



INTERIOR BOARD OF INDIAN APPEALS

In re Federal Acknowledgment of the Duwamish Tribal Organization

37 IBIA 95 (01/04/2002)



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 : Order Docketing and Dismissing
OF THE DUWAMISH TRIBAL : Request for Reconsideration and
ORGANIZATION : Referring Issues to the Secretary
: of the Interior
:
:
: Docket No. IBIA 02-30-A
:
:
: January 4, 2002

On December 31, 2001, the Board of Indian Appeals received a request for reconsideration of the “Final Determination Against Federal Acknowledgment of the Duwamish Tribal Organization” which was signed by the Assistant Secretary - Indian Affairs on September 25, 2001, and published in the Federal Register on October 1, 2001. 66 Fed. Reg. 49966. The request for reconsideration was filed by the Duwamish Tribe of Washington, which is evidently the same entity as the Duwamish Tribal Organization (hereafter, “Petitioner”).

25 C.F.R. § 83.11(d) describes the Board’s jurisdiction over a request for reconsideration of an acknowledgment determination. That regulation 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).

Under 25 C.F.R. § 83.11(c)(2), the Board is required to determine whether a request for reconsideration alleges any of the grounds in 25 C.F.R. § 83.11(d). Under 25 C.F.R. § 83.11(f)(1), it is required to describe in its decision any other grounds for reconsideration alleged in a request for reconsideration and, under 25 C.F.R. § 83.11(f)(2), it is required to refer those issues to the Secretary of the Interior.

Petitioner does not allege any of the grounds for reconsideration in 25 C.F.R. § 83.11(d). It makes only one allegation—that a final determination to acknowledge Petitioner was made on January 19, 2001, by the then Acting Assistant Secretary - Indian Affairs. Petitioner disputes the statement made in the October 1, 2001, Federal Register notice that the January 19, 2001, action was a “preliminary finding” and asks the Board to “remand the matter to the Department with directions to retract the Sept. 25 Decision and reinstate the Jan. 19 Decision.” Request for Reconsideration at 9.

The Board finds that it lacks jurisdiction to review this request for reconsideration because Petitioner has not alleged any of the grounds for reconsideration in 25 C.F.R. § 83.11(d). See In re Federal Acknowledgment of the Snoqualmie Tribal Organization, 31 IBIA 260, recon. denied, 31 IBIA 298 (1997); In re Federal Acknowledgment of the Snoqualmie Tribal Organization, 31 IBIA 299 (1997).

The Board further finds that Petitioner has raised issues that are not within the Board’s jurisdiction. These are: (1) Whether the January 19, 2001, action taken by the Acting Assistant Secretary was a final determination to acknowledge Petitioner and (2) if so, whether the September 25, 2001, final determination should be retracted and the January 19, 2001, final determination reinstated.

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, this request for reconsideration is docketed. It is, however, dismissed for lack of jurisdiction. The issues described in the preceding paragraph are referred to the Secretary of the Interior under 25 C.F.R. § 83.11(f).

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge