Indian Affairs - Office of Public Affairs

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WASHINGTON – Acting Principal Deputy Assistant Secretary-Indian Affairs George T. Skibine today issued a proposed finding not to acknowledge the petitioner known as the Brothertown Indian Nation (Petitioner #67) as an Indian tribe. This petitioner, located in Fond du Lac, Wisc., has 3,137 members.

The evidence in the record demonstrates that the petitioner does not meet five of the seven mandatory criteria for federal acknowledgment as set forth in 25 CFR Part 83.7. In accordance with the regulations [section 83.6(c)], the failure to meet all seven criteria requires a determination that the petitioning group is not an Indian tribe within the meaning of federal law. Therefore, the Department proposes to decline to acknowledge the Brothertown petitioner.

This proposed finding treats the Brothertown Indian tribe of Wisconsin that was acknowledged by the U.S. government until 1839 as the "historical Indian tribe." This historical tribe evolved from the Brothertown Indian tribe of New York State when a large portion of the tribe moved from New York to Wisconsin. At an earlier time, portions of several historical Indian tribes of Rhode Island, Connecticut and Long Island had combined to form the Brothertown Indian tribe of New York. The proposed finding evaluates whether the petitioner meets the acknowledgment criteria by demonstrating that it is a continuation of the historical Brothertown Indian tribe of Wisconsin.

The evidence in the record indicates that a Senate proviso to a Treaty of 1831, a Treaty of 1832 and an Act of 1839 constitute "unambiguous previous federal acknowledgment" of the Brothertown Indian tribe of Wisconsin. Therefore, in accordance with provisions of the regulations relating to previously acknowledged Indian tribes, the proposed finding evaluated the Brothertown petitioner on the basis of whether or not it meets the seven mandatory criteria in section 83.7 as modified by section 83.8(d) from last federal acknowledgment in 1839 until the present.

The five criteria the Brothertown petitioner does not meet are criteria 83.7(a), 83.7(b), 83.7(c), 83.7(e) and 83.7(g).

Criterion 83.7(a) requires that external observers have identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. As modified by section 83.8(d)(1), the petitioner must be identified since last federal acknowledgment, which for the Brothertown petitioner is 1839. The evidence in the record demonstrates that external observers identified a historical Brothertown group from 1839 until 1855. Between 1855 and 1981, outside observers periodically identified a Brothertown Indian entity, but because these periodic identifications are separated by long periods of time in which the petitioner or its members' ancestors were not identified as an Indian entity, the petitioner does not satisfy the standard of "substantially continuous" identification as required by the regulations. The petitioning group has been identified as an American Indian entity since 1981.

Criterion 83.7(b) requires that a predominant portion of the petitioning group has comprised a distinct community since historical times. As modified by section 83.8(d)(2), the petitioner must demonstrate only that a predominant portion of the petitioning group comprises a distinct community "at present," which for this case is considered to be the period since the petitioner formally organized in 1980. For

the period from 1980 to 2009, there is insufficient evidence that a predominant portion of the petitioning group's members regularly associate with each other or that the petitioner's members comprise a distinct community.

Criterion 83.7(c) requires that the petitioning group has maintained political influence over its members as an autonomous entity since historical times. The petitioner does not meet the requirements of this criterion as modified by section 83.8(d)(3) because the evidence in the record does not demonstrate that authoritative, knowledgeable external observers identified leaders or a governing body of the petitioning group on a substantially continuous basis since the date of last federal acknowledgment in 1839. Alternatively under the provisions of section 83.8(d)(5), the evidence in the record is insufficient to demonstrate that the petitioner or any group antecedent to it maintained political influence or authority over its members at any time since 1839.

Criterion 83.7(e) requires that the petitioner's members descend from a historical Indian tribe. The evidence in the record shows that only 51 percent of the petitioner's 3,137 members have demonstrated descent from an individual known to be a member of the historical Brothertown Indian tribe of Wisconsin. The claims of descent from the historical Indian tribe for additional members of the petitioning group may be demonstrated for the final determination.

Criterion 83.7(g) requires that the petitioner not be subject to congressional legislation that has terminated or forbidden the federal relationship. Congress, in the Act of 1839, brought federal recognition of the relationship with the Brothertown Indian tribe of Wisconsin to an end. By expressly denying the Brothertown of Wisconsin any federal recognition of a right to act as a tribal political entity, Congress has forbidden the Federal Government from acknowledging the Brothertown as a government and from having a government-to-government relationship with the Brothertown as an Indian tribe. Congress has both expressly ended and forbidden the federal relationship for this petitioner.

The two criteria the petitioner meets are criteria 83.7(d) and 83.7(f).

Criterion 83.7(d) requires that the petitioner provide a copy of its governing document including its membership criteria.

Criterion 83.7(f) requires that the petitioner's membership be composed principally of persons who are not members of another federally recognized Indian tribe.

The petitioner does not meet all of the seven mandatory criteria; therefore, it does not qualify for acknowledgment under the Department's regulations.

Notice of this proposed finding will be published in the Federal Register. As provided by 25 CFR Part 83.10(i), the petitioner or any individual or organization wishing to challenge or support the proposed finding shall have 180 days after the notice's publication date to submit arguments and evidence to rebut or support the proposed finding before any final determination is issued.

After the 180-day comment period, the petitioner will have an additional 60 days to respond to the comments from interested parties. After the response period closes, the Department will begin work on a final determination.

The Assistant Secretary-Indian Affairs has responsibility for fulfilling the Interior Department's trust responsibilities and promoting self-determination on behalf of the 564 federally recognized American

Indian and Alaska Native tribal governments. The Assistant Secretary also oversees the Bureau of Indian Affairs, which is responsible for providing services to the tribes and their members, approximately 1.9 million individual American Indians and Alaska Natives, and the Office of Federal Acknowledgment (OFA), which is responsible for administering the federal acknowledgment process.

The Assistant Secretary has delegated authority to sign some federal acknowledgment findings, including this proposed finding, to the Acting Principal Deputy Assistant Secretary-Indian Affairs effective June 4, 2009.

Copies of the proposed finding and Federal Register notice will be posted on the Department of the Interior's website at http://www.doi.gov.
