MUCKLESHOOT INDIAN TRIBE

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By Email: consultation@bia.gov

Darryl LaCounte
Acting Assistant Secretary – Indian Affairs
1849 C Street N.W. MS-4460-MIB
Washington, D.C. 20240

Re: Federal Acknowledgment Re-Petitioning – 25 CFR Part 83

Dear Acting Assistant Secretary LaCounte:

The Muckleshoot Indian Tribe supports retention of the prohibition on re-petitioning by groups previously denied acknowledgment under 25 CFR part 83 for the reasons set forth below. But if the ban is relaxed, re-petitioning should be limited to groups that can demonstrate a strong likelihood that the 2015 changes to 25 CFR part 83 would result acknowledgment were the group's petition to be reconsidered.

In 1978 the Department established a comprehensive regulatory process for groups seeking federal acknowledgment as Indian tribes. 43 FR 39361 (Aug. 24, 1978). The regulations were revised in 1994, 59 FR 9280 (Feb. 25, 1994), and again in 2015, 80 FR 37862 (July 1, 2015). The essential requirement of this regulatory process is to insure that groups seeking federal acknowledgment as Indian tribes have existed continuously as communities with retained political powers. Coen, Tribal Status Decision Making: A Federal Perspective on Acknowledgment, 37 New Eng. L. Rev. 491, 496 (2003). To this end the criteria for acknowledgment focus on the continuous existence of the petitioning group as a distinct social and political entity. *Id*. 496-97; *see*, 25 CFR §§83.11(a)-(c); 25 CFR §§83.4(a)-(b) (2015).

There are 7 criteria for acknowledgment. As presently framed under the 2015 regulations they require the group petitioning for acknowledgment to demonstrate:

(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
(b) The petitioner comprises a distinct community and demonstrates that it existed as a community from 1900 until the present.[1]

[1] Groups that can demonstrate previous federal acknowledgment are reviewed under relaxed criteria, that only require a showing of community at present and identification as an Indian entity and maintenance of political authority from 1900 to present, or the time of previous federal acknowledgment whichever is later. 25 CFR §83.12 (2015).

(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present.
(d) The petitioner has provided a governing document or a written statement setting forth its full membership criteria and governing procedures.
(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).
(f) The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe.
(g) Neither the petitioner nor its members are the subject of legislation that has expressly terminated or forbidden the Federal relationship.

25 CFR §83.11 (2015). A petitioning group must satisfy all 7 criteria to be acknowledged.

Although the criteria have been clarified and modified in some respects over time, they remain substantially the same as those originally adopted in 1978. *Compare* 25 CFR §54.7 (1978); 25 CFR §83.7 (1994); 25 CFR §83.11 (2015).

In 1994 when the Department first revised the regulations it stated that though it had reduced the evidentiary requirements for petitioners demonstrating previous federal acknowledgment, the revisions to the regulations were not intended to change the outcome of acknowledgment petitions, and expressly prohibited groups denied under the prior regulations from re-petitioning. 59 FR 9280 (Feb. 25, 1994); 25 CFR §83.3(f) (1994).

> In some circumstances the burden of evidence to be provided is reduced, but the standards of continuity of tribal existence that a petitioner must meet remain unchanged.
>
> None of the changes made in these final regulations will result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations. Neither will the changes result in the denial of petitioners which would have been acknowledged under the previous regulations.

59 FR 9280, 9283 (Feb. 25, 1994).

In 2014 the Department proposed further revisions to the regulations. 79 FR 30766 (May 29, 2014). Perhaps most significantly, the department proposed to define the burden of proof so that petitioners need not prove that the criteria for acknowledgment were more likely than not established. *Id*. at 30773; *Chinook Indian Nation v. Bernhardt*, 2020 WL 128563 at 2 (W.D. Wash. Jan. 10, 2020). Other proposed changes included:

> Limiting the time period for which proof of community and political authority needs to be demonstrated to the period from 1934 to the present.
>
> Allowing satisfaction of the community and political authority criteria (b) and (c) with evidence that the petitioner has maintained a state recognized reservation from 1934 to

> the present, or that the United States has held land in trust for the petitioner at any time from 1934 to present.
>
> Allowing gaps in the evidence for criteria (a)-(c) of up to 20 years.

Chinook Indian Nation, supra.

In light of these proposed changes the Department proposed to relax the ban on re-petitioning if the group seeking to re-petition: (i) obtained the consent of third parties who had participated in prior administrative proceedings; and, (ii) established that the changes in the regulations warranted reconsideration under the new regulations, or (iii) if the burden of proof which the proposed regulations redefined had been "misapplied" in the prior negative determination. *Id*. at 3; 79 FR 30766, 30773.

The proposed changes garnered varying responses. Some commenters supported the changes, while others including local governments and existing recognized tribes vigorously opposed them. *Chinook Indian Nation, supra* at 3.

In 2015 the Department issued a final rule altering the 1994 rule, but rejecting the changes discussed above including the proposed relaxation of the ban on re-petitioning. *Id*. at 4. More modest petitioner friendly changes adopted in the 2015 rule included:

> Adoption of a rule explicitly providing that evidence or methodology found in a prior acknowledgment decision to satisfy any criteria "will be sufficient to satisfy the criterion for a present petitioner."
>
> Revision of the time period for which evidence of community and political authority under criteria (b) and (c) to the time period from 1900 to present.
>
> Allowing evidence of self-identification as an Indian tribe to satisfy criterion (a).
>
> Expanding the definition of tribal marriages for the purposes of meeting criterion (b).
>
> Allowing satisfaction of criterion (e) based on tribal rolls prepared by the federal government for various purposes.
>
> Loosening of the requirements under criterion (f) for petitioners with members enrolled in existing federally recognized tribes.

Id. at 4-5; *Burt Lake Band of Ottawa and Chippewa Indians v. Bernhardt*, 2020 WL 1451566 at 9 (D.D.C. Mar. 25, 2020).

The 2015 final rule explained the decision to reject relaxation of the re-petition ban as follows:

> The proposed rule would have provided for a limited opportunity for re-petitioning. After reviewing the comments both in support of and in opposition to allowing for any

> opportunity for re-petitioning, limiting re-petitioning by providing for third-party input, and other suggested approaches for re-petitioning, the Department has determined that allowing re-petitioning is not appropriate. The final rule promotes consistency, expressly providing that evidence or methodology that was sufficient to satisfy any particular criterion in a previous positive decision on that criterion will be sufficient to satisfy the criterion for a present petitioner. The Department has petitions pending that have never been reviewed. Allowing for re-petitioning by denied petitioners would be unfair to petitioners who have not yet had a review, and would hinder the goals of increasing efficiency and timeliness by imposing the additional workload associated with re-petitions on the Department, and OFA in particular. The Part 83 process is not currently an avenue for re-petitioning.

80 Fed Reg. 37862, 37875.

Two unsuccessful acknowledgment petitioners challenged the continuation of the re-petition ban found in the 2015 final rule at 25 CFR §83.4(d). In separate decisions the United States District Courts for the District of Columbia and for the Western District of Washington upheld the Department's authority to ban re-petitioning, but concluded that the explanation provided for maintaining the ban did not adequately support the decision to do so. *Chinook Indian Nation v. Bernhardt*, 2020 WL 128563 at 6, 8-9 (W.D. Wash. Jan. 10, 2020); *Burt Lake Band of Ottawa and Chippewa Indians v. Bernhardt*, 2020 WL 1451566 at 3, 5, 9-12 (D.D.C. Mar. 25, 2020).

For the reasons stated below, the re-petitioning ban should be maintained. But as previously noted, if the ban is relaxed re-petitioning should be limited to groups that can demonstrate a strong likelihood that the 2015 changes to 25 CFR part 83 would result in acknowledgment, if the group's petition were to be reconsidered. And, groups that have previously determined not to be Indian tribes by a final decision of the federal courts, as well as by the Department under 25 CFR part 83, should not be permitted to re-petition.

The same underlying policies of finality, repose, and respect for the decision making process that underlie the judicial policies of claim preclusion (res judicata) and issue preclusion (collateral estoppel) support maintenance of the ban on re-petitioning first explicitly announced in the 1994 rule and continued in the 2015 final rule. For reasons that are unclear, the Department failed to discuss these considerations in explaining the maintenance of the re-petition ban even though a number of commenters on the rule raised the issue. *See, Chinook Indian Nation, supra* at 9. Although the Chinook court in *dicta* was skeptical whether claim preclusion should be applicable given the changes between the 1994 and 2015 regulations, *id*. at 9, it is well established that changes in decisional law even ones that would have affected the outcome of a prior judgment are generally insufficient to reopen a judgment absent "extraordinary circumstances." § 2864 Other Reasons Justifying Relief, 11 Fed. Prac. & Proc. Civ. (3d ed.) discussing numerous cases holding that extraordinary circumstances are required before a change in decisional law will warrant relief from a prior judgment; *see e.g., Gonzalez v. Crosby*, 545 U.S. 524, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005).

If the Department nonetheless chooses to relax the re-petitioning ban, it should be obvious that at a minimum for a change in law to justify reopening a prior decision the change must necessarily

be one that would affect the outcome of the prior decision. If anything, the changes between the 1978 rule and the 1994 rule were more significant than those between 1994 and 2015. For example, in 1994 the Department adopted significantly reduced evidentiary requirements for petitioners demonstrating previous federal acknowledgment, 25 CFR §83.8(d) (1994), but nonetheless noted that "petitioners that were not recognized under the previous regulations would not be recognized by these revised regulations." 59 FR 9280, 9282 (Feb. 25, 1994). The 1994 regulations explained this to be true because "the revisions maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence." *Id*. The same is true for the 2015 regulations which also "maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence" although some of the evidentiary standards for demonstrating historic continuity have been modestly revised.

Groups previously denied acknowledgment have argued they should be permitted to re-petition under the 2015 regulations, because the system under the former regulations was "broken." These argument should be rejected for a number of reasons.

First, while many have criticized the acknowledgment process as "broken" much of that criticism has focused on the length of time that it has historically taken from the time a group gives notice of its intent to seek acknowledgement to the time a final decision is rendered. This criticism focuses on process and not the outcome of acknowledgment decisions. Moreover, critics who describe the process as "broken" because of the inordinate time that often elapses before a decision is rendered rarely if ever address the reasons for the length of time it has taken to reach a decision.

Under the 1978 and 1994 regulations petitioners were allowed unlimited time to perfect petitions, and petitions were generally not deemed ready for review until the petitioner agreed that the Department should begin active consideration. Thus, while the Department was often slow in processing petitions much of the time between a group filing a notice of intent and perfecting its petition for review has been attributable to delays by petitioners in assembling the necessary documentation supporting their claims.

In addition, OFA has been underfunded and understaffed further contributing to delays. Compounding this problem, OFA historically engaged in detailed independent research of petitioner's claims, rather than simply reviewing the evidence presented by the petitioners and interested parties, contributing to additional delay in processing petitions. None of these failings has anything to do with the standards applied to acknowledgment petitions, or the ultimate outcome of petitions that have been decided and denied.

Second, many of the most vociferous critics of the process have been petitioners and their supporters who would like the Department to apply a presumption of continuous existence and seek acknowledgment of groups composed of descendants of historic tribes without an affirmative demonstration that the petitioning group has maintained continuous existence as a tribal community exercising some measure of political influence or authority over its members. The Department has repeatedly and rightly reject such arguments, as have the federal courts. *See e.g.,* 59 FR 9280, 9282 (Feb. 25, 1994). Indeed, the approach suggested by these critics would

potentially transform tribes into racial or ethnic groups jeopardizing the sovereign status of all federally recognized tribes which is based on continuous existence as political entities predating the Constitution. As noted in these comments the essential requirement that petitioners demonstrate continuous existence as tribal communities with political influence or authority over their members has been maintained from the 1978 regulations, through the 1994, and 2015 revisions, and it is therefore unlikely that the 2015 revisions would affect the outcome of previously denied petitions.

Between 1981 and 2019 34 petitioners were denied acknowledgment under 25 CFR part 83. These petitioners are listed on the Bureau of Indian Affairs website at https://www.bia.gov/as-ia/ofa/decided-cases with links to the Department's decision documents. The list is reproduced below annotated with the criteria which each of the unsuccessful petitioners failed to satisfy.

PETITIONERS DENIED THROUGH 25 CFR PART 83 (34 PETITIONS)

Petitioning Group Name & Criteria Not Satisfied	Petition Number	State	Date Decisi Effective
Duwamish Indian Tribe, WA (a)-(c) 1978 & 1994	025	WA	7/19/19
Georgia Tribe of Eastern Cherokees, Inc. (aka Dahlonega, Cane Break Band), GA (a)-(c) 1994	041	GA	3/14/18
Tolowa Nation, CA (b) 1994	085	CA	2/18/16
Choctaw Nation of Florida (e) Note: Expedited single criterion finding 83.10(e) 1994	288	FL	7/11/13
Brothertown Indian Nation (g) Note: Single criterion finding 83.10(e) 1994	067	WI	12/11/12
Central Band of Cherokee of Lawrenceburg, TN (e) 1994	227	TN	7/24/12
Juaneno Band of Mission Indians, CA (a)-(c) &(e) 1994	084B	CA	6/20/11
Steilacoom Tribe, WA (a)-(c), (e) 1994	011	WA	6/17/08
Nipmuc Nation, Hassanamisco Band, MA (a)-(c) & (e) 1994	069A	MA	1/28/08
Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, MA (a)-(c) 1994	069B	MA	1/28/08
St. Francis/Sokoki Band of Abenakis of Vermont, VT (a)-(c), (e) 1994	068	VT	10/1/07

Petitioning Group Name & Criteria Not Satisfied	Petition Number	State	Date Decisi Effective
Burt Lake Band of Ottawa and Chippewa Indians, Inc., MI (b)(c)(e) 1994	101	MI	1/3/07
Paucatuck Eastern Pequot Indians of Connecticut, CT (b)(c) 1994	113	CT	10/14/05
Schaghticoke Tribal Nation, CT (b)(c) 1994	079	CT	10/14/05
Eastern Pequot Indians of Connecticut, CT (b)(c) 1994	035	CT	10/14/05
Golden Hill Paugussett Tribe, CT (a-c)(e) 1994	081	CT	3/18/05
Snohomish Tribe of Indians, WA (a)-(c)(e) 1994	012	WA	3/5/04
Muwekma Ohlone Tribe of San Francisco Bay, CA (a)-(c) 1994	111	CA	12/16/02
Chinook Indian Tribe/Chinook Nation, WA (a)(b)(c) 1978 &1994	057	WA	7/5/02
Yuchi Tribal Organization, OK (f) Note: Expedited single criterion finding 83.10(e) 1994	121	OK	3/21/00
MOWA Band of Choctaw, AL (e) Note: Expedited single criterion finding 83.10(e) 1994	086	AL	11/26/99
Ramapough Mountain Indians, Inc., NJ (b)(c)(e) 1994	058	NJ	1/7/98
Miami Nation of Indians of IN, Inc., IN (b)(c)	066	IN	8/17/92
MaChis Lower AL Creek Indian Tribe, AL (a)-(c) (e)	087	AL	8/22/88
Tchinouk Indians, OR (a)-(c) (g)	052	OR	3/17/86
Southeastern Cherokee Confederacy (SECC), GA (a)-(c) (e)	029	GA	11/25/85
Northwest Cherokee Wolf Band, SECC, OR (a)-(c) (e)	029A	OR	11/25/85
Red Clay Inter tribal Indian Band, SECC, TN (a)-(c) (e)	029B	TN	11/25/85
United Lumbee Nation of NC and America, CA (a)-(c) (e)(f)	070	CA	7/2/85

Petitioning Group Name & Criteria Not Satisfied	Petition Number	State	Date Decisi Effective
Principal Creek Indian Nation, AL (a)-(c)	007	AL	6/10/85
Kaweah Indian Nation, CA (a)-(c) (e)	070A	CA	6/10/85
Munsee Thames River Delaware, CO (a)-(c) (e)	026	CO	1/3/83
Lower Muskogee Creek Tribe-East of the Mississippi, GA (a)-(c) (e)	008	GA	12/21/81
Creeks East of the Mississippi, FL (a)-(c) (e)	010	FL	12/21/81

In all but 6 of the cases in which the Department has denied petitions, the petition was denied for failing to satisfy multiple criteria. In the majority of the 6 cases where the petition was denied based on a single criteria, the decision was made under §83.10(e) (1994) which provides for a negative determination without a full evaluation of all of the criteria, if the petitioner clearly has not satisfied criteria (e), (f), or (g). An examination of these negative prior determinations by anyone familiar with the regulations would readily establish that is highly unlikely that the 2015 changes would have affected the outcome of any of these petitions.[2]

Several decisions from the Northwest provide examples. In the case of the Steilacoom petitioner, for example, the Department concluded the group had not established that its members were descended from the historic Steilacoom Tribe. The 2015 changes to the regulations would provide no help to Steilacoom and similarly situated petitioners. And, in the Department's last negative decision denying acknowledgment to the Duwamish petitioner on the ground that it did not meet criteria (a), (b), and (c) under either the 1978 or 1994 regulations, Assistant Secretary Washburn contemporaneous with his promulgation of the 2015 regulations, explicitly noted that the Duwamish petitioner would face the same problems meeting the requirements of the 2015 regulations as it did under the 1978 and 1994 regulations.

> A fundamental problem identified in the PF and FD was the DTO [Duwamish petitioner] formed in 1925 and was not a continuation of the D'Wamish and other allied tribes. A second fundamental problem was that the DTO did not provide sufficient evidence of community or political influence and authority at any time, even after it formed in 1925. The DTO would still face these fundamental problems under the revisions to Part 83.

Summary under Criteria and Evidence for Final Decision on Judicial Remand Against Acknowledgment of the Duwamish Tribal Organization Reconsideration of September 2001 Final Determination at 3 (July 24, 2015).

[2] Significantly, neither the Chinook nor Burt Lake decisions examine whether application of the 2015 regulations would likely have resulted in a different outcome for plaintiffs.

This is a common problem shared by most if not all of the denied petitioners which led Assistant Secretary Washburn to state more generally that it was "doubtful that many groups would deserve reconsideration under the Proposed Rule." *Chinook Indian Nation, supra* at 3. That conclusion is even stronger given the Department's decision to reject the most significant changes contained in the 2014 Proposed Rule, which would have significantly shortened the timeframe for showing community and political influence and reduced the burden of proof to something below a preponderance of the evidence.

Because the changes made in the 2015 regulations do not affect the underlying requirement that petitioning groups demonstrate descent from a historic tribe and the continuous existence of a tribal community with political influence and authority over its membership, the changes are unlikely to change the outcome of previously denied petitions, the rule. The 2015 changes therefore do not constitute the kind of extraordinary circumstances that would warrant departure from ordinary principles of finality and repose.

The proper remedy for unsuccessful petitioners is judicial review of a negative final determination under the Administrative Procedures Act, or a petition to Congress seeking legislative recognition. *See e.g., Miami Nation of Indians of Indiana, Inc. v. Babbitt*, 112 F. Supp. 2d 742, 758 (N.D. Ind. 2000), *aff'd sub nom. Miami Nation of Indians of Indiana, Inc. v. U.S. Dep't of the Interior*, 255 F.3d 342 (7th Cir. 2001); §2870 P.L. 116-92, 133 Stat. 1198, 1907-1909 (Dec. 20, 2019) (extending federal recognition to the Little Shell Tribe). The remedy should not be re-petitioning under Part 83 until a different result is obtained.

If the Department reconsiders the ban and allows re-petitioning, it should be strictly limited as follows:

> Only previously denied petitioners that can establish by a preponderance of the evidence that reconsideration of the group's petition under the 2015 regulations would result in acknowledgment should be permitted to re-petition. Thus, if a group was previously found to have failed to satisfy criteria (a), (b), and (c), the fact that under the 2015 regulations the group might now be likely to satisfy criterion (a), is insufficient to justify permitting the group to repetition where the regulatory changes would not likely affect the determination that the petitioner does not criteria (b) and (c).[3]
>
> The initial determination whether a different outcome is likely under the 2015 regulations and reconsideration should be allowed should be made by the Interior Board of Indian Appeals, rather than political appointees or individual OHA administrative law judges. The IBIA is an apolitical body and has experience and expertise in handling reconsideration of acknowledgment determinations. Assignment of re-petition requests to the IBIA should provide consistency in determinations compared to assignment to

[3] The 2014 draft regulations proposed allowing a group to re-petition based on the claim that the Department misapplied the burden of proof, as well as, on the ground that changes in the regulations more generally warranted re-petitioning. *See above* at 2. The Muckleshoot Tribe opposes allowing re-petitioning based on claims that the burden of proof was misapplied, as this proposal was coupled with a change in the burden of proof that was not adopted. Moreover, the proper remedy for claims that the Department misapplied the burden of proof in making its determination is judicial review pursuant to the APA. *See, Miami Tribe, supra.*

different individual OHA administrative law judges who may not have familiarity with federal Indian law and the acknowledgment process and criteria.

The initial determination should be based on the record developed in the previous petition, except where the 2015 regulations allow consideration of types of evidence not previously considered supportive of the criteria under 1978 or 1994 regulations. In short, no new evidence should be permitted unless it is evidence that would not have been considered probative under the 1978 and 1994 regulations, but is now probative under the 2015 regulations. Given the fulsome and lengthy opportunity that previous petitioners were afforded to develop the factual records in support of acknowledgment petitions there is no reason to allow petitioners to supplement the factual record with material that would have been considered relevant under the old regulations. Moreover, allowing supplementation of the record with evidence that could have been previously submitted in support of a petition effectively opens up re-petition process to petitioners whose petitions were denied based on failure of the evidence, rather than those allegedly affected by changes in the regulations.

Potentially affected recognized tribes should be permitted to fully participate in the proceedings to determine whether a group is eligible to re-petition, as well as, subsequent acknowledgment proceedings if re-petitioning is permitted to the full extent permitted under the 1978 and 1994 regulations. And, the definition of potentially affected tribes should explicitly recognize the interest of recognized tribes whose membership descends in significant part from the same historic tribe or group from which the petitioner claims descent. The Department has a trust obligation to recognized tribes that was recognized in the prior regulations which permitted participation by "interested parties" including potentially affected tribes, and that obligation should be fully accommodated in any re-petition process without regard to the level of participation in the previous acknowledgment proceeding. For example in the Northwest, the Quinault Indian Nation and the Shoalwater Bay Indian Tribe should be permitted as a matter of right to fully participate should the Chinook group seek to re-petition. The Puyallup and Nisqually Tribes should be permitted to fully participate with respect to Steilacoom. The Muckleshoot and Suquamish Tribes should be permitted to fully participate with respect to the Duwamish group, and the Tulalip Tribes should be permitted to fully participate with respect to the Snohomish group.

The decision whether to allow a group to re-petition should be considered a final decision of the Department subject to judicial review under the Administrative Procedures Act whether positive or negative. Should the Department allow limited re-petitioning, groups seeking to re-petition will have the opportunity to seek judicial review of decisions determining a group is not eligible to re-petition. Similarly, recognized tribes and other interested parties should have the right to seek judicial review of decisions to allow re-petitioning to proceed without having to wait for a decision on the merits of the petitioner's claim to tribal status.

Finally, petitioners previously denied acknowledgment by the Department under the prior regulations should not be permitted to re-petition if the petitioner has also been found not

> to be an Indian tribe by a final decision of the federal courts. Finality considerations apply with even greater force and counsel against permitting re-petitioning by groups whose claims of tribal status have been previously denied by the federal courts, in addition to the Department. *See*, *Chicago & S. Air Lines v. Waterman S. S. Corp.*, 333 U.S. 103, 113, 68 S. Ct. 431, 437, 92 L. Ed. 568 (1948) ("Judgments, within the powers vested in courts by the Judiciary Article of the Constitution, may not lawfully be revised, overturned or refused faith and credit by another Department of Government.")[4]

In conclusion, the Muckleshoot Indian supports reinstatement of the ban on re-petitioning at issue in the *Chinook* and *Burt Lake* decisions for the reasons stated above. But if the Department does allow re-petitioning by previously denied groups it should be strictly limited.

Respectfully submitted,

/s/ Richard Reich

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[4] To be sure the Department has in a few instances acknowledged groups as tribes whose claims to tribal status were rejected by the federal courts, e.g. Samish and Snoqualmie. Whatever the merits of these past actions, they do not justify allowing a group to re-petition after both the federal courts and the Department have independently made negative determinations.