through on this promise.

As a result of the BIA's failure to reorganize the BIA Branch of Forestry at the Yakama Agency, and to hire the staff necessary to run the program, this last year only 59 million board feet of trust timber was harvested from our forest. Currently, the BIA is not offering the annual allowable harvest to the Yakama Nation, which directly affects our tribal enterprise, YFP. YFP has approximately 18 million board feet under contract for the upcoming year, which will only support three months of production. BIA's inaction is destroying a viable Yakama Nation industry. Lumber prices are up and YFP could produce more lumber, creating more jobs, bigger economies for the Nation, and treat more forest health issues if the BIA would simply produce timber sales.

Second, BIA committed to providing information to the Yakama Nation about potential "savings" from retirees at the Yakama Agency. The Yakama Nation understood that these employees were budgeted for a full year, and although their pay-off and annual leave were a part of the salary budgeted for the year, there was an expectation that there would be a savings by the end of the fiscal year, even with sequestration. Any opportunity for savings is essential to the Yakama Nation because the Yakama Nation is funding many of the federal government's budgeting shortfalls with Tribal funds. In fiscal year 2013, the Yakama Nation contributed more than \$1.1 million to pay for the shortfall in salaries of the tribal employees who are funded from the administrative fees (FMD). Currently there are 46 tribal employees who perform trust activities; jobs such as timber sale officer, scaling, marking, and other administrative activities. The Yakama Nation has been committed to our forestry operations, but due to the economy the Nation is facing declining budgets and may not be able to fund those positions in the future. These tribal forestry employees are keeping BIA Forestry operational. Because BIA failed to provide the Yakama Nation with the agreed upon information, we are uncertain about the future of our forestry program. The Yakama Nation is demanding that funding from the retirement savings and the chronic vacancies within Yakama BIA Branch of Forestry remains at the Yakama Agency and is transferred to the Yakama Forestry 638 Contract.

The Yakama Nation worked with BIA to develop realistic timelines for the processing of upcoming timber sales and their presentation for approval, but these timelines have been discarded. In the time since we collaborated to develop these timelines, a major wildfire and timber salvage operation diverted the limited staff's time to capture value from the fire. The Yakama Nation is concerned we are once again back to where we where prior to the salvage; BIA Forestry is unable meet the timber sale planning timelines due to inadequate staff. Deadlines for these new sales were supposed to be ready for approval in September and October, but are now being pushed back by more than six months. In addition, the "Woodchoppers Mediation" stated that BIA would assure five advertised timber sales to be under contract by October of 2013, but BIA has only advertised two of these timber sales. This is not satisfactory and the Yakama Nation is demanding a stronger commitment from the federal government in meeting its trust obligation for forestry activities within the Yakama reservation.

During our June Forest Summit, the Yakama Nation has expressed major concerns about the current inventory. It was recommended that a Forest Inventory Team be assembled which would include Mark Petruncio, Yakama Inventory Forester, Everett Isaac, Yakama Fuels Planuer, Ken Borchert, NWRO, Dave Wilson, BOFRP, and Dr. James Arnie, private consultant. It was our understanding that this Team would work together to verify the annual allowable cut calculation and look into improvements with our inventory data collection including CFI, stand exams and timber cruising. It was also our understanding that this Team was to be organized within two weeks of the Timber Summit. As of today, the Forest Inventory Team has not been assembled. The Yakama Nation requests that this team be assembled, and that BIA coordinates this effort to ensure that what was promised at the Forestry Summit is implemented. To be clear, the past and current mismanagement policies and activities of the BIA has reduced the sustainability of the Yakama Nation's forest and natural resources, including but not limited to, the reduction of tree species composition, increasing the susceptibility to outbreaks of defoliators, disease and destructive forest insects, increasing hazardous fuel build up and creating extensive areas of high risk-intensity fires (and the associated fire suppression costs). The Yakama Nation concerns are growing due to BIA's current approach for conducting forest inventory analysis and timely

completing annual allowable cut calculations which is not being coordinated. The Yakama Nation is disturbed because the BIA Forestry does not know the forest inventory or our sustainable annual allowable cut. How do we know what we have? Or where we are going? Or if our forest is being managed sustainably? This is clearly a violation of NIFRMA and BIA's trust responsibility.

Another area has to do with the Timber allotments at the Yakama Agency. Currently there are over 35 Allotments that have not been a part of the timber sales due the local BIA officials having concerns with the profit margin with the timber appraisal system used at Yakama. The Yakama Nation asks that the BIA demonstrate various options of appraisal models or advertise those allotments. The Yakama Nation request that the backlog of NEPA ready timber allotments be put on the open market or the BIA activates those allotments with appraisal system alternatives that the BIA can live with. Again no action has been taken.

On a final note, the BIA completed the A-123 Audit which resulted in the development of the Yakama Forest Log, which outlines a number of identified Tasks that needed some resolution. The Yakama Nation requests an update on the Yakama Forestry Log and would like to coordinate with the BIA to ensure that the issues were resolved, or in the alternative, to develop a plan for resolution.

In sum, BIA's failure to meet its trust responsibility by carrying out its duties as outlined and agreed upon during the June Summit is unacceptable. BIA must prioritize a reorganization of the BIA Branch of Forestry at the Yakama Agency, and hire qualified and dependable employees to meet those essential job positions. The Yakama Nation continues to be concerned that BIA is unable to meet its obligations within the Yakama Nation Forest Management Plan nor capable of offering the annual allowable harvest (Or what the annual allowable harvest should be). BIA's failures are severely impacting the forest and natural resources we depend on, the tribal revenue that result therefrom, and our tribal forestry employment opportunities (loggers, mill jobs, and related forestry employment). To ensure that BIA lives up to its obligations under the Treaty and federal law, I respectfully request emergency government-to-government consultation on the Yakama Reservation to discuss the Yakama Nation's forestry issues.

If you have any questions or concerns, please feel free to contact Phil Rigdon, Superintendent of the Yakama Nation Department of Natural Resources, at (509) 865-5121 extension 4655 or prigdon@yakama.com.

Sincerely,

Harry Smiskirf Chairman

Yakama Nation Tribal Council

CC

David Shaw, Superintendent, Yakama Agency
William Schuster, BIA Forest Manager, Yakama Agency
Stan Speaks, Regional Director, NWRO
Bodie Shaw, Asst. Regional Director, NWRO
Bryan Rice, Deputy Director - BIA Trust Services
Faline Haven, Acting Chief Forester, Division of Forestry and Wildland Fice
Philip Rigdon, Deputy Director, YN DNR
JoDeGoudy, Yakama Nation Tribal Council
Steve Andringa, Yakama Nation Tribal Forestry



Mary Kay Lacey Counsel

marykay.lacey@dentons.com D +1 415 882 5021 Dentons US LLP 525 Market Street 26th Floor San Francisco, CA 94105-2708 United States

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RECEIVED

MAR 1 1 2016

DOI/AS-IA/OFA Washington, DC

March 9, 2016

BY FEDEX

Lee Fleming
Office of Federal Acknowledgment
Department of the Interior, Bureau of Indian Affairs
MS-34B-SIB
1951 Constitution Avenue, NW
Washington, D.C. 20240

Re: FOIA Request on Behalf of the Kern Valley Indian Community

Dear Mr. Fleming:

This is a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended, and the Department of Interior's implementing regulations, Title 43 C.F.R., Part 2 ("FOIA"). This request is made on behalf of the Kern Valley Indian Community ("KVIC"). I am writing on behalf of KVIC as an attorney representing the Tribe on a pro-bono basis. I request that your office provide me with the following documents, as soon as possible.

#### REQUEST:

Any and all records in the file kept by the Office of Federal Acknowledgment ("OFA") for the Kern Valley Indian Community. It is my understanding that OFA has in its possession the Letter of Intent to seek federal recognition that was submitted by KVIC, and this request seeks that document in particular, which I understand is part of the file that is kept by OFA for KVIC.

In the event that any of the requested documents contained in the KVIC file kept by OFA contain information exempt from disclosure under the FOIA, I request all reasonably segregable portions of the records.

The desired format of disclosure is electronic format via email, using the email address provided above.

### FEES:

As part of my firm's representation of KVIC on a pro bono basis, we are willing to pay a fee for this request. It is my understanding that the file kept by OFA for KVIC is not extensive, and it is our expectation that the fee will not exceed \$100.00. To confirm that this estimate is correct, I ask that you please have someone in your office contact me to advise me of the number of pages that are comprised within my request, the expected amount of the fee, and to arrange for payment of the fee.

\$150k



Please do not hesitate to contact me if you need additional information or clarification in processing this request, and thank you very much for your assistance.

Sincerely,

Mary Kay Lace

cc: Daniel Largo, Jr., FOIA Coordinator, Department of the Interior, BIA George Skibine, Dentons, US, LLP

94313428\V-1



FOLD on this line and place in shipping pouch with bar code and delivery address visible

- 1. Fold the first printed page in half and use as the shipping label.
- Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
- 3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.

### Legal Terms and Conditions

Tendering packages by using this system constitutes your agreement to the service conditions for the transportation of your shipments as found in the applicable FedEx Service Guide, available upon request. FedEx will not be responsible for any claim in excess of the applicable declared value, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the applicable FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of 100 USD or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is 500 USD, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see applicable FedEx Service Guide. FedEx will not be liable for loss or damage to prohibited items in any event or for your acts or omissions, including, without limitation, improper or insufficient packaging, securing, marking or addressing, or the acts or omissions of the recipient or anyone else with an interest in the package. See the applicable FedEx Service Guide for complete terms and conditions. To obtain information regarding how to file a claim or to obtain a Service Guide, please call 1-800-GO-FEDEX (1-800-463-3339).

Tue, Mar 29, 2016 at 5:06 PM



FOIA Request Form from IBM address

FOIA Request Form <FOIAForm@opengov.ibmcloud.com>
Reply-To: FOIAForm@opengov.ibmcloud.com

To: foia@bia.gov

Submitted on Tuesday, March 29, 2016 - 5:06pm

Submitted by anonymous user: [10.156.8.131]

Submitted values are:

Your Name: Jeffrey B. Sienkiewicz

Street Address: 54 Bridge Street

City: New Milford

State or Country: Connecticut

Zip or Postal Code: 06776

Address Type: Business

Daytime Phone Number: 860-350-5454

Fax Number: 860-350-5457

Your Email Address: jsienkiewicz@asctlaw.com

Your Organization: Allingham & Readyoff, LLC

Are you filing the request on behalf of another party? Yes

If so, who are you filing the request on behalf of? Town of Kent

Contact Information Certification: I certify that the above statement(s) concerning who I am filing the request on behalf of are true and correct to the best of my knowledge and belief. If I want to receive greater access to records about a person I represent, I will submit proof that the person consents to the release of the records to me, as discussed in 43 C.F.R. § 2.9.

Bureau/Office: Bureau of Indian Affairs (BIA)

Relevant park, refuge, site or other location: Office of Federal Acknowledgment

Request Description:

I am the attorney of record for the Town of Kent, an "interested party" in petition #239, Schaghticoke Indian Tribe (hereafter "SIT"). On behalf of the Town of Kent, I hereby request copies of those portions of the acknowledgment petition submitted by the SIT subsequent to September 14, 2006, including but not limited to the following:

- 1. All documents constituting the SIT's response to the technical assistance letter dated September 14, 2006;
- 2. All documents constituting the SIT's response to the informal technical assistance meeting held on February 17, 2009;
- 3. All documents constituting the letter and submission(s) by John A. Sarcone, III received on by the Department on or about December 28, 2012 pertaining to the SIT's petition #239;
- 4. All documents constituting the SIT's response to the letter dated January 16, 2013 directed to Alan Russell and Gail Donovan:
- 5. All documents constituting the SIT's June 2013 submission(s) to the DOI (referenced on page 2 of letter dated August 22, 2013 directed to Alan Russell);
- 6. All documents constituting the SIT's September 26, 2013 submission(s) to the DOI (referenced in the letter dated November 8, 2013 directed to Alan Russell);
  - 7. All SIT membership lists submitted subsequent to August 15, 2013;
- 8. All documents submitted by or on behalf of the SIT subsequent to September 26, 2013 and constituting a part of the record in this proceeding;
- 9. All additional documents submitted subsequent to September 14, 2006 that address or provide supporting evidence for the Section 83.11(b) "community" criteria for the SIT's for the periods between 1920 and 1967 and from 1997 to the present;
- 10. All additional documents submitted subsequent to September 14, 2006 that address or provide supporting evidence for the Section 83.11(c) "political influence or authority" criteria for the periods between 1801 through 1875, between 1885 and 1967 and from 1997 to the present.

Desired Format of Disclosure: Electronic copies via CD

Select the applicable reason why you are requesting expedited processing:

**Expedited Processing Justification:** 

**Expedited Processing Certification:** 

Please select the appropriate statement: I am requesting a waiver or reduction of fees.

I agree to pay fees up to this particular amount:

In order to assist you in determining my requester category to assess fees, you should know that I am: affiliated with an educational or noncommercial scientific institution and this request is made for a scholarly or scientific purpose and not for commercial use

News Media/Educational or Noncommercial Scientific Institution Affiliation: This is the closest category but is not truly descriptive of the requestor's status. I am making the request on behalf of the Town of Kent, Connecticut, a municipal corporation. The Town of Kent is a public entity, acting on behalf of its citizens and in the public interest. It is designated as an "interested party" in the subject proceedings.

Check the boxes to the right to confirm that you meet the Department's fee waiver criteria:

- Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.
- Disclosure of the information is not primarily in my commercial interest.

Detailed Fee Waiver Justification: The Town of Kent is designated by the Department as an "interested party". The Town of Kent acts in the public interest and on behalf of its citizens in that an Indian reservation claimed by the SIT exists within its jurisdictional limits and a decision in this matter will have a significant impact on the citizens of the Town regardless of the outcome. Moreover, in order to meet the requirements of due process, the Town of Kent is entitled to the petition documents in order that it may review, analyze and respond to the SIT's petition in a meaningful way. Citizens of the Town have the right to know what evidence and reasoning the SIT is relying on, whether that evidence and reasoning is probative and whether the Departments ultimate decision conforms to the regulations and is consistent with the evidence. At a minimum, the requested documentation will contribute to the understanding of how and why the Department makes the adjudicative

decision necessary in this petition.

The results of this submission may be viewed at:

https://www.doi.gov/node/11498/submission/2800



FOIA Request Form from IBM address

FOIA Request Form FOIAForm@opengov.ibmcloud.com>
Reply-To: FOIAForm@opengov.ibmcloud.com
To: foia@bia.gov

Thu, Mar 31, 2016 at 11:24 AM

Submitted on Thursday, March 31, 2016 - 11:24am

Submitted by anonymous user: [10.156.8.131]

Submitted values are:

Your Name: Anthony Schick

Street Address: 7140 SW Macadam Ave

City: Portland

State or Country: OREGON Zip or Postal Code: 97219

Address Type: Business

Daytime Phone Number: 5032931931

Fax Number: 5032931931

Your Email Address: aschick@opb.org

Your Organization: Oregon Public Broadcasting

Are you filing the request on behalf of another party? No

If so, who are you filing the request on behalf of?

Contact Information Certification:

Bureau/Office: Bureau of Indian Affairs (BIA)

Relevant park, refuge, site or other location:

Request Description:

Under the Freedom of Information Act, 5 U.S.C. § 552, I request copies of all student counts taken at any time during the school year, attendance records and graduation rates since 2010 for the following federal off-reservation boarding schools:

- \* Chemawa Indian School
- \* Sherman Indian High School
- \* Riverside Indian School
- \* Flandreau Indian School
- \* Circle of Nations

Desired Format of Disclosure: Electronic format via email

Select the applicable reason why you are requesting expedited processing:

Expedited Processing Justification: I am pursuing information concerning government activity. This information will be used in news broadcasts to inform the public. As a member of the news media pursuing information in the public interest, I request expedited processing.

Expedited Processing Certification: I certify that the above statement(s) concerning expedited processing are true and correct to the best of my knowledge and belief.

Please select the appropriate statement: I am requesting a waiver or reduction of fees.

I agree to pay fees up to this particular amount: \$100

In order to assist you in determining my requester category to assess fees, you should know that I am: a representative of the news media and this request is made as part of a news gathering effort and not for commercial use

News Media/Educational or Noncommercial Scientific Institution Affiliation: Oregon Public Broadcasting (affiliate of both PBS and NPR)

Check the boxes to the right to confirm that you meet the Department's fee waiver criteria:

- Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.
- Disclosure of the information is not primarily in my commercial interest.

Detailed Fee Waiver Justification: I am a journalist working for Oregon Public Broadcasting, a nonprofit public media outlet with a wide reach and frequent partner of national programs. I request that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a) (4)(A)). We are examining federally run schools that educate some of the country's most vulnerable populations, making our work of significant public interest.

The results of this submission may be viewed at:

https://www.doi.gov/node/11498/submission/2837



### **United States Department of the Interior**

### BUREAU OF INDIAN EDUCATION Washington, D.C. 20240

MAY 0 5 2017

IN REPLY REFER TO: FOIA-BIA-2016-01009

Mr. Anthony Schick 7140 SW Macadam Ave. Portland, Oregon 97219

Dear Mr. Schick:

We are providing a final response to your Freedom of Information Act (FOIA) request, dated March 31, 2016, requesting "copies of any investigations, inspections or audits – both internal and external -- on file since 2006 for federal off-reservation boarding schools, including the following:

- \*Chemawa Indian School
- \*Sherman Indian School
- \*Riverside Indian School
- \*Flandreau Indian School
- \*Circle of Nations."

Your FOIA request was assigned control number BIA-2016-01009. Please cite this number in any future communications with our office regarding your request.

We classified you as a "Media" requester. There are 65 records and a total of 1,080 pages.

The FOIA fee for processing your request is calculated as follows:

Duplicated/Scanned Pages 1,080 pages (-100) @ \$.15 per page = \$147.00. We are transmitting these files as zip files via email along with this letter.

Please note that you have not been charged for the first 100 duplicated/scanned pages (or their equivalent volume). In addition, due to our delay in responding, we are not charging you for the documents.

We have redacted portions of 112 pages of these responsive documents under FOIA Exemption 6 because they contain personal contact information of members of the public who served as subcontractors or include their social security numbers, and dates of birth.

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5

### U.S.C. § 552(b)(6).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information, as noted earlier, the information withheld includes social security numbers, dates of birth, personal contact information, subcontractors names, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties.

Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure.

Jackie Cheek, Bureau of Indian Education, Special Assistant to the Director, is responsible for this partial denial. James Porter, Attorney-Advisor in the Office of the Solicitor, was consulted.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal <u>no</u> <u>later than 90 workdays</u> from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the BIE's response is in error. You must also include with your appeal copies of all correspondence between you and BIE concerning your FOIA request, including your original FOIA request and

BIE's response. Failure to include with your appeal all correspondence between you and BIE will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior Office of the Solicitor 1849 C Street, N.W. MS-6556 MIB Washington, DC 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339 Fax: (202) 208-6677

Email: FOIA.Appeals@sol.doi.gov

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road - OGIS College Park, MD 20740-6001

E-mail: ogis@nara.gov

Web: <a href="https://ogis.archives.gov">https://ogis.archives.gov</a> Telephone: 202-741-5770

Fax: 202-741-5769

Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. If you have any questions about our response to your request, you may contact Jackie Cheek by phone at 202-208-6983, by fax at 202-208-3312, by email at <a href="mailto:Jacquelyn.Cheek@bie.edu">Jacquelyn.Cheek@bie.edu</a>, or by mail at U.S. Department of the Interior, Bureau of Indian Education, 1849 C Street, NW, MS 3609-MIB, Washington, D.C. 20240.

You may seek dispute resolution services from our FOIA Public Liaison, Jessica Rogers, by phone at (202) 208-3135, by email at FOIA@bia.gov, or by mail at 1849 C Street, NW MS -4660 MIB, Washington DC 20240."

This concludes our response to your FOIA request assigned control number BIA-2016-01009.

Sincerely,

Jacquelya M. Cheek Jacquelyn M. Cheek

Special Assistant to the Director

Bureau of Indian Education



# K&L GATES LLP 925 FOURTH AVENUE SUITE 2900, SEATTLE, WA 98104-1158 T +1 206 623 7580 F +1 206 623 7022 klaates.com

#### Via Email and US Mail

Daniel Largo, Jr.
Office of the Asst Secretary/BIA
MS-3070
1849 C Street NW
Washington DC 20240

Email: foia@bia.gov

Ben Mayer ben.mayer@klgates.com

T+1 206 370 8074

February 25, 2016

Re: FOIA Request for Information on Behalf of the Duwamish Tribe

Dear Mr. Largo:

I write to follow-up on an outstanding request for information made by K&L Gates LLP ("K&L Gates")—on behalf of the Duwamish Tribe—on July 23, 2015 (the "Request"). The Request asked for information related to the Office of Federal Acknowledgment's ("OFA") decision to deny federal acknowledgment to the Duwamish Tribal Organization ("Duwamish Tribe" or "Tribe") in July 2015.

As you know, the Duwamish Tribe and the OFA have previously communicated about this matter. For your convenience, I have reproduced that correspondence history here:

- On July 23, 2015, Michael K. Ryan, an attorney at K&L Gates, submitted the Request to Mr. Daniel Largo, Indian Affairs FOIA Officer, pursuant to the Freedom of Information Act ("FOIA") and Department of the Interior's FOIA regulations. 5 U.S.C. §§ 552 et seq.; 43 C.F.R. Part 2. Mr. Ryan outlined 13 document categories in the Request.
- On July 27, 2015, OFA acknowledged receipt by email, indicating the Request had been forwarded to Mr. Lee Fleming, OFA FOIA Coordinator. No responsive documents arrived after that initial contact.
- On September, 14, 2015, Mr. Ryan sent a follow-up email to Mr. Fleming requesting a response from OFA. Mr. Ryan clarified that the Request covered any communications between the Bureau of Indian Affairs and the White House regarding the changes made to the Federal Acknowledgement regulations in 2015.
- On September 17, 2015, Mr. Fleming responded by letter to Mr. Ryan. Mr. Fleming stated that approximately 1,000 pages of responsive material existed, but OFA would

K&L GATES

Page 2
February 25, 2016

not begin processing the Request until written assurance of payment had been received. Mr. Fleming estimated \$2,651.00 in total costs because OFA classified the Request as a "commercial requestor."

Please find the correspondence described above attached to this letter for reference. This letter responds to Mr. Fleming's September 17th letter, OFA's last communication with the Duwamish Tribe.

#### Requester Classification and Costs

Mr. Fleming miscategorized the Request. Mr. Fleming incorrectly deemed K&L Gates, on behalf of the Duwamish Tribe, a "commercial-use requester".

Mr. Ryan and K&L Gates made the Request on behalf of the Duwamish Tribe as the Tribe's pro bono counsel. As pro bono counsel, K&L Gates is properly categorized as an "all other requester," not commercial-user. Commercial use is defined as "use that furthers your commercial, trade or profit interest or that of the person on whose behalf the request is made." 43 C.F.R. 2.70. "All other requesters" are those requesters that do not qualify as either education or non-commercial scientific institutions, or as representatives of the news media. Unlike commercial use, all-other requestors are only required to pay search and duplication fees. See Muffoletto v. Sessions, 760 F. Supp. 268, 277-78 (E.D.N.Y. 1991) (citing 5 U.S.C § 552(a)(4)(A)ii(I)-(iii). See also 43 C.F.R. §§ 2.38, 2.39.

The Duwamish Tribe is correctly categorized as an "all other requester." The Tribe is not pursuing a commercial, trade, or profit interest through the Request. The Tribe instead seeks documentary records related to its petition for Federal Acknowledgement. Moreover, K&L Gates is not pursuing a profit interest through the firm's engagement with the Duwamish Tribe. K&L Gates is providing the Tribe legal services free-of-charge. In fact, K&L Gates has devoted substantial time, energy, and resources to the Tribe's interests, all without cost to the Tribe.

Because K&L Gates makes the Request on behalf of the Duwamish Tribe—a non-commercial "all other" requester—OFA may not charge Managerial Review Costs. Moreover, the Bureau of Indian Affairs has previously provided documents on behalf of the Duwamish Tribe under this "other-use" designation, without Managerial Review costs. For reference, attached please find a letter dated September 16, 2015 from Sean Johnson, Program Analyst/FOIA Officer, Northwest Regional Office.

The estimated costs for the Request, then, should be approximately \$211.00, not \$2,651.00 as quoted by Mr. Fleming. The Duwamish Tribe and the Tribe's counsel, K&L Gates, are only responsible for Duplication (\$61.00) and Managerial Search fees (\$150.00).

#### **OFA's Failure to Comply with Statutory Time Limits**

The United States Department of Interior ("Interior") has adopted FOIA rules implementing 5 U.S.C. § 552. See 43 C.F.R. 2.1. These rules and the federal statute require OFA to make a

determination on a FOIA request within 20 days of receiving such request. <u>Id.</u> § 2.16. <u>See also U.S.C.</u> § 552(a)(6). OFA must "immediately notify the person making such request of such determination and the reasons therefor . . . ." 5 U.S.C. § 552(a)(6)(A)(i).

OFA was required to provide responsive documents within 20 days of July 23, 2015. OFA did not provide a response until September 17, 2015, well past the statutory and regulatory compliance period under FOIA.

In conclusion, I renew the Request and ask that your office promptly provide us with a revised estimate for the cost of documents responsive to the Request using the "other-use requester" designation. The information outlined in the Request is critical to the Duwamish Tribe. In addition, releasing these documents through FOIA is likely to contribute significantly to the public's understanding of the operations and activities of the Bureau of Indian Affairs, the OFA and the Department of Interior as a whole.

Thank you in advance for your immediate attention to this matter. If you have any questions, please contact me directly at 206.370.8074 or <a href="mailto:ben.mayer@klgates.com">ben.mayer@klgates.com</a>.

Regards,

Ben Mayer

Attachments

**K&L GATES** 

**K&L GATES LLP** 

925 FOURTH AVENUE SUITE 2900, SEATTLE, WA 98104-1158 T +1 206 623 7580 F +1 206 623 7022 klgates.com

#### By Email

Mr. Daniel Largo Indian Affairs FOIA Officer Assistant Secretary -- Indian Affairs 1849 C Street, N.W. MS 3070 -- MIB Washington, D.C. 20240 Michael K. Ryan michael.ryan@klgates.com

T 206.370.8023

July 17, 2015

Re: FOIA Request for Information Related to Duwamish Tribe

Dear Mr. Largo

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 et seq., and the Department of the Interior FOIA regulations at 43 C.F.R. Part 2, I am writing to request information regarding and relating to the Office of Federal Acknowledgment's ("OFA") recent decision to deny Federal Acknowledgment to the so-called Duwamish Tribal Organization ("Duwamish Tribe") that was issued by R. Lee Fleming, Director, on or around July 2, 2015. Nothing in this letter, however, should be construed as limiting the documents requested below to only those documents considered by the OFA in rendering its decision. A copy of correspondence between OFA and the Duwamish Tribe, dated July 2, 2105, is attached as Exhibit A for reference.

#### We are seeking the following documents:

- (1) All documents relating in any way to communications with, or information received from, any third party, including but not limited to any "Interested and Informed Parties," as that term is used in Mr. Fleming's July 2, 2015 letter to Ms. Cecile A. Hansen.
- (2) All documents relating in any way to Director Fleming's statement in his July 2, 2015 letter that "we believe that some members are already enrolled in federally recognized tribes, and other of your individual members may also be eligible for membership in recognized tribes."
- (3) All documents relating to the Department of Interior's determination, as stated in Director's Fleming's July 2, 2015 letter, that the decision is properly considered a "final decision."

(4) All documents relating to any internal communications between OFA regarding the so-called "final decision" referenced in Director Fleming's July 2, 2015 letter.

- (5) All documents relating to any communications between OFA and any other department, bureau or agency of the United States or any other federally recognized Indian tribe, regarding the so-called "final" decision reference in Director Fleming's July 2, 2015 letter.
- (6) All documents relating to the decision to make the new Federal Acknowledgment regulations effective after the so-called "final" decision reference in Director Fleming's July 2, 2015 letter.
- (7) All documents dated from before 1979, related to the Department of the Interior's actual or potential identification of the Duwamish Tribe petitioner as an Indian tribe, specifically including but not limited to any documents related to Exhibit A, reprinted on page 187 of the 1976 report of the American Indian Policy Review Commission, Task Force #10, which on information and belief is a document created in or around 1974 by the Portland office of the Bureau of Indian Affairs, assessing whether various Pacific Northwest Indian Tribes, including the Duwamish Tribe, satisfied the so-called Cohen criteria.
- (8) All documents, specifically including but not limited to Department of Interior precedent, Department of Interior decisions (formal or informal), Department of Interior rules or regulations, statutes, case law, considered by the OFA and/or the Department of Interior, in reaching its Final Determination on the Duwamish Tribe's petition for acknowledgment. If too voluminous, we will accept a list specifically identifying such sources in a format sufficient enough for us to locate and obtain them from the public record.
- (9) All documents relating or referring to the any request made by the Duwamish Tribe for the Bureau of Indian Affairs to create a trust (scholarship fund) from money obtained from a land claims settlement. For reference, attached as <u>Exhibit B</u> is a copy of the relevant portions of an official State of Washington document referencing the Duwamish Tribe's request.
- (10) All documents referring or relating to, or prepared by, Peter P. Three Stars, in his capacity as Superintendent of the Western Washington Agency Bureau of Indian Affairs or Tribal Operations Specialist, including, but not limited to, to any documents related to Exhibit C, an excerpt of which is reprinted and titled "Re: Federal Recognition, Tribe: Duwamish," dated on or around June 24, 1974.
- (11) All documents referring or relating to the suspension of various tribes' petitions for Federal Acknowledgment in light of the recent changes made to the criteria considered by the OFA.
- (12) All documents referring or relating to any consideration by the OFA of how the new Federal Acknowledgment regulations would apply to the Duwamish Tribe.
- (13) All documents referring or relating to any policies, procedures, whether internal or external, formal or informal, regarding the decision to apply the new Federal Acknowledgment

regulations to any request petition for Federal Acknowledgment that was pending as of January 1, 2015.

For purposes of this request, the term "documents" should be construed in the broadest sense to include, but not be limited to, letters, memoranda, facsimiles and facsimile cover sheets, telephone message logs, emails, voicemails, calendar entries, tapes/cds/dvds, transcripts, meeting notes, and other potentially responsive materials. Such documents should be included regardless of their source, including personal computers, cellular phones, or any other means of communication. In the event that you believe any of the documents requested may not be disclosed in their entirety, we request in advance that you release any disclosable material that can be reasonably segregated. In addition, please state with sufficient specificity the legal and factual basis for withholding any document or portions of a document, including a reasonably detailed log of any materials or documents being withheld. While we would prefer electronic files, please provide the materials in the format that allows for the most efficient and rapid response possible.

Please be advised that K&L Gates is willing to pay for the processing of this request. If you are able to provide us with a cost estimate at the outset of the process, please do so. For purposes of fee classification, K&L Gates should be considered in the category "other." We are engaged in the practice of Indian law, and this information is critical to our informed representation of our clients. In addition, because the documents requested are readily available to the general public, releasing these documents through FOIA is likely to contribute significantly to the public's understanding of the operations and activities of the Bureau of Indian Affairs, the OFA and the Department of Interior as a whole.

We request that your office respond with all documents responsive to this request, in complete and unredacted form, with twenty working days, as required by 5 U.S.C. § 552(a)(6)(A)(i).

Thank you in advance for your immediate attention to this request. If you have any questions, please contact me directly at 206.370.8023.

Yours truly,

Attachments

Michael K. Ryan

# EXHIBIT A



## United States Department of the Interior

OFFICE OF THE SECRETARY WASHINGTON, D.C. 20240

JUL 0 2 2015

Ms. Cecile A. Hansen 14235 Ambaum Blvd. SW Burien, Washington 98166

Dear Ms. Hansen:

The petition for Federal Acknowledgment as an Indian tribe of the group known as the Duwamish Tribal Organization (Petitioner #25) has been reviewed under Part 83 of Title 25 of the <u>Code of Federal Regulations</u>, (25 CFR Part 83), "Procedures for Establishing that an American Indian Tribe Exists as an Indian Tribe." Based on the available evidence, the Department has determined that Petitioner #25 is not entitled to be acknowledged as an Indian tribe within the meaning of Federal law.

This decision is final and will become effective immediately on publication of the *Federal Register* notice. Because this Final Decision is done under Judicial Remand after your group had exhausted the appeals provided under the acknowledgment regulations (§ 83.11), we will not direct you to further appeal under the Interior Board of Indian Appeals. This decision is final for the Department.

When a Final Determination is negative, the regulations direct that the petitioner will be informed of alternatives to this administrative process for achieving the status of a federally recognized tribe, or other means by which the petitioner's members may become eligible for services and benefits as Indians (§ 83.10(n)). In your case, we believe that some members are already enrolled in federally recognized tribes, and other of your individual members may also be eligible for membership in recognized tribes.

Enclosed please find copies of the Summary under the Criteria and the Description and Analysis of the Evidence for the final decision on judicial remand. Should you have any questions, please do not hesitate to contact the Office of Federal Acknowledgment, 1951 Constitution Avenue, N.W., MS 34B-SIB, Washington, D.C. 20240 or call (202) 513-7650.

Sincerely,

Director, Office of Federal Acknowledgment

Enclosures:

Summary under the Criteria

Description and Analysis of the Evidence

List of interested parties

cc:

Interested and Informed Parties

# "ARE YOU LISTENING NEIGHBOR?"

REPORT OF THE INDIAN AFFAIRS TASK FORCE

AND

# THE OPLE SOFFIK

Will you listen?

1978

STATE OF WASHINGTON

GOVERNOR DIXY LEE RAY



FIRST REVISION

#### **PREFACE**

Requests for "Are You Listening, Neighbor?" and "The People Speak, Will You Listen?": reports compiled by the Indian Affairs Task Force published in 1971 and 1973, respectively, keep coming in. Funding for the printing of additional copies, however, was not available until the reports were updated. Thus it is that these two publications have been revised and are now under one cover. Increased printing costs necessitate deletion of pictures as well as other interesting but not indispensable material from the original reports.

The executive board of the Reservation Council, Governor's Indian Advisory Council, approved "Are You Listening, Neighbor?" in its original form and voted to retain it that way. They requested that any new information be added as inserts so as to disturb as little as possible the existing content and message. The Urban and Non-reservation Councils, on the other hand, asked that "The People Speak, Will You Listen?" be rewritten, and this has been done.

Research material was gathered from court briefs, meetings of Indian organizations, news clippings, publications, responses to letters sent to heads of state and Indian agencies, the Bureau of Indian Affairs, Indian Health Services and many personal interviews conducted throughout the State of Washington. Recommendations at the ends of the chapters have been answered by the appropriate state agency as to what action has been taken in response to the recommendation in the original report.

It is the intent of this report to clear away, where possible, misunderstandings based on lack of information so that the light of reason can enter into discussion on issues affecting Indians in the State of Washington. Those who are mutually dependent on one another, as are the Indian and non-Indian citizens of this state, should make every effort to meet half-way. The new governor, Dixy Lee Ray, has declared this to be her policy.

Members of the Governor's Indian Advisory Council who are responsible for editing and approving the First Revision are: Reservation Council; Wayne Williams, Glenn Galbraith, Bill Yallup, Anne Pavel, Marvin Wilbur, Blanchard Matte, Mel Tonasket. Non Reservation Council; Ken Hanson, Clifford Allen, Mary Cloquet, Joan Marshall, Kathleen Bishop, Robert Comenout, Beulah Wilson, Robert Wooten. Urban Indian Council; Herb Barnes, John Dalton, Corrine Leach, Donald Bonds, Margaret Tillman, Ken Gourneau, Gregory Frazier, Ruth Chambers. Staff; William R. Jeffries, Jean Long, Delores Hicks McGee.

Donald M. Matheson Lou Matheson This First Revision has been made possible by a grant from the Pacific Northwest Regional Commission. The material is a result of tax-supported research and as such is not copy-rightable. It may be freely reprinted with customary crediting of the source.

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#### CHAPTER V

#### **Landless Tribes and Self-Determination**

We have told you about many of the problems that face the landless tribes. In the general discussion of the last chapter, however, we could not tell you about the many diverse characteristics of the landless tribes and what we are doing to retain a measure of control over our tribal destinies.

To demonstrate this diverse character, several tribes have been selected for specific discussion. These tribes generally reflect those tribes which (1) signed treaties and reside in treaty areas; (2) did not sign treaties but reside in treaty areas; and (3) did not sign treaties and were in areas not ceded to the United States by treaty. No attempt is made to describe all the landless tribes.

#### **DUWAMISH TRIBE**

The Duwamish Tribe, led by Chief Seattle, after whom the state's largest city is named, came to the treaty negotiation table in 1855 to become the first signator to the Treaty of Point Elliot. As Chief of both the Duwamish and the Suquamish Tribes, Chief Seattle agreed that the Duwamish Tribe would join the Suquamish and the Muckleshoot tribes on two reservations. The reservations exist to this day and were named for the latter tribes. In addition, the Duwamish retained fishing rights at "usual and accustomed" places and the privilege of hunting and gathering roots and berries on open and unclaimed land.

For some of the reasons discussed earlier, many members of the Duwamish Tribe did not move to the designated reservations. The Duwamish Tribe continued to live in and move about its aboriginal lands which include areas around what is now known as Lake Washington, the Cedar River and the City of Seattle.

Some members of the Duwamish Tribe, however, are enrolled on the two reservations and have parcels of land called allotments. They are considered by the Bureau of Indian Affairs to be either Suquamish Indians or Muckleshoot Indians—not Duwamish. The Duwamish cannot receive services from the BIA or the Indian Health Service if they identify themselves as members of the Duwamish Tribe. This is true today in spite of the fact that Duwamish Indians not enrolled on a reservation have received services from these agencies in the past, although the provision of services was the exception rather than the rule:

Mr. Willard Bill, Chairman of the 1,100 member Duwamish Tribe, testifying before the Indian Affairs Task Force, stated that his tribe is principally concerned with giving its children the greatest opportunity for gaining a full education. In an effort to assist the education of Duwamish

children the tribe attempted to channel land claims settlement money (amounting to \$64,000) into a scholarship fund. The Bureau of Indian Affairs told the tribe it could not do this, and the Bureau channeled the money on a per capita basis to tribal members. For each member, the amount received came to \$64—a small sum easily lost by an individual but in the aggregate sufficient to establish a fund to ensure the education of all Duwamish children.

The tribe is also interested in regaining a land base on which resources may be developed to provide an ongoing source of tribal income, establishing businesses which would hire unemployed Indians and developing homes for its elderly. The tribe continues to assert its right to fish in usual and accustomed stations.

#### STEILACOOM TRIBE

The Steilacoom Tribe of Indians, is a tribe of non-reservation American Indians located in Pierce County in the State of Washington. The Steilacoom Tribe of Indians is the modern successor-in-interest to the aboriginal Steilacoom Tribe. The tribal members are descendants of the Steilacoom Tribe who have resided in the same general area since time immemorial.

The United States of America entered into the Treaty of Medicine Creek with the Steilacoom Tribe of Indians on December 26, 1854. This treaty was ratified on March 8, 1855 and proclaimed April 10, 1855. This ratification and proclamation gave Congressional approval and recognition that the Steilacoom Tribe was a sovereign entity and was capable of signing a treaty. In this way, Congress acknowledged that the Steilacoom people were a sovereign tribe of Indians.

By the Treaty of Medicine Creek the Federal government became obligated to the members of the Steilacoom Tribe of Indians to provide care and protection to them and to secure fulfillment of their rights under the treaty.

The United States Congress has not acted to abrogate the Treaty of Medicine Creek or any rights, entitlements, or obligations under it.

The Tribe has never been terminated by Congress nor has any agency or official of the United States Government taken any formal action to declare or determine that it has ceased to exist.

The Steilacoom Tribe was found by the United States Indian Claims Commission to be an identifiable group of Indians and also that it was one of the parties to the

TO BE AND THE SECOND COMMENTS OF THE COMMENTS OF THE SECOND COMMENTS
Re: Federal Recognition
Tribe: DUWAMISH
Note: Evaluation is based on data available as of June 17, 1974.
DETERMINATION
1. Eligible for Federal recognition?
Yes. 2  No. 1
2. Comments: According to Hygeney records and Agency Staff comments, Their gence was active and worked together through a common commil. "Ludless but deserve recognition"
3. By: Peter P. Three Stars Specialist.  Date: 6-24-74 Stind branch review
Teom

#### FEDERAL RECCONITION OF INDIAN TRIBES

five considerations.  These have been relied upon in reaching the conclusion that a group constitutes a "tribe" or "band".)	Aboriginal Swinomish	Duwamish	James town	Kikiallus	Lower Skagi	Samish	Snohomish *	Snoqualmie	Steilscoom	Cowlitz	Chinook
1) That the group has had treaty relations with the United States.		X	1		, 2						
2) That the group has been denominated a tribe by act of Congress or Executive Order.											
3) That the group has been treated as a tribe or band by other Indian tribes.		X									
4). That the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe.		X									 !
5) That the group has exercised poli- tical authority over its members, through a tribal council or other governmental forms.		X							1		
OTHER:  1. Group has received special appropriations.  2. Group is now or has received											
Federal services (BIA-IHS, etc.).  3. Group is recognized by the Indian		X									
Claims Commission.  4. ETA has had regular contacts with the group or its representatives.		Y	-							7.	<del>.</del>
o. Group has had frequent contacts with the BIA.		X									
p. BIA has assisted group with special projects.  Group has an organization which						,					
eets regularly and annually.  Group has elected officials and		X									
ribal council. Group has a constitution and cylaws.		X			,		- 1				
O. Group has an official tribal		X									
1. Group's council meets regularly conduct tribal business. 2. BIA has issued I.D. cards to		X		-	,					7.77	·
members of group for gishing, etc.  3. Group invited to BIA meetings with northwest tribes.		X				- i - i					
4. Group has been active in asserting its fishing rights.		X	1								
CNCLUSION: ELIGIBLE - I for Yes. N for no.		Y	ŭ.								



# United States Department of the Interior

OFFICE OF THE SECRETARY WASHINGTON, D.C. 20240

SEP 17 2015

Mr. Michael Ryan K & L Gates 925 Fourth Avenue, Suite 2900 Seattle, Washington 98104

Dear Mr. Ryan:

Thank you for your Freedom of Information Act (FOIA) request dated July 23, 2015, received by the Office of Federal Acknowledgment (OFA) on July 27, 2015. You requested copies of documents related to the 2015 decision to deny Federal acknowledgment to the Duwamish Tribal Organization (Petitioner #25) and outlined 13 categories.

As a "commercial-use requester," you are expected to pay for all costs:

Managerial search fee is \$15.25 per 1/4 hour. To find this material, it may take a minimum of 1 hour.

Therefore, the estimated cost for managerial search is 1 hour or \$61.00.

**Duplication** fee is \$0.15 per page/image, and entails copying approximately 1/2 archival box or 1,000 pages/images:

Therefore, the estimated cost for duplication of 1,000 images is \$150.00.

Managerial review fee is \$15.25 per 1/4 hour. The estimated time to conduct a managerial review is calculated at 1,000 images divided by 25 images reviewed per hour or approximately 40 hours (or 5 workdays). Therefore, the estimated cost for managerial review is 40 hours X \$61.00 per hour or \$2,440.

In summary, the estimated costs are broken down as follows:

Managerial Search Cost	\$ 61.00
<b>Duplication Cost</b>	150.00
Managerial Review Cost	<u>2,440.00</u>
Estimated Total Cost	\$ 2,651.00

You stated, "K&L Gates is willing to pay for the processing of this request; however, when costs exceed \$250.00, the Department requires an assurance of payment. It is anticipated that the total cost to process your request will be approximately \$2,651.00.

Please note that personal information, such as a group's membership list, enrollment files, vital records, and other personal information would be withheld entirely or partially, or redacted under Exemption 6. At this point we are not sure of the approximate number of images of personal information would fall under Exemption 6. In addition, we anticipate that the request may include attorney client communications and other privileged material that would fall under Exemption 5. Based on this information and in view of the above anticipated fees, you may wish to narrow the scope of your request. We will also attempt to remove any duplicative materials. Narrowing your request will reduce your costs.

Please furnish written assurance of your willingness to pay the full amount for copies of the documents to:

Mr. R. Lee Fleming, Director Office of Federal Acknowledgment 1951 Constitution Avenue, N.W., MS: 34B-SIB Washington, D.C. 20240

We will not start processing your request until an assurance of payment has been received from you indicating a willingness to pay for your initial FOIA request or a modified request. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request. Should you have any questions regarding this response, please contact me at (202) 513-7650.

Sincerely,

Director, Office of Federal Acknowledgment

From: Ryan, Michael

Sent: Monday, September 14, 2015 9:00 AM

To: FOIA, BIA; Lee Fleming

**Cc:** Freedman, Bart; Cheryl Branum; Heather Garcia **Subject:** RE: Freedom of Information Act Request

Dear Coordinator Fleming,

On July 17, 2015, you received a FOIA request on behalf of the Duwamish Tribe that was directed to Mr. Daniel Largo, Indian Affairs FOIA Officer. While I received the acknowledgment below regarding our request, we have not heard any additional response nor received any documents. As you know, under the FOIA (5 U.S.C. 552(a)(6)(A)(i)), the Bureau was required to provide the requested documents within twenty days. This has not occurred. As a result, the Bureau is currently not in compliance with the FOIA. We reserve our rights to take any necessary action to insure your compliance with the FOIA.

Also, while we believe the following request is already covered in our FOIA request, we want to be clear that it covers all documents relating to, or referencing, any communications between the Bureau and the White House, its staff, or any other person affiliated in any way with the White House regarding the changes made to the Federal Acknowledgment regulations in 2015. To the extent you do not agree that our request covers those documents please consider this an independent request for all such documents. We would like you to attach priority to this request.

Finally, please make sure that all communications regarding this FOIA request are also sent to Mr. Bart Freedman, who is cc'd above.

I look forward to your prompt response.

King regards,

#### Michael K. Ryan

K&L Gates LLP 925 Fourth Avenue, Suite 2900 Seattle, WA 98104 206.370-8023 (direct dial) 206.623.7022 (fax) michael.ryan@klgates.com www.klgates.com

From: jessica rogers@ost.doi.gov [mailto:jessica rogers@ost.doi.gov] On Behalf Of FOIA, BIA

Sent: Monday, July 27, 2015 4:37 AM

To: Ryan, Michael

Cc: Freedman, Bart; Cheryl Branum; Lee Fleming; Heather Garcia

Subject: Re: Freedom of Information Act Request

RE: BIA-2015-01737

Thank you for your email. Your request has been forwarded to the Office of Federal Acknowledgment FOIA Coordinator; Lee Fleming. He can be contacted at:

Office of Federal Acknowledgement 1951 Constitution Avenue NW Mailstop 34B-SIB Washington, DC 20251 lee.fleming@bia.gov

Sincerely,

Jessica R. Rogers Acting Government Information Specialist

On Thu, Jul 23, 2015 at 4:54 PM, Ryan, Michael < michael.ryan@klgates.com > wrote: To Whom It May Concern,

Attached please find a request for documents under the Freedom of Information Act, 5 U.S.C. 552, et seq. If you assign a reference or tracking number to this request, please let me know what that number is so that I can properly track/reference the request if necessary. Finally, would you please be so kind as to confirm receipt of this request.

If you have any questions please do not hesitate to contact me directly at the number below.

Yours truly,

Michael K. Ryan



# United States Department of the Interior

OFFICE OF THE SECRETARY WASHINGTON, D.C. 20240

APR 1 1 2016

CORRECTED FOIA BIA-2016-00810

Mr. Ben Mayer K & L Gates LLP 925 Fourth Avenue, Suite 2900 Seattle, Washington 98104-1158

Dear Mr. Mayer:

Thank you for your Freedom of Information Act (FOIA) request dated February 25, 2016, received by the Office of Federal Acknowledgment (OFA) on February 29, 2016. The Office of the Assistant Secretary – Indian Affairs' (AS-IA) FOIA office assigned your request with the following control number: FOIA BIA-2016-00810. Please cite this number in any future communications with OFA regarding your request.

We understand that you are renewing an earlier request that Mr. Michael Ryan made on behalf of K & L Gates. Mr. Ryan requested copies of documents, outlined 13 categories, related to the 2015 decision to deny Federal acknowledgment to the Duwamish Tribal Organization (Duwamish), the effective date of the 25 C.F.R. part 83 (2015) and suspensions of other petitioners. We interpret your request as not including a duplicate copy of records provided to you previously as part of the administrative record in *Hansen v. Salazar*, 2013 U.S. Dist. Lexis 40622 (W.D. Wash. 2013). If we err in this interpretation, however, please let us know. As you are aware, the copy of the administrative record that you have is without redaction under the FOIA and is thus more comprehensive than that which we could provide you in response to your FOIA.

The FOIA office assigned Mr. Ryan's request with the control number: FOIA BIA-2015-01737. Mr. Ryan advised:

K & L Gates is willing to pay for the processing of this request. If you are able to provide us with a cost estimate at the outset of the process, please do so. For purposes of fee classification, K & L Gates should be considered in the category "other." We are engaged in the practice of Indian law, and this information is critical to our informed representation of our clients.

Mr. Ryan did not indicate that K & L Gates was submitting this request on behalf of the Duwamish. By letter of September 17, 2015, OFA provided Mr. Ryan a cost estimate based on the fee structures of a "commercial-use requester" and a request for written assurance of payment. We advised:

If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request.

After 20 workdays, we did not hear from Mr. Ryan, and the Department of the Interior (Department) closed out FOIA BIA-2015-01737 on October 16, 2016.

As a new request, K & L Gates is now asking for, on behalf of the Duwamish, copies of documents from the same 13 categories that Mr. Ryan had requested under FOIA BIA-2015-01737. We note, however, that we have a very similar request from your client through Cecile Hansen, which we received the same date as yours. We will process her request after we process yours. This letter is to advise you of the following:

#### Other Use Requester - 43 CFR §§ 2.38, 2.39

With recent clarification, we have classified you as an "other-use" requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs. You are also entitled to up to 2 hours of search time and 100 pages/images of duplication at no charge.

#### Agreement to Pay Fees – 43 CFR § 2.6(a)

Your request must explicitly state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver. Please note that we will begin processing the request only after the fee issues are resolved. To help you determine a willingness to pay fees up to a specific amount, we are providing an estimate of costs.

#### **Estimate of Costs**

Per your request for a revised estimate, we are writing today to advise you that the cost of processing your request will be as follows. Based on a recent FOIA request, OFA and the Office of the AS-IA estimate 15 hours for search at the "Managerial Rate" of \$61.00 per hour. With two hours of search at no charge, the cost of the remaining 13 hours is \$793.00 (13 hrs. x \$61.00 = \$793.00).

Duplication fee is \$0.15 per page/image, and would entail copying approximately 1/2 archival box or 1,000 pages/images, the first 100 are free. Therefore, the estimated cost for duplication of 900 pages/images is \$135.00 (900 x \$.15). Therefore, the overall cost in processing this part of your request is estimated to be approximately \$928.00 (\$793.00 + \$135.00).

#### **Additional Estimate of Costs**

Your request also encompasses communications that would require a search of electronic communications for personnel no longer with the Department. It will take approximately eight hours to locate and reproduce the individuals' emails, at a professional rate of \$42.00 per hour

for a total of \$336.00 (8 x \$42.00). As an "other requestor," you will not be charged for the additional managerial review time.

#### **Overall Costs**

Therefore, we estimate that the total expense for fulfilling your FOIA request #BIA-2016-00810 will be \$ (\$928.00 + \$336.00 = \$1,264.00). You may wish to narrow your request to identify a specific time periods and specific individuals for the search of the Department's email system, and thus reduce the expense. Further, if we erred in our interpretation that your request does not include records from the administrative record already in your possession, there will be an increase in the copying and search fees.

This estimate was also made in consultation with Ms. Barbara Coen, Senior Attorney, Office of the Solicitor. Please furnish written assurance of your willingness to pay the full amount for processing this request to: Mr. R. Lee Fleming, Director, OFA, 1951 Constitution Avenue, N.W., MS-34B SIB, Washington, D.C. 20245.

We will not start processing your request until an assurance of payment has been received from you indicating a willingness to pay for your FOIA request or a modified request. If we do not hear from you within 20 workdays of the date of this letter, we will assume you are no longer interested in this matter and will close the file on your request. Should you have any questions regarding this response, please contact me at (202) 513-7650.

Sincerely,

Director, Office of Federal Acknowledgmen



April 25, 2016

Benjamin Mayer ben.mayer@klgates.com

T +1 206 370 8074

R. Lee Fleming Director, OFA 1951 Constitution Ave, N.W. MS-34B SIB Washington, DC 20245

Via Email and US Mail

Re: FOIA BIA-2016-00810 Assurance of Payment

Dear Mr. Fleming,

Please accept this letter as K&L Gates LLP's written assurance of willingness to pay the full amount of \$1,264.00 for processing FOIA BIA-2016-00810 pursuant to your letters dated April 7, 2016 re FOIA BIA-2016-000810 and April 11, 2016 re Corrected FOIA BIA-2016-00810. In addition to accepting this assurance of payment letter, I ask that you provide a time estimate for responding to this request.

Thank you in advance for your prompt attention to this matter. If you have any questions, please contact me directly at 206.370.8074 or ben.mayer@klgates.com.

Regards,

Benjamin Mayer

Enclosure

cc: Bart J. Freedman