



Michael R. Smith
msmith@zuckerman.com
(202) 778-1832

April 5, 2018

Hon. Mae A. D'Agostino
United States District Judge
U.S. District Court for the
Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

Re: *Oneida Indian Nation v. U.S. Dep't of Interior*, No. 17-cv-0913 (MAD/TWD)

Dear Judge D'Agostino:

I write on behalf of Plaintiff Oneida Indian Nation to request leave to file four pages of recently-obtained documents in advance of the upcoming April 12th argument on the pending motion to dismiss this APA action.

The administrative record has not been filed, but, after briefing on the pending motion was complete, I received documents in response to an earlier FOIA request to Defendant, the Department of the Interior. Four pages of those documents detail a step-by-step process Department personnel follow to obtain higher-level approvals for changing the names of Indian tribes in the list the Department publishes in the Federal Register. Those four pages would have been attached to the Nation's complaint, if they had been available. The Nation believes that they embody the unpublished rule alleged in the complaint and that they have relevance to issues raised by the Department concerning whether it makes a decision when it changes tribes' listed names and whether there is law to apply in evaluating that decision.

Counsel for the Department has authorized me to represent that the Department has no objection to the Nation's request for leave to file the four pages enclosed with this letter.

Respectfully submitted,

/s/ Michael R. Smith

Michael R. Smith



Howaste, Wakinyan <wakinyan.howaste@bia.gov>

request re: tribal entities name change instructions to region from Laurel

Howaste, Wakinyan <wakinyan.howaste@bia.gov>

Thu, Aug 3, 2017 at 11:58 AM

To: James Porter <james.porter@sol.doi.gov>, Laurel Iron Cloud <laurel.ironcloud@bia.gov>

Cc: "Mr. Wakin'yan Howa'ste" <Wakinyan.howaste@bia.gov>

Jim: We have a request for Hankie and Laurels "Policy" (Instructions) to the Region regarding the protocol for tribes in order to pursue tribal name change etc. The Question is; "Should we sent out the email as it is?

"Request Description:

I am requesting a copy of the policy that was ordered by Hankie Ortiz, Deputy Bureau Director, Office of Indian Services, BIA, and implemented by Laurel Iron Cloud Chief, Division of Indian Services Bureau of Indian Affairs as stated to me by Harley Long of the Pacific Regional Office. Harley Long stated that, "The policy requires that before the BIA can change the name of a tribe the tribe must show evidence that its name is embodied in its governing documents."

William Pink

Laurel reply is the attached Aug 2, 2017, email she sent out to the Regional Tribal Government staff:

"Good afternoon to all, A few of you have asked about what needs to be submitted if a tribe wishes to make a change to their name in the next publication of the tribal "Entities" list. The most efficient process for our office is as follows:

1. Tribe drafts a letter to AS-IA requesting that the name be changed on the Entities list. The letter should make clear the rationale. For example, a tribe may want to clarify that the state designation should be removed, the spelling changed, addition or removal of commas, hyphens, etc.
2. Along with the request letter, the tribe should attach a formal tribal resolution for the change, along with supporting documentation such as a constitution or other governing documents that reflect consistency with the name change.
3. Ideally, the request packet should be submitted to the local servicing office to be reviewed and processed through the respective regional office to the Office of Indian Services in Washington, DC for final BIA surname processing for the next years' publication of the Entities list. If a tribe submits a request directly to DC, upon receipt in our office, we will send a copy to the respective region to ensure consistency.
4. All complete requests for name change submitted to the Office of Indian Services by September 30th will have the change reflected in the following January Entities list publication.

Please feel free to contact me if you have any questions. Also, please note that this process only applies when a tribe is already currently listed. This not NOT the process for groups wishing to be added to the list.

Laurel Iron Cloud, Chief
Division of Tribal Government Services
1849 C Street NW
MS4513-MIB
Washington, DC 20240
Phone: (202) 513-7626
Fax: (202) 219-1193"

Mr. Wakin'yan Howa'ste', Program Analyst, Records Management Officer
Office of the Deputy Bureau Director - Indian Services
1849 C Street N.W. - MS-3654-MIB (Main Interior Building)

Washington, D.C. 20240
Phone: 202.513.7640
Email: wakinyan.howaste@bia.gov

If you receive this e-mail in error, please notify the sender immediately. Thank you.

2 attachments

 FOIA BIA 2017 01758_PINK_William_INCOMING Email 8.31.17.pdf
186K

 Tribal Entities name change Instructions_L. IronCloud.pdf
268K

Porter, James <james.porter@sol.doi.gov>
To: "Howaste, Wakinyan" <wakinyan.howaste@bia.gov>
Cc: Laurel Iron Cloud <laurel.ironcloud@bia.gov>

Thu, Aug 3, 2017 at 12:17 PM

Thanks Wakinyan,
Seems to me that FOIA doesn't give us any choice. The email is a document that is responsive to the FOIA request. Looks to me like it is a decision by an agency official, so it's not deliberative process. Did you have some particular concern, or some thought about why we would not produce the email?

[Quoted text hidden]

James W. Porter
Attorney-Advisor
Branch of Tribal Government Services, Division of Indian Affairs
Office of the Solicitor, Department of the Interior
1849 C Street, N.W. Washington, D.C. 20240
Mail stop 6518
202-208-5349 (phone)
202-208-4115 (fax)
James.Porter@sol.doi.gov

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Howaste, Wakinyan <wakinyan.howaste@bia.gov>
To: "Porter, James" <james.porter@sol.doi.gov>

Thu, Aug 3, 2017 at 12:24 PM

Not really, Laurel just thought we should check with you before we reply with the email as it is.

My question to Laurel was:

"Is there actual written Policy for Tribal Entities name change", and Laurel sent the email with instructions...

Other than that, the reply looks good to me.

Mr. Wakin'yan Howa'ste', Program Analyst, Records Management Officer
Office of the Deputy Bureau Director - Indian Services
1849 C Street N.W. - MS-3654-MIB (Main Interior Building)
Washington, D.C. 20240
Phone: 202.513.7640
Email: wakinyan.howaste@bia.gov

If you receive this e-mail in error, please notify the sender immediately. Thank you.

[Quoted text hidden]

Iron Cloud, Laurel <laurel.ironcloud@bia.gov>
To: "Porter, James" <james.porter@sol.doi.gov>
Cc: "Howaste, Wakinyan" <wakinyan.howaste@bia.gov>

Thu, Aug 3, 2017 at 1:26 PM

I do not have a problem with the release. I just wanted SOL approval.

On Thu, Aug 3, 2017 at 12:17 PM, Porter, James <james.porter@sol.doi.gov> wrote:

[Quoted text hidden]

--
Laurel Iron Cloud, Chief
Division of Tribal Government Services
1849 C Street NW
MS 3645-MIB
Washington, DC 20240
Phone: (202) 513-7626
Fax: (202) 219-1193

8/2/2017

DEPARTMENT OF THE INTERIOR Mail - Fwd: Name changes for "Entities" list



Howaste, Wakinyan <wakinyan.howaste@bia.gov>

Fwd: Name changes for "Entities" list

1 me ag

Iron Cloud, Laurel <laurel.ironcloud@bia.gov>
 To: Wakinyan Howaste <wakinyan.howaste@bia.gov>

Wed, Aug 2, 2017 at 1:09 PM

----- Forwarded message -----

From: Iron Cloud, Laurel <laurel.ironcloud@bia.gov>

Date: Thu, Mar 12, 2015 at 1:10 PM

Subject: Name changes for "Entities" list

To: Todd Gravelle <todd.gravelle@bia.gov>, Andrea Phillips <andrea.phillips@bia.gov>, Becky Smith <becky.smith@bia.gov>, Cheryl Arviso <cheryl.curley@bia.gov>, Cody Halterman <cody.halterman@bia.gov>, "Crespin, Lolita" <lolita.crespin@bia.gov>, Darren Smith <darren.smith@bia.gov>, Diane Buck <diane.jobee@bia.gov>, Donna Carroll <donna.carroll@bia.gov>, Ethel Dybdahl <ethel.dybdahl@bia.gov>, Gregory Norton <greg.norton@bia.gov>, Harley Long <harley.long@bia.gov>, Jo-Ellen Cree <jo-ellen.cree@bia.gov>, Louise Reyes <louise.reyes@bia.gov>, Mary Foster <mary.foster@bia.gov>, Patricia Mattingly <patricia.mattingly@bia.gov>, Scott Sufficool <scott.sufficool@bia.gov>, Sharlot Johnson <sharlot.johnson@bia.gov>, Sherrel LaPointe <sherrel.lapointe@bia.gov>, Sherry Lovin <Sherry.Lovin@bia.gov>, Shyla Joe <Shyla.Joe@bia.gov>, Sophia Torres <sophia.torres@bia.gov>, Viola Brooks <viola.brooks@bia.gov>, Wakinyan Howaste <wakinyan.howaste@bia.gov>

Good afternoon to all,

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 Division of Tribal Government Services
 1549 C Street NW
 MS 4513-MTB
 Washington, DC 20240
 Phone: (202) 513-7620
 Fax: (202) 219-1199

Laurel Iron Cloud, Chief
 Division of Tribal Government Services