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TO: The Honorable Gale Norton, Secretary of the Interior
Sue Ellen Wooldridge, Deputy Chief of Staff

● **Attn: Mari Grace Thomas**

FROM: Tom Gede, Executive Director

DATE: March 10, 2004

SUBJ: CWAG Meeting with Secretary Norton and Staff,
Wednesday, March 17, 2004, 1:30 p.m. - 2:30 p.m.

3/11/04
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The Conference of Western Attorneys General appreciates the opportunity to meet with you and members of your staff. Included and attached here are the schedule, topics suggested for discussion and an attendance list.

Program Schedule:

- Introductions (led by CWAG Chair Montana AG Mike McGrath)
- Greetings from CWAG Chair Montana AG Mike McGrath
- Roundtable of State Attorneys General with Topics and Concerns

Topics:

1. Please discuss implementation of 2003 Amended Biological Opinion of Fish & Wildlife Service for the Missouri River and habitat creation issues (Nebraska, Dakotas, Montana)
2. Would the Secretary please address her Section 6 Policy under the ESA. This policy allows delegation of authority to a State for providing ESA protection. (Idaho)

The Honorable Gale Norton
March 10, 2004
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3. Will the Secretary take a position on S. 1529, amendments to IGRA that allow bingo-style slots without a compact; restrict tribal revenue sharing with states and local governments; and cut back on states' regulatory role? (several AG's/CWAG letter in opposition)
4. Will the Secretary be able to address the dispute over production companies' deductions in royalty payments.
5. Can we get an update on the Klamath and similar water disputes in light of Alsea/Grange decisions, especially if hatchery salmon are included with non-hatchery salmon under the ESA.
6. What, if any, reforms are under consideration to improve the consistency and reliability in the section 83 acknowledgment process at BIA/BAR for the federal acknowledgment of Indian tribes?
7. Will the Secretary be able to address the Department's position concerning streamflow in the Rio Grande, importation of interbasin water and the silvery minnow.
8. Is there an update on the decisions concerning snowmobiles in Yellowstone/Tetons.
8. Other topics as brought up by Attorneys General.

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attch: Attendance list

CWAG Meeting with Secretary Norton

Washington DC

March 15-17, 2004

Attendance List - March 17, 2004 1:30 p.m.

	<u>NAME</u>	<u>STATE</u>	<u>TITLE</u>	
1.	Gregg Renkes	Alaska	Attorney General	
2.	Bill Lockyer	California	Attorney General	
3.	Lawrence Wasden	Idaho	Attorney General	
4.	Ann Wilkenson	Nevada	Assistant Attorney General	
5.	Patricia Madrid	New Mexico	Attorney General	
6.	Stuart Bluestone	New Mexico	Chief Deputy Attorney General	
7.	Glen Smith	New Mexico	Assistant Attorney General	
8.	Wayne Stenehjem	North Dakota	Attorney General	
9.	Christine Gregoire	Washington	Attorney General	
10.	Patrick Crank	Wyoming	Attorney General	
11.	Mark Bennett	Hawaii	Attorney General	
12.	Larry Long	South Dakota	Attorney General	
13.	Richard Blumenthal	Connecticut	Attorney General	<i>pending</i>
14.	Phill Kline	Kansas	Attorney General	
15.	Jon Bruning	Nebraska	Attorney General	<i>pending</i>
16.	Dave Cookson	Nebraska	Assistant Attorney General	
17.	Drew Edmondson	Oklahoma	Attorney General	<i>pending</i>
18.	Barry McBee	Texas	First Assistant Attorney General	
19.	Tom Gede	California	Executive Director-CWAG	
20.	Karen White	California	Deputy Director-CWAG	

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL



Hartford

March 17, 2004

The Honorable Gale A. Norton
Secretary
United States Department of Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Norton:

I am deeply troubled by an internal Bureau of Indian Affairs (BIA), Office of Federal Acknowledgement (OFA) staff memorandum to former Acting Assistant Secretary for Indian Affairs, Aurene Martin, that apparently led her to reverse her predecessor's negative proposed finding in the Schaghticoke Tribal Nation (STN) petition, and essentially, on the same factual record, to grant the Schaghticoke Tribal Nation's petition for federal acknowledgement. A copy of this memorandum is attached. This "briefing paper" provides yet another example that the tribal acknowledgement process is seriously flawed and requires immediate and comprehensive reform to restore its credibility.

The OFA briefing paper confirms that recognition of Schaghticoke petitioner required the BIA to disregard its own regulations and established precedents, and to "revise," yet again, its recent pronouncements on the meaning and import of the State's relationship with the group, as well as ignore substantial gaps in the evidence. The BIA has now revised its view of the import of state recognition no less than four times in only two years. It has completely, unashamedly reversed the long-standing view that federal recognition could not be based on state recognition alone, moving to its present view that it can actually be a substitute for evidence on critical and mandatory criteria. The BIA has taken this new and revised approach despite substantial evidence in the record to show that the State of Connecticut never viewed or treated the Schaghticoke petitioner as a political entity or social community.

In particular, the briefing paper sets forth options and seeks guidance from the Acting Assistant Secretary with respect to how to address two issues staff acknowledged were potentially fatal to the petition: (1) little or no evidence of the petitioner's political influence and authority, one of the mandatory regulatory criteria, for two substantial historical periods; and (2) serious problems associated with the internal fighting among the two factions of the group. With respect to the lack of evidence issue, the OFA shows, by its own words and analysis, its disregard for the legal standards and precedents as demonstrated by one of the four options

posited by the OFA. OFA posits that one of the options is to: "Decline to acknowledge the Schaghticoke, based on the regulations and existing precedent." In explaining this option, which the OFA and the Assistant Secretary rejected, the OFA explained: "Option 2 [declining to acknowledge the group] maintains the current interpretation of the regulations and established precedents concerning how continuous tribal existence is demonstrated." In other words, declining to acknowledge the group means following the law. Yet, despite this clearly correct legal path, the BIA chose option 1, and acknowledged the petitioner by substituting state recognition in lieu of actual evidence for large periods of time. The BIA chose this option despite its own concession that it would create a "lesser standard."

I am also greatly disturbed by the OFA's lack of concern for the rights of the State of Connecticut, its citizens and the interested parties who participated in these proceedings under the apparent mistaken view that their input would be heard and considered fairly. The memorandum largely justifies adopting a "lesser standard" in violation of the regulations on the ground will have only a limited future precedential value because there are only "six other historically state recognized tribes with a continuously existing state reservation which have not yet been considered for acknowledgement." The State of Connecticut, and all affected by this proceeding have a right to expect that a federal agency, making a decision of this import, will do so by fairly and consistently applying the law.

The BIA's own internal memorandum demonstrates, beyond any doubt, that the tribal acknowledgement process is completely lacking in credibility, fatally flawed and in need of immediate and substantial reform. Continuing to tolerate the existing process, which is so obviously flawed and infected by improper influences, threatens irreparable and irrevocable harm. An immediate, full and far-reaching investigation is critical.

I am joined in this view by Connecticut's congressional delegation, who have requested that the General Accounting Office and the Inspector General undertake investigation of this process. In addition, I will request that the Department of Justice immediately investigate the legality and propriety of the actions that led to this memorandum and the recognition and decision of this matter.

Until a full and fair investigation can be conducted and completed, I urge you to take any available action to impose an immediate moratorium on all pending recognition decisions including any proceedings before the Interior Board of Indian Appeals. The magnitude and severity of the illegal and improper actions described in the memorandum cut to the core of all Interior Department decisions relating to the Schaghticoke and other petitioners involving state recognition as a compensating factor for lack of evidence.

March 17, 2004

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I am available to discuss this matter with you at your convenience.

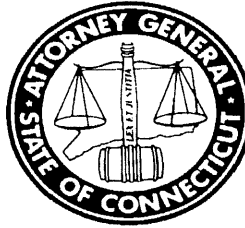
Very truly yours,



RICHARD BLUMENTHAL

Attachment

c: All parties of record:
Eric Watt Weichmann
Thomas Van Lenten
Jeffery Sienkiewicz
Thomas A. Gugliotti
Richard Street
Robert A. Slavitt
David Elliott
James R. Fogarty
Jerry Strauss
Judith Shapiro
Michael J. Burns
Scott Keep
John Hughes
Barbara Coen



RICHARD BLUMENTHAL
ATTORNEY GENERAL

TELEFAX COMMUNICATION

Date: March 18, 2004

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Number
of pages: 11 (including cover)

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Comments: Attached letter was mailed late in the day on 3/17/04.

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