



INTERIOR BOARD OF INDIAN APPEALS

In re Federal Acknowledgment of the Chinook Indian Tribe/Chinook Nation

36 IBIA 245 (08/01/2001)

Assistant Secretary's Reconsidered Final Determination:
67 Fed. Reg. 46204 (07/12/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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IN RE FEDERAL ACKNOWLEDGMENT : Order Affirming Final Determination and
OF THE CHINOOK INDIAN TRIBE/ : Referring Nine Issues to the Secretary
CHINOOK NATION : of the Interior
: :
: Docket Nos. IBIA 01-87-A
: IBIA 01-102-A
: IBIA 01-103-A
: :
: August 1, 2001

The Board of Indian Appeals (Board) received three requests for reconsideration of the “Final Determination to Acknowledge the Chinook Indian Tribe/Chinook Nation (Formerly: Chinook Indian Tribe, Inc.)” (Final Determination). The Final Determination, which was made by the Assistant Secretary - Indian Affairs (Assistant Secretary), was published at 66 Fed. Reg. 1690 (Jan. 9, 2001). The requests for reconsideration were filed by the Quinault Indian Nation (Quinault) (Docket No. IBIA 01-87-A), the Columbia River Crab Fisherman’s Association (Association) (Docket No. IBIA 01-102-A), and Michels Development Company (Michels) (Docket No. IBIA 01-103-A). The Board has also received a request from Linda Amelia to appear as an interested party.

“Interested Party” Status

As a threshold matter in addressing a request for reconsideration of an acknowledgment determination, the Board is required to determine whether the person seeking reconsideration is an “interested party” within the meaning of 25 C.F.R. § 83.1. A person must be an “interested party” in order to file a petition for reconsideration of a final acknowledgment determination. 25 C.F.R. § 83.1 defines “interested party” as:

any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. “Interested party” includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

In an interim order dated April 18, 2001, the Board concluded that Quinault came within the definition of “interested party” because it is a recognized Indian tribe whose membership might be affected by a determination to acknowledge the Chinook Indian Tribe/Chinook Nation (Chinook). ^{1/} Noting that the “interested party” status of the Association and Michels was not as clear, it gave all parties an opportunity to discuss this question.

Both the Association and Michels filed responses. Each contends that it is an “interested party” because it has a “property interest” and/or a “legal interest” in the acknowledgment determination based on the fact that, if acknowledged, Chinook and/or its members might be in economic competition with them.

Chinook argues that neither the Association nor Michels is an “interested party.”

After reviewing the responses on “interested party” status in light of the allegations of error which the Association and Michels raise, the Board has determined that it is not necessary for it to decide here whether the Association and/or Michels each had the right to petition for reconsideration. Because Quinault clearly had that right, its petition is properly before the Board. As discussed below, the allegations raised by the Association and Michels are comparable, if not identical, to allegations made by Quinault which the Board is referring to the Secretary of the Interior. Thus, whether or not the Association and Michels actually had the right to petition for reconsideration, their allegations will be addressed in the context of consideration of Quinault’s allegations. In addition, they will each have the right to seek to participate in the proceedings before the Secretary or before the Assistant Secretary if the Secretary refers Quinault’s allegations to the Assistant Secretary. The Board believes that the scope of participation by the Association and/or Michels in subsequent proceedings should be determined by the officials with authority over those proceedings.

There is one further “interested party” issue remaining before the Board--the request of Linda Amelia to appear as an interested party. Because this decision disposes of the case before the Board, the Board declines to rule on Amelia’s motion. Amelia may refile her request for “interested party” status with the Secretary and/or the Assistant Secretary.

^{1/} The Board does not hold that membership issues are the only way a recognized tribe “might be affected by an acknowledgment determination.” See, e.g., In re Federal Acknowledgment of the Snoqualmie Tribal Organization, 34 IBIA 22, 25 (1999) (holding that a recognized Indian tribe which shows that it has an historical or present relationship with a group petitioning for acknowledgment is an interested party with standing to petition for reconsideration of an acknowledgment determination).

Allegations Over Which the Board Has Jurisdiction

25 C.F.R. § 83.11(d) sets out those issues over which the Board has jurisdiction in a request for reconsideration of an acknowledgment determination. The regulation provides:

The Board [of Indian Appeals] 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).

In its April 18, 2001, order, the Board found that Quinault had made the allegations required under section 83.11(d). Specifically, the Board found that, at page 6 of its Request for Reconsideration, Quinault alleged that:

1. [The Assistant Secretary's] Conclusion That the Chinook Meet the Requirements of Criterion (b) under 1978 Regulations [2/] and the 1994 Regulations [25 C.F.R. § 83.7(b)] Is Not Supported by Reliable or Probative Evidence.

2. [The Assistant Secretary's] Conclusion That the Chinook Meet the Requirements of Criterion (c) under 1978 Regulations and the 1994 Regulations [25 C.F.R. § 83.7(c)] Is Not Supported by Reliable or Probative Evidence.

2/ Quinault objects to the fact that the Assistant Secretary considered the Chinook petition under the 1994 regulations. As noted below, the Board lacks authority to address Quinault's question of whether the use of the 1994 regulations was proper. For purposes of this decision, the Board reviews the Final Determination under the 1994 regulations.

3. [The Assistant Secretary's] Research with Respect to Past Departmental Interpretations of 1911, 1912, and Particularly the 1925 Act upon which He Relied Was Materially Incomplete. [3/]

4. Documents Reflecting the Department's Contemporaneous Interpretation of the 1925 Act Constitute "New" Evidence that Materially Affects the Determination.

5. [The Assistant Secretary] Repeatedly Failed to Consider and Explain His Departures from Past Departmental Interpretations which Constitute Reasonable Alternative Interpretations of the 1911, 1912, and 1925 Acts.

The Board finds that it can address Quinault's allegations without further briefing. Under the acknowledgment regulations, Quinault was required to provide all of its arguments in its request for reconsideration and does not have an opportunity to file an additional brief. See 25 C.F.R. § 83.11(e)(5) and (6). Thus, Quinault has had its full opportunity to present its case.

The standard of Board review of the allegations in a request for reconsideration of an acknowledgment determination is set out in 25 C.F.R. § 83.11(e)(9), which provides:

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 [for reconsideration] under paragraphs (d)(1)-(d)(4) of this section.

In its first and second allegations, Quinault contends that the Assistant Secretary's conclusion that Chinook met the requirements of 25 C.F.R. § 83.7(b) and (c) is not supported by reliable or probative evidence. Section 83.7 provides in pertinent part: "The mandatory criteria [for Federal acknowledgment] are: * * * (b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. * * * (c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present." For those groups which can show unambiguous previous Federal acknowledgment, 25 C.F.R. § 83.8(a) provides:

Unambiguous previous Federal acknowledgment is acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal

3/ These acts are: Quinault Allotment Act, Act of Mar. 4, 1911, ch. 246, 36 Stat. 1345; Act of Aug. 24, 1912, ch. 388, § 19, 37 Stat. 518, 534-35; Act of Feb. 12, 1925, ch. 214, 43 Stat. 886.

acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of § 83.7 to the extent required by this section.

Quinault's discussion under these allegations consists primarily of quotations from the regulations, from the preamble to the Federal Register publication of the regulations, and from a brief which the Department filed in Miami Nation of Indians of Indiana v. Babbitt, No. S92-586RM (N.D. Ind.). Quinault makes no argument whatsoever in support of its allegation that the Assistant Secretary's conclusion was not supported by reliable or probative evidence. The Board concludes that Quinault has failed to show by a preponderance of the evidence that the Assistant Secretary's determinations that Chinook met the requirements of 25 C.F.R. § 83.7(b) and (c) were not supported by reliable or probative evidence.

Quinault's third and fourth allegations are that the Assistant Secretary's research with respect to past Departmental interpretations of the 1911, 1912, and 1925 Acts was materially incomplete and that documents reflecting the Department's contemporaneous interpretation of the 1925 Act constitute "new" evidence that materially affects the determination.

Quinault shows that the three statutes were interpreted differently by Assistant Secretary Gover than by his immediate predecessor as Assistant Secretary and by the Department prior to that. However, nothing in the argument even suggests that Assistant Secretary Gover was not aware of the prior interpretations. The Board concludes that Quinault has failed to show by a preponderance of the evidence that the Assistant Secretary's research into the Department's prior interpretations of the three statutes was materially incomplete or that documents reflecting the Department's contemporaneous interpretation of the 1925 Act constitute "new" evidence.

Quinault's fifth allegation relates to 25 C.F.R. § 83.11(d)(4). This subsection gives the Board jurisdiction over allegations "[t]hat 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)." (Emphasis added.) Quinault's omission from its allegation of the phrase "not previously considered," presents an incorrect reading of this regulation. As discussed above, Quinault has failed to show that the Assistant Secretary did not know of or consider the Department's prior interpretations of the three Acts. Under these circumstances, the Board concludes that Quinault has also failed to show by a preponderance of the evidence that the Department's prior interpretations were not considered in reaching the Final Determination at issue here.

Both the Association and Michels challenge the interpretation of the 1911, 1912, and 1925 statutes. Although the Association and Michels each couched their allegations in terms that met the threshold jurisdictional requirements of 25 C.F.R. § 83.11(d)(1)-(4), the arguments they raise in support of their allegations clearly constitute legal challenges to the interpretation of the three statutes. These arguments are essentially the same as those raised by

Quinault under the second, third, and fourth allegations listed below, which are being referred to the Secretary of the Interior.

The Board finds that, although the Association and Michels alleged issues within its jurisdiction, their arguments in support of those allegations are not within the Board's jurisdiction. Therefore, even if the Association and Michels were "interested parties" with the right to petition for reconsideration of the Final Determination, the Board would have to refer their arguments to the Secretary.

The Board affirms the Assistant Secretary's Final Determination based on the facts that Quinault did not prove its allegations over which the Board has jurisdiction by a preponderance of the evidence, and that the Association and Michels have not raised arguments in support of their allegations which are within the Board's jurisdiction.

Quinault's Remaining Allegations of Error

In addition to the issues which it alleged were within the Board's jurisdiction, Quinault also raised other issues which it argued should be referred to the Secretary of the Interior under 25 C.F.R. § 83.11(f). Subsection 83.11(f) provides:

(1) The Board, in addition to making its determination to affirm or remand, shall describe in its decision any grounds for reconsideration other than those in paragraphs (d)(1)-(d)(4) of this section alleged by a petitioner's or interested party's request for reconsideration.

(2) If the Board affirms the Assistant Secretary's decision under § 83.11(e)(9) but finds that the petitioner or interested parties have alleged other grounds for reconsideration, the Board shall send the requests for reconsideration to the Secretary. The Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds.

The issues which Quinault argues fall within the referral provision of 25 C.F.R. § 83.11(f)(2) are:

1. a) [The Assistant Secretary] Was Without Authority to Review the Petition under the 1994 Regulations.

b) If [the Assistant Secretary] Had Discretion to Consider a Request from the Chinook to Review the Petition under the 1994 Regulations, He Abused that Discretion in Granting the Chinook Request.

2. [The Assistant Secretary's] Interpretation of the 1911 Quinault Allotment Act, and 1912 and 1925 Claims Legislation as Evidence of Prior Congressional Acknowledgment of the Existence of A Chinook Tribal Entity Is Contrary to Longstanding Departmental Interpretations of those Acts.

3. As a Matter of Law and Basic Logic Prior Contrary Departmental Interpretations of the 1925 Western Washington Claims Act, Preclude [the Assistant Secretary's] Conclusion that the 1925 Act Constitutes "Unambiguous" Previous Federal Acknowledgment of the Chinook.

4. [The Assistant Secretary] Improperly Departed From the Regulations and Prior Departmental Interpretations of the Acknowledgment Regulations, When He Found that an Act Authorizing Claims Against the Government Constituted Unambiguous Federal Acknowledgment that the Chinook Existed as Tribal Entity [sic] at the Time of the Act.

5. [The Assistant Secretary] Improperly Departed From the Regulation and Prior Departmental Interpretations of the Acknowledgment Regulations, When He Concluded That Evidence That a Subgroup of the Petitioner Constituted a Community under Criterion (b) Was an Adequate Substitute for a Demonstration That the Chinook Petitioner as a Whole Meets Criterion (b) [25 C.F.R. § 83.7(b)].

6. [The Assistant Secretary] Improperly Departed From the Regulation and Prior Departmental Interpretations of the Acknowledgment Regulations, In Relying on Claims Activities As Evidence of Community and Political Authority under Criteria (b) and (c) [25 C.F.R. § 83.7(b) and (c)].

7. [The Assistant Secretary] Improperly Accorded the Chinook Petitioner a Presumption of Continued Existence.

8. [The Assistant Secretary's] Decision Was Improperly Based on the Advice and Recommendations of a "Consultant" Retained by the [Assistant Secretary] to Provide Input Outside of the Regular Departmental Decision Making Process.

9. [The Assistant Secretary's] Decision Reflects Bias, a Personal Political Agenda Calculated to Implement a Recognition Policy at Odds with the Intent of the Existing Regulations, and Is Tainted by the Appearance of a Conflict of Interest.

Quinault Request for Reconsideration at 6-8.

The Board agrees with Quinault that the nine issues it raises at pages 6-8 of its Request for Reconsideration fall outside the scope of the Board's jurisdiction as specified in 25 C.F.R. § 83.11(d)(1)-(4). Therefore, these issues will be referred to the Secretary of the Interior.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Assistant Secretary's Final Determination is affirmed. The nine issues listed on pages 250-251 of this opinion are referred to the Secretary of the Interior under 25 C.F.R. § 83.11(f).

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge