



INTERIOR BOARD OF INDIAN APPEALS

In re Federal Acknowledgment of the Cowlitz Indian Tribe

36 IBIA 140 (05/29/2001)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## IN RE FEDERAL ACKNOWLEDGMENT OF THE COWLITZ INDIAN TRIBE

IBIA 00-76-A

Decided May 29, 2001

Request for reconsideration of a final determination to acknowledge the Cowlitz Indian Tribe.

Affirmed. Three issues referred to the Secretary of the Interior.

1. Indians: Federal Recognition of Indian Tribes: Acknowledgment

A showing of disagreement with the analysis in an acknowledgment determination is not sufficient to establish grounds for reconsideration of the determination under 25 C.F.R. §§ 83.11(d) and 83.11(e)(9), (10).

2. Indians: Federal Recognition of Indian Tribes: Acknowledgment

A party seeking reconsideration of an acknowledgment determination does not carry its burden of proof under 25 C.F.R. § 83.11(e)(9), (10) when it merely repeats arguments it made in comments on the proposed finding and does not address the responses to those arguments included in the final determination and its supporting documents.

APPEARANCES: Richard Reich, Esq., Mercer Island, Washington, for the Quinault Indian Nation; Dennis J. Whittlesey, Esq., Washington, D. C., for the Cowlitz Indian Tribe.

### OPINION BY ADMINISTRATIVE JUDGE VOGT

The Quinault Indian Nation (Quinault) seeks reconsideration of the "Final Determination To Acknowledge the Cowlitz Indian Tribe [(Cowlitz)]," which was signed by the Assistant Secretary - Indian Affairs on February 14, 2000, and published at 65 Fed. Reg. 8436 (Feb. 18, 2000). For the reasons discussed below, the Board affirms the Final Determination but refers three issues to the Secretary of the Interior.

Background

On February 27, 1997, the Assistant Secretary published a "Proposed Finding for Federal Acknowledgment of [Cowlitz]." 62 Fed. Reg. 8983. The Proposed Finding stated that Cowlitz had been found to meet the requirements of 25 C.F.R. § 83.8 concerning unambiguous previous Federal acknowledgment and had therefore been considered under the modified requirements described in section 83.8. The Proposed Finding explained:

The petitioner consists of descendants of the historical Lower Cowlitz Indians and Upper Cowlitz, or Cowlitz Klickitat, Indians of southwestern Washington. Its members are descendants specifically of the Lower Cowlitz Indians who were represented in 1855 at the Chehalis River Treaty negotiations held between several American Indian tribes of southwest Washington and Federal officials, and of the Upper Cowlitz band which was subsequently amalgamated with the Lower Cowlitz band. Although the Lower Cowlitz refused to sign the Chehalis River Treaty, their participation in the negotiations constitutes unambiguous Federal acknowledgment of the tribe's sovereignty. \* \* \* The date of the treaty negotiations, March 2, 1855, has been used as the date of latest Federal acknowledgment for purposes of this finding to enable the petitioner to proceed under the provisions of § 83.8. Because the petitioner had already completed documentation of the petition before the present regulations became effective, it was not necessary to determine if there was a later date of unambiguous Federal acknowledgment for purposes of this evaluation under the 1994 regulations.

Id.

Comments on the proposed finding were submitted by Quinault and responded to by Cowlitz. Pursuant to a September 28, 1998, stipulated order in Quinault Indian Nation v. Gover, No. C97-5625RJB (W.D.Wash.), <sup>1/</sup> the comment period was reopened for the purpose of allowing further comments by Quinault and further response by Cowlitz. Quinault submitted further comments, and Cowlitz responded. At the request of Quinault, a formal meeting

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<sup>1/</sup> In this litigation, Quinault challenged a decision of the Department of the Interior to withhold certain membership documents encompassed in Quinault's Freedom of Information Act (FOIA) request for all records and correspondence regarding the petitions for acknowledgment filed by Cowlitz and the Chinook Indian Tribe. On Oct. 19, 1998, the district court granted summary judgment in favor of the Federal defendants. On July 27, 2000, the United States Court of Appeals for the Ninth Circuit affirmed the district court decision. No. 98-36231 (9th Cir. July 27, 2000) (unpublished).

was held under 25 C.F.R. § 83.10(j)(2). The meeting took place in the offices of the Branch of Acknowledgment and Research, Bureau of Indian Affairs (BAR; BIA) and was attended by representatives of Quinault and Cowlitz.

Following consideration of the comments and further research by BAR staff, the Assistant Secretary issued his Final Determination. He stated, with respect to the evidence considered:

This final determination incorporates the evidence considered for the proposed finding, new documentation and argument received from third parties and the petitioner, including that in the formal meeting, and interview and documentary evidence collected by the BIA during the final evaluation. The final determination reaches factual conclusions based on a review and reanalysis of the existing record in light of this new evidence.

65 Fed. Reg. at 8436.

With respect to previous Federal acknowledgment of Cowlitz, he stated:

This final determination now extends the date of previous Federal acknowledgment to 1878-1880 to when Federal Indian agents appointed Atwin Stockum chief in 1878 and included both the Lower Cowlitz and Upper Cowlitz bands in Office of Indian Affairs censuses taken in 1878 and 1880. The proposed finding found that the government administratively joined the Lower Cowlitz, which included the Lower Cowlitz metis, [2/] and the Upper Cowlitz. Although Government documents of the 1860's and 1870's noted separate groups, they handled them together. The Quinault Nation submitted substantial comment, disagreeing both with the finding that different Cowlitz populations amalgamated and with the application of [25 C.F.R. §] 83.8 to the amalgamated entity. First, the Cowlitz metis were always part of the Lower Cowlitz. Second, the regulations allow for amalgamations of historical tribes at § 83.6(f). Because both the Upper and Lower Cowlitz bands had prior recognition in 1880, and because the regulations do not require that the

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2/ The Lower Cowlitz metis are described on page 21 the Summary under the Criteria and Evidence for Proposed Finding: "These families resided primarily at Cowlitz Prairie. This group was made up of descendants of marriages between mostly Lower Cowlitz Indian women and French Canadian Hudson's Bay Company employees which had taken place from the 1820's through the 1840's."

amalgamated entity have separate Federal recognition when made up of two recognized entities, Quinault's arguments against the applicability of [§] 83.8 is [sic] rejected.

Id.

#### Discussion and Conclusions

Quinault bases most of the arguments in its Request for Reconsideration on the grounds described in 25 C.F.R. § 83.11(d)(2) and (3). <sup>3/</sup> It alleges that "a substantial portion of the evidence relied upon with respect to material portions of the Assistant Secretary's determination was unreliable or of little probative value" and that "the Bureau's and Petitioner's research is incomplete in one or more material respects." Request for Reconsideration at 3.

Quinault's arguments in support of these allegations are contained in Part IV of its Request for Reconsideration. Part IV consists of four subparts. In Subpart IV.A, Quinault argues that a substantial portion of the evidence relied upon for the determination that Cowlitz was entitled to consideration under 25 C.F.R. § 83.8 was unreliable or of little probative value. This argument is broken down into two sections. In the first section, Quinault challenges the determination that the Upper Cowlitz had unambiguous Federal acknowledgment as late as

<sup>3/</sup> 25 C.F.R. § 83.11(d) provides:

"The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:

- "(1) That there is new evidence that could affect the determination; or
- "(2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or
- "(3) That petitioner's or the Bureau's research appears inadequate or incomplete in some material respect; or
- "(4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7 (a) through (g)."

25 C.F.R. § 83.11(e) provides:

"(9) The Board shall affirm the Assistant Secretary's determination if the Board finds that the petitioner or interested party has failed to establish, by a preponderance of the evidence, at least one of the grounds under paragraphs (d)(1)--(d)(4) of this section.

"(10) The Board shall vacate the Assistant Secretary's determination and remand it to the Assistant Secretary for further work and reconsideration if the Board finds that the petitioner or an interested party has established, by a preponderance of the evidence, one or more of the grounds under paragraphs (d)(1)--(d)(4) of this section."

1878/1880. In the second, it challenges the determination that the Cowlitz metis were part of the Lower Cowlitz at the time Cowlitz was last found to have unambiguous Federal acknowledgment.

Quinault's argument in Subpart IV.A is lengthy. However, although it discusses various parts of the evidence, the argument is not truly focussed upon the reliability or probative value of that evidence. Rather, it is directed toward BIA's analysis of evidence. Quinault contends, directly in some places and indirectly in others, that BIA should have weighed the evidence differently than it did. Quinault also objects to the fact that BIA reevaluated evidence for the Final Determination, even though it was Quinault itself which sought the reevaluation.

[1] Quinault presents its own analysis of the evidence, which plainly differs from BIA's. However, as the Board stated in In re Federal Acknowledgment of the Snoqualmie Tribal Organization, 34 IBIA 22, 33, 35 (1999), a showing of disagreement with BIA's analysis is not sufficient to establish grounds for reconsideration under 25 C.F.R. §§ 83.11(d) and 83.11(e)(9), (10). Further, although one of the grounds in 25 C.F.R. § 83.11(d), i.e., subsec. 83.11(d)(4), allows for a challenge to BIA's interpretation of the evidence, Quinault does not invoke that provision but, rather, makes its argument under subsec. 83.11(d)(2), which is concerned solely with challenges to evidence per se.

One point made by Quinault in Subpart IV.A requires some further discussion. Quinault notes that the Technical Report for the Final Determination (Final Technical Report) erroneously states in two places (on pages 39 and 44) that the Cowlitz metis were enumerated in the 1878 censuses prepared by Agent R. H. Milroy.

In his July 10, 2000, transmission of critical documents under 25 C.F.R. § 83.11(e)(8), the Assistant Secretary acknowledges the erroneous statements but argues that the analysis surrounding them is consistent with the actual facts. Cowlitz also acknowledges that the statements were erroneous but argues that the error was harmless.

It is apparent that the BAR researchers were aware that the Cowlitz metis were not specifically enumerated in the 1878 censuses. See, e.g., Genealogical Technical Report 4/ at 61. The erroneous statements in the Final Technical Report were most likely inadvertent and may

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4/ The Genealogical Technical Report was prepared for the Proposed Finding, as were the Anthropological Technical Report and the Historical Technical Report.

A single technical report, here termed the Final Technical Report, was prepared for the Final Determination.

have had little, if any, impact on the analysis employed by BIA. However, it is conceivable that those statements had some impact either on the BIA analysis or on the decision of the Assistant Secretary to issue the Final Determination.

While there is a concern here, it is not one arising from the unreliability or lack of probative value of evidence. Rather, it is one related to BIA's analysis of the evidence. As such, it is not a matter within the Board's jurisdiction under 25 C.F.R. § 83.11(d)(2). Therefore, as further discussed below, this issue will be referred to the Secretary under 25 C.F.R. § 83.11(f)(2).

Quinault fails in Subpart IV.A to establish by a preponderance of the evidence that a substantial portion of the evidence relied upon for the determination that Cowlitz was entitled to consideration under 25 C.F.R. § 83.8 was unreliable or of little probative value.

In Subpart IV.B, Quinault argues that BIA's and Cowlitz's research is materially incomplete. Subpart IV.B, like Subpart IV.A, is divided into two sections. In the first section, Quinault contends that "neither [BIA] nor [Cowlitz] present any analysis demonstrating that [Cowlitz] is, in fact, descended from the Upper and Lower Cowlitz families identified by the government as part of the two entities at the time of last previous acknowledgment." Request for Reconsideration at 34. It argues that this failure renders BIA's and Cowlitz's "research and analysis inadequate and materially incomplete." Request for Reconsideration at 34.

As suggested by the quoted statements, Quinault's argument here is directed primarily to BAR's analysis, rather than to its research. Further, contrary to Quinault's broad assertion, BIA conducted an extensive analysis of the descent of current Cowlitz members from the Upper and Lower Cowlitz Tribes. See Genealogical Technical Report; Final Technical Report at 104-108.

Quinault fails in the first section of Subpart IV.B to establish by a preponderance of the evidence that BIA's or Cowlitz's research is inadequate or incomplete in some material respect.

In the second section of Subpart IV.B, Quinault contends that Cowlitz and BIA failed to consider a substantial body of scholarly work and evidence concerning the metis community at Cowlitz Prairie, thus rendering their research inadequate and materially incomplete.

In this section, Quinault contends that it has located evidence that BIA has not considered. It specifically names two books 5/ and then states that it has identified "a substantial body

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5/ These are Jean Baptiste Zacharie Bolduc, Mission of the Columbia, Ye Galleon Press, 1979, and John C. Jackson, Children of the Fur Trade, Forgotten Metis of the Pacific Northwest, Mountain Press Publishing Co., 1995.

of scholarly work and literature on the metis in Western Washington." Request for Reconsideration at 35. An attached document titled "Nicklason Supplemental Report," prepared in connection with the Request for Reconsideration, states on page 1 that the author has "located significant new materials." The exhibits to the Nicklason Supplemental Report include a section labelled "New Documents (IBIA)."

Quinault's argument in this section, although not identified as one made under 25 C.F.R. § 83.11(d)(1) ("there is new evidence that could affect the determination"), appears to have been constructed with that provision in mind. The Board presumes that the documents labelled "New Documents (IBIA)" were intended to be offered as new evidence.

Five documents are included in "New Documents (IBIA)" exhibit. The first consists of selected pages from Notices & Voyages of the Famed Quebec Mission to the Pacific Northwest, Being the correspondence, notices, etc., of Fathers Blanchet and Demers, together with those of Fathers Bolduc and Langlois, Oregon Historical Society, 1956. The Assistant Secretary's List of Documentary Exhibits, which accompanied the critical documents he transmitted to the Board, states that most of the pages from this work which are included in Quinault's "New Documents (IBIA)" exhibit were submitted by Quinault and Cowlitz during earlier proceedings.

The Assistant Secretary identifies a few pages which were not submitted earlier and which are, therefore, arguably new evidence. The Board finds no specific discussion of those pages in Quinault's Request for Reconsideration or the accompanying Nicklason Supplemental Report.

The second document consists of Quinault adoption records from National Archives Microfilm Publication M 1344. The Assistant Secretary indicates that virtually all of this material was either submitted previously or was not considered relevant to the Cowlitz petition.

The third document consists of the title page and pages 178 and 179 from Richard G. Montgomery, Young Northwest, Random House, 1941. With respect to this work, the Nicklason Supplemental Report states at page 4:

The historical development of the Hudson's Bay Company community at the Cowlitz Prairie was inextricably tied to the Pacific Northwest fur trade and competing interests between Great Britain and the United States over claims and control of the region. According to Richard Gill Montgomery, writing in the Young Northwest, the British hoped that if the Pacific Northwest could be occupied by British settlers outnumbering those from the United States, they would then have a better claim to ownership of the entire region.

The Assistant Secretary states that this work is not in the administrative record. However, it seems apparent from Quinault's discussion of the work that it has little, if any, relevance to the issue here.

The fourth document consists of selected pages from Mission of the Columbia, supra. This work was discussed in Cowlitz's 1987 petition for acknowledgment and was listed in the bibliography for the petition. It is also listed as a source for the Proposed Finding. The Assistant Secretary states that the work itself is not in the administrative record but that other documents on the early missions are in the record. He furnishes copies of seven of them.

The Nicklason Supplemental Report discusses the work at pages 6-9 but does not show how it would add any new information to the administrative record.

The fifth document consists of selected pages from Children of the Fur Trade, supra.

The Assistant Secretary states that this work is not in the administrative record but has been available to BIA researchers since 1997. It clearly appears that the Assistant Secretary did not rely on the work in reaching his decision.

The Nicklason Supplemental Report discusses the work briefly but does not show how it would add any new information to the administrative record.

The materials included in Quinault's "New Documents (IBIA)" exhibit do not demonstrate that BIA's and Cowlitz's research is inadequate or incomplete in some material respect. Nor do they constitute new evidence that could affect the determination.

Quinault's broad assertion concerning the existence of "significant new materials" is insufficient to show that BIA's and Cowlitz's research is inadequate or incomplete in some material respect. It is also insufficient to support an allegation under 25 C.F.R. § 83.11(d)(1). As a threshold matter, any evidence claimed to be new under that provision was required to be included in Quinault's request for reconsideration. 25 C.F.R. § 83.11(b).

Quinault fails in the second section of Subpart IV.B to establish by a preponderance of the evidence that BIA's or Cowlitz's research is inadequate or incomplete in some material respect. Further, it also fails to establish by a preponderance of the evidence that there is new evidence that could affect the determination.

In Subpart IV.C, Quinault contends that a substantial portion of the evidence relied upon by the Assistant Secretary for his finding concerning the present-day Cowlitz community

was unreliable or of little probative value. 6/ Here, Quinault contends that the evidence was rendered unreliable by bias and improper research methodology.

Most of Subpart IV.C is devoted to an argument that one of the BAR cultural anthropologists who conducted interviews of Cowlitz members was biased in favor of acknowledgment. Quinault made this argument earlier, in its comments on the Proposed Finding. It also filed an Affidavit of Prejudice in which it requested that the Proposed Finding be vacated and that some or all of the BAR researchers who prepared the Proposed Finding be recused from further participation in the matter. The Assistant Secretary explicitly rejected Quinault's bias argument. Summary Under the Criteria and Evidence for Final Determination (Summary) at 11. See also Final Technical Report at 15-18.

Quinault also objects to the methodology reflected in the Anthropological Technical Report, contending that the interviewees selected by BAR researchers were not representative of the Cowlitz membership as a whole. Quinault made the same argument in its comments on the Proposed Finding. BIA responded to the argument in the Final Technical Report at 25-26.

Finally, in a brief paragraph, Quinault alleges that there is a lack of probative evidence to support BIA's conclusions about social interactions in the present-day Cowlitz community. It fails, however, to develop an argument on this point.

Quinault's argument in Subpart IV.C is directed almost exclusively to the Proposed Finding, the Anthropological Technical Report (which, as noted above, was prepared for the Proposed Finding), and interviews that took place prior to the Proposed Finding. Quinault acknowledges that the Assistant Secretary rejected its bias argument but does not address the extensive discussion of that point in the Final Technical Report. The Final Technical Report noted, among other things, that during preparation of the Final Determination, additional field

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6/ The Assistant Secretary found that Cowlitz satisfied the mandatory criterion in 25 C.F.R. § 83.7(b) as modified by 25 C.F.R. § 83.8(d)(2).

25 C.F.R. § 83.7(b) provides:

"A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present."

25 C.F.R. § 83.8(d)(2) provides:

"The group meets the requirements of the criterion in § 83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically."

work was done and additional interviews were conducted by a cultural anthropologist other than the anthropologist to whom Quinault objected. 7/ Final Technical Report at 18.

Quinault also fails to address BIA's response to its argument about the selection of interviewees.

[2] It is the Final Determination to acknowledge Cowlitz that is at issue here, not the Proposed Finding. Quinault has not carried its burden of proof when it simply repeats the arguments it made in comments on the Proposed Finding and fails to address the responses BIA made to those arguments in the Final Determination and its supporting documents.

Quinault's undeveloped argument alleging a lack of probative evidence concerning social interactions is also insufficient to carry its burden of proof.

Quinault fails in Subpart IV.C to establish by a preponderance of the evidence that a substantial portion of the evidence relied upon by the Assistant Secretary for his finding concerning the present-day Cowlitz community was unreliable or of little probative value.

In Subpart IV.D, Quinault contends that a substantial portion of the evidence relied upon for the finding that Cowlitz satisfies the criterion in 25 C.F.R. § 83.7(c) as modified by 25 C.F.R. § 83.8(d) was unreliable or of little probative value. 8/ Again, Quinault engages in

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7/ In a footnote, Quinault acknowledges BIA's statement in this regard but contends that it cannot address the additional field work because the Department has refused to release material concerning it.

Presumably, whatever material has been withheld from Quinault has been withheld under FOIA. See n.1, supra. A considerable amount of material concerning the later field work was included in the critical documents transmitted to the Board. The Assistant Secretary did not claim that any of that material was exempt from disclosure under FOIA. See 43 C.F.R. § 4.31.

8/ 25 C.F.R. § 83.7(c) provides: "The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times to the present."

25 C.F.R. § 83.8(d) provides in part:

"(3) The group meets the requirements of the criterion in § 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by

a lengthy discussion of its interpretation of evidence. As was the case in Subpart IV.A, Quinault does not challenge any evidence per se. Rather, it challenges BIA's analysis of the evidence. Further, as was the case in Subpart IV.C, Quinault's argument is largely a repetition of arguments it made in comments on the Proposed Finding. Quinault fails to deal with the extensive response BIA made to those arguments at pages 12-17 of the Summary and pages 131-160 of the Final Technical Report.

Quinault fails in Subpart IV.D to establish by a preponderance of the evidence that a substantial portion of the evidence relied upon for the finding that Cowlitz satisfies the criterion in 25 C.F.R. § 83.7(c) as modified by 25 C.F.R. § 83.8(d) was unreliable or of little probative value.

In Part V of its Request for Reconsideration, Quinault asks the Board to refer certain issues to the Secretary of the Interior under 25 C.F.R. § 83.11(f)(2). Quinault contends that BIA misapplied the burden of proof in 25 C.F.R. § 83.6(d) and that it reviewed the evidence in an arbitrary and inconsistent manner. This discussion is, in part, a reframing of the arguments made in earlier parts of the Request for Reconsideration. Here, however, Quinault openly challenges BIA's analysis of evidence.

Because Quinault makes specific allegations that are outside the scope of the Board's authority under 25 C.F.R. § 83.11(d), the Board finds that the allegations should be referred to the Secretary under 25 C.F.R. § 83.11(f)(2).

Quinault also asks the Board to refer to the Secretary the issue of bias on the part of one of the BAR cultural anthropologists. It states that it seeks a referral of the bias issue to the Secretary as an alternative to consideration of the issue by the Board.

As evident from the discussion above, the Board has considered the allegation of bias in connection with Quinault's argument concerning the reliability and probative value of evidence relating to the present-day Cowlitz community. Quinault makes no new argument concerning

fn. 8 (continued)

authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in § 83.7(c).

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"(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d) (1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7 (a) through (c) from last Federal acknowledgment until the present."

bias in this part of its Request for Reconsideration. Accordingly, nothing remains of Quinault's bias allegation to be referred to the Secretary.

Three issues will be referred to the Secretary under 25 C.F.R. § 83.11(f)(2). The first, discussed above, concerns the erroneous statements in the Final Technical Report relating to the enumeration of the Cowlitz metis in the 1878 censuses. The specific issue referred is whether the erroneous statements had an effect on BIA's analysis and/or the Assistant Secretary's decision to issue the Final Determination which is sufficient to warrant reconsideration of the Final Determination.

The other two issues referred are: (1) Whether BIA misapplied the burden of proof in 25 C.F.R. § 83.6(d) and (2) whether BIA's analysis of the evidence was arbitrary and inconsistent.

In Part VI of its Request for Reconsideration, Quinault asks the Board to order BIA to provide it with a complete copy of the administrative record for the Final Determination, including copies of documents previously withheld under FOIA.

In light of the Board's limited jurisdiction over acknowledgment cases, and particularly in light of the Federal court decisions in Quinault's FOIA litigation, the Board declines to issue such an order.

In accordance with the above discussion, and pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1 and 25 C.F.R. § 83.11, the Assistant Secretary's Final Determination is affirmed. The three issues mentioned above are referred to the Secretary.

//original signed

Anita Vogt  
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn  
Chief Administrative Judge