Indian Affairs - Office of Public Affairs

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WASHINGTON – Assistant Secretary – Indian Affairs Neal A. McCaleb today announced he has issued a Notice of Final Determination whereby he declined to acknowledge that the Muwekma Ohlone Tribe (petitioner #111, formerly known as Ohlone/Costanoan Muwekma Tribe) located in San Jose, Calif., exists as an Indian tribe within the meaning of Federal law. The decision is based on a determination that the petitioner does not satisfy three of seven mandatory criteria set forth under 25 CFR Part 83, specifically 83.7(a), 83.7(b) and 83.7(c). The petitioner was evaluated under Section 83.8 because it was determined to have had unambiguous previous Federal acknowledgement until 1927.

Criterion 83.7(a) requires the petitioner to have been identified on a substantially continuous basis as an American Indian entity since 1900. Section 83.8(d)(1) requires the petitioner to have been identified on a "substantially continuous" basis since last Federal acknowledgment. Based on the available evidence, the Assistant Secretary determined that the petitioner had not been identified as an Indian entity on a "substantially continuous" basis since 1927.

Criterion 83.7(b) requires the petitioner to have maintained a continuous community from historical times until the present. Section 83.8(d)(2) requires the petitioner to demonstrate that it comprises a distinct community "at present," but need not demonstrate its existence as a community historically. The Assistant Secretary determined that the petitioner did not submit documents or oral histories sufficient to demonstrate that it meets the requirement "at present."

Criterion 83.7(c) requires the petitioner to have maintained political authority or influence on a substantially continuous basis from historical times until the present. The Assistant Secretary determined that the petitioner did not meet the requirements of Section 83.8(d)(3) and that it did not demonstrate that it has maintained "political influence or authority" over its members since 1927, and thus does not meet the requirements of criterion 83.7(c).

A Notice of Proposed Finding to decline to acknowledge the petitioner was published in the Federal Register on August 3, 2001. An order of the U.S. District Court for the District of Columbia dated January 16, 2001 set the close of the period for comment on the proposed finding as October 29, 2001. Following two extensions granted by the Court in response to the petitioner's motions, the end date for the comment period was set as January 27, 2002 and the end of the period for the petitioner to respond to third-party comments as March 28, 2002. The petitioner submitted comments on the proposed finding, but did not submit a response to the public comments. The Court granted the Department's request for a 30-day extension to the August 8, 2002 due date for the issuance of a final determination to September 9, 2002. The final determination was made following a review of the petitioner's comments and the public comments on the proposed finding, and was based on all of the evidence in the record.

Having completed his review, the Assistant Secretary will publish the Notice of Final Determination on the petitioner in the Federal Register. This determination is final and will become effective 90 days from the notice's publication date unless a request for reconsideration is filed with the Interior Board of Indian Appeals (IBIA) pursuant to 25 CFR 83.11.