



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245



IN REPLY REFER TO

Tribal Government Services - AR
MS: 4603-MIB

Surname #

MAR 14 1997

Handwritten notes in a box: "D. Wynn 3/13/97", "Reckon 3/13/97", "D. Wynn 3/13/97".

Ms. Rosemary Cambra
226 Airport Parkway, Suite 630
San Jose, California 95110

Dear Ms. Cambra:

Thank you for your letter of February 7, 1997, to the Assistant Secretary - Indian Affairs (Assistant Secretary) regarding issues raised at a meeting with us on January 17, 1997.

The essential requirement for Federal acknowledgment of a tribe is the tribe's continuity of tribal existence. This position of the Department of the Interior has been upheld by Federal courts. In United States v. Washington (9th Cir., 1981), the Court of Appeals rejected the argument that "because their ancestors belonged to treaty tribes, the appellants benefitted from a presumption of continuing existence" (641 F.2d 1374). It agreed with the district court that tribes must have continued to function since their recognition as treaty tribes as "continuous separate, distinct and cohesive Indian cultural or political communit[ies]" (641 F.2d 1373). A demonstration of a group's Indian ancestry is not sufficient to meet this standard. Thus, the Assistant Secretary cannot acknowledge as a tribe a group which is descended from a previously-acknowledged tribe without a showing that the group has continued to exist as a tribe since the time of its last Federal recognition. The Federal acknowledgment process provides the opportunity to make such a showing for a group which is not currently a federally-recognized tribe. It is the successful presentation of such evidence under the acknowledgment regulations which allows the Assistant Secretary to acknowledge a group as a tribe.

A finding by the Bureau of Indian Affairs (BIA) that a petitioner for Federal acknowledgment has been previously recognized as a tribe by the Federal Government allows the petitioner to benefit from Section 83.8 of the acknowledgment regulations (25 CFR Part 83). A determination that a petitioner was previously recognized provides it with significant advantages. First, a previously-recognized petitioner benefits from a reduced burden of proof that it meets the mandatory criteria for acknowledgment as set forth in Section 83.7 of the regulations, for Section 83.8 modifies Section 83.7. For example, the Muwekma will need to demonstrate that it exists as a distinct community at present, but not that it has done so throughout history. Second, a determination that a petitioner was previously recognized may reduce the period of time for which the petitioner needs to demonstrate that it meets the mandatory criteria. For example, the Muwekma will need to

demonstrate its continuity from a previously-recognized tribe and its continuous tribal existence only since 1927. This relieves the Muwekma of the burden of demonstrating its continued tribal existence for the 150 years from the 1770's to the 1920's. As a result, the Muwekma will not need to confront the difficult question of whether or not a group of mission Indians constitutes a "historical tribe." The Muwekma also will not need to document its tribal existence during the difficult years of the late-19th century when tribal existence was under assault. Thus, the reduced burden of proof which accompanies a finding of previous recognition offers very significant advantages to the Muwekma, and to other petitioners in California with similar histories.

Although a previously-recognized petitioner is not evaluated under "active consideration" ahead of other petitioners, a determination that a petitioner was previously recognized can significantly expedite the acknowledgment process for that petitioner. The acknowledgment regulations establish a first-come first-served priority for evaluating petitioners, including those who have been previously recognized. A preliminary finding that a petitioner was previously recognized, however, should reduce the time required for the petitioner to prepare its completed petition. The Muwekma, for example, will need to document that it meets the acknowledgment criteria only for the 70 years since 1927, not the 220 years since the 1770's. This could reduce its research time and reproduction of documents by two-thirds. A petitioner which already has completed research on the entire history of its group, of course, does not need to wait for a preliminary determination of previous recognition before requesting to be placed on "active consideration." A petitioner can request the BIA to determine whether it was previously recognized at the same time that the BIA evaluates the petition under "active consideration." A petitioner beginning its research, however, may find that a preliminary determination that it was previously recognized will significantly reduce the time required to prepare its documented petition prior to "active consideration."

All findings made by the BIA prior to "active consideration" must be preliminary, for they are made without the benefit of the full documentation of a completed petition and the extensive evaluation of a petition that occurs under "active consideration." The only conclusive findings are those made by the Assistant Secretary and published in the Federal Register as a Proposed Finding or a Final Determination. Thus, we wrote to you on May 24, 1996, to inform you that the BIA had "concluded on a preliminary basis" that your group had been previously acknowledged between 1914 and 1927. This means that you may now complete your documented petition by providing evidence that you meet the seven mandatory criteria for acknowledgment in Section 83.7, as modified by Section 83.8, for the years since 1927 only.

The fundamental principle of the acknowledgment regulations requires you to demonstrate your continuous tribal existence since 1927. Although the BIA has accepted, "on a preliminary basis," that your modern group is the same as the band recognized in 1927, you still need to demonstrate the validity of that preliminary judgment. The regulations require you to establish your descent from a historical tribe, and one effect of the finding of previous

recognition in this case has been to shift the historical tribe from the aboriginal Ohlone, or the Indians of the mission at San Jose, to the Verona Band of 1927. The distinction made in our technical assistance letter of October 10, 1996, was that while your genealogical work had traced your members' ancestry back to the Indians of the San Jose Mission, it had not necessarily traced their ancestry back through the Verona Band. A demonstration of continuous tribal existence since 1927, however, requires more than genealogical evidence. Thus, we urge you to review our comments in the technical assistance letter for criteria (a), (b), and (c), and to discuss any questions you may have with the Branch of Acknowledgment and Research (BAR).

You have submitted materials in response to our technical assistance letter, and have indicated that you plan to submit additional evidence. According to the acknowledgment regulations, you will not receive an additional technical assistance letter unless you specifically request a second review. Your petition will be reviewed to determine if it is "ready" for evaluation on its merits only when you declare that it is complete and request us to place it under "active consideration."

In order to evaluate the claims of previous recognition made by the Tsnungwe and Muwekma petitioners, the BAR has conducted research about Federal recognition policy in California in general. We appreciate your support of this research. It did help us make a preliminary finding in the Muwekma case. At this time, however, the BAR has not prepared a report which is ready for distribution. When such a report is ready, we will provide you with a copy at that time.

If you have any further questions, please contact the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street N.W., MailStop 4603-MIB, Washington, D.C. 20240, (202) 208-3592.

Sincerely,

/SGD/ DEBORAH J. MADDOX

Director, Office of Tribal Services

cc: Dena Magdaleno, ACCIP, P.O. Box 56, Burnt Ranch, CA 95527

cc: 440E:Surname;Chron;400
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