



Tolowa Dee-ni' Nation

(Formerly known as Smith River Rancheria)

140 Rowdy Creek Rd, Smith River, CA 95567-9525

Ph: (707) 487-9255 Fax: (707) 487-0930

Loren Me'-lash-ne
Bommelyn
Chairman

Denise Padgett
Vice Chairperson

Scott D. Sullivan
Council Secretary

Dr. Joseph
Giovannetti
Treasurer

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Marvin
Richards, Sr
Council Member

Russ Crabtree
Tribal
Administrator

*Via US Mail and
The Federal Rulemaking Portal:
<http://www.regulations.gov>*

July 19, 2015

National Park Service
Joe Watkins
Office of Tribal Relations and
American Cultures
1201 Eye Street NW.
Washington, DC 20005.

Re: Regulation Identification Number 1024-AD84: Department of Interior, National Parks Service,
Proposed Rule for Gathering of Certain Plants or Plant Parts by Federally Recognized Indian
Tribes for Traditional Purposes

Dv-laa-ha~ Mr. Watkins:

The Tolowa Dee-ni' Nation is a federally recognized Indian Tribe of Tolowa Dee-ni' (people) located in the Pacific Northwest and organized pursuant to the Constitution of the Tolowa Dee-ni' Nation that was duly adopted by the citizens of the Tolowa Dee-ni' Nation. We have reviewed the proposed rule on "Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes" and have significant concerns. We are submitting comments for the National Park Service (NPS) proposed rule as well as requesting a government-to-government Consultation with NPS regarding this proposed rule.

The Tribe has relied on Tolowa Dee-ni' lands since our genesis and has maintained an intrinsic relationship of stewardship as mandated by our laws or spiritual protocols. The Tribal Council is the formally constituted governing body of the Tribe, entrusted with the responsibility to protect, preserve and promote the utilization of the ceremonial, subsistence, and economic resources and interests of the Tolowa Dee-ni' people.

As a Sovereign Nation, the Tribe has defined its lands with concurrence from the Federal Government through the Tribe's Constitution. Article I of the Constitution defines the Aboriginal Lands, Territory and Jurisdiction. Section I defines the aboriginal lands to include portions of the Redwood National and State Parks (RNSP). Within the boundaries of the RNSP there are numerous village sites, Pre-Historic and Historic, and a continued relation to place for sustenance including hunting, fishing, and gathering as well as the continued use that maintains our cultural standards of health and wellbeing, economy, education, puberty, ritual, religion and meditation.

Further defined in Sections II through V are the Tribe's Territory, Rights, Inherent Sovereign Powers to govern, and Jurisdiction. The Tribe is a Self-Governance Tribe who has an executed

***Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni
Our Heritage Is Why We Are Strong***

compact with the United States of America-Department of Interior, and is currently negotiating a General Agreement with the Park to enhance our relationship to fulfil the above responsibilities. The Tribe has proposed Self-Governance agreements with RNSP under the non-BIA programs of Title IV of the Indian Self-Determination Education and Assistance Act to engage in and perform Programs, Services, Functions and Activities outlined in non-BIA agencies. The Tribe has an unprecedented active role in the management and stewardship of RNSP as stated by NPS staff through the Foundation Vision planning process, and we expect that promulgation of this rule will be consistent with these efforts to recognize the equal interests and roles the federal government and the Tribe has in the protection of the lands that are now designated as RNSP lands.

We acknowledge the management obligations of the NPS of the trust resources of the National Parks, however, we feel the extent and type of information federally recognized tribes are required to provide in this proposed rule is overly burdensome and an impediment to Self-Determination. To that end, below is an explanation of our concerns to this proposed rule.

Discussion

It is the recommendation to look to 25 CFR Part 1000 for the relationship and structure of how to engage in the negotiation of an agreement, and consider this proposed rule as a “program” under §1000.131-5 under NPS that will be allowable to “compact” under Title IV, non-BIA programs. Per the recommendation of the Tolowa Dee-ni’ Nation to make this proposed rule a compactable non-BIA program under Part 25 CFR Part 1000 there is a negotiation process that is laid out in a series of steps that can assist to define sections 2.6 (b-g) of the proposed rule.

Sec. 2.1(d) Authorization of Agreements

The NPS should be required to notify a tribe upon receipt of a request for traditional gathering agreements from any other tribe for areas known to be within another tribe’s ancestral territory.

Sec. 2.6(a) Definitions

The Definitions provided should provide the Tribes to define what “association” and “purpose” are to meet their needs. There is an absence of the definition of plant and plant parts, and once again should allow for the Tribe to define their needs and should be inclusive rather than exclusive.

Sec. 2.6(b) Agreements Between the NPS and Indian Tribes

This section states that the Superintendent of the park “may” negotiate and enter into an agreement with a federally recognized Tribe upon receipt of its request. The Word “may” should be replaced with the word “shall” under this section. We recommend this language be consistent with language in 25 CFR Chapter IV Part 1000.

Sec. 2.6(c) Tribal Request

The current language does not indicate the NPS responsibility to reply to the request, we propose that within 30 days of receipt, NPS should be *required* to respond to a Tribe’s request for a traditional gathering agreement.

Sec. 2.6(d) Criteria for Entering Into Agreement

The current language gives all the decision making power to the superintendent of the Park. If Tribe’s are to enter into Government to Government Agreements, the Criteria should be mutually accepted by both parties during the negotiation of the agreement. The analysis and such as the NEPA process, should be a compactable portion of a program to be evaluated by the Tribe, with results presented to the NPS during the negotiation of the agreement.

Sec. 2.6(e) Denial of Request To Enter Into Agreement

This Section does not establish a process for denial or opportunity of appeal if the Tribe objects. § 2.6(e) should provide tribes with an expected timeframe and opportunity for response please see §1000.179 of 25 CFR Part 1000 as a recommended solution for failure to reach an agreement.

Sec. 2.6(f) Contents of Agreements

We recommend the "Agreement" be an initial program proposal with the scope generally defined in previous proposed section 2.6 (c). Within the Agreement the permitting component of the rule would be compacted and managed by the Tribe's developed programmatic agreement as other programs that are annually published in the Federal register's list of eligible non-BIA programs to compact. This sections request for information is unnecessary and overly burdensome. The compactable program could require tribal citizens to apply to the Tribe's Compacted Program for a permit for collection within the park and an annual list can be provided to the superintendent per the negotiated Agreement. Section 2.6 (d) Criteria, would eliminate the need to collect information per this sections (5-8) reducing the burden of request for information.

Sec. 2.6(g) Regional Office Concurrence

We recommend the proposed rule would require the Regional Director to "acknowledge" an agreement has been entered into rather than "approve" under the proposed rule.

Sec. 2.6(h) Closure


This section does not present a respectful government to government relationship, and creates a unilateral federal action process that can terminate an executed agreement. Any closure per sections i-vii should require consultation and concurrence with tribes as to find a reasonable solution and to remediate the issue.

Sec. 2.6(i) Termination or Suspension

If the Superintendent finds the Tribe to be in violation of the Agreement the Tribe should be notified as to find a solution to any violation that may arise.

Tribal access to National Park Lands for the purposes of Self-Determination is long overdue and we applaud NPS' efforts to provide access to lands held in trust for the purpose of cultivating traditional cultural practices. The act of lifting the prohibition on harvesting and allowing for the gathering and removal of traditional plants or plant parts is monumental in the honoring of the trust obligation the Federal government has to federally recognized tribes, but the regulation of harvesting is a task best left to the sovereign self-regulatory authority of the tribes themselves in the exercise of self-government.

Shu' shaa nin-la,



Loren Me'-lash-ne Bommelyn
Chairman on behalf of the Tolowa Dee-ni' Nation

CC: Senator Feinstein
Senator Boxer
Congressman Huffman
RNSP Superintendent Steven Prokop