

Reconsidered Final Determination

for the

Cowlitz Indian Tribe

Prepared in response to a petition submitted to the Secretary of the Interior for Federal Acknowledgment that this group exists as an Indian Tribe.

Approved: DEC 31 2001  
(Date)



Assistant Secretary - Indian Affairs

## Reconsidered Final Determination to Acknowledge that the Cowlitz Indian Tribe Exists as an Indian Tribe

In an opinion issued May 29, 2001, the Interior Board of Indian Appeals (IBIA) affirmed the Department of the Interior's (the Department) Final Determination (FD) of February 18, 2000, to acknowledge that the Cowlitz Indian Tribe (CIT) exists as an Indian tribe and meets the seven mandatory criteria for acknowledgment at 25 CFR §83.7(a)-(g), as modified by §83.8. The IBIA based its opinion on the consideration of the arguments and evidence presented by the petitioner and interested parties, particularly the Quinault Indian Nation (Quinault), and on critical documents relied upon by the Assistant Secretary - Indian Affairs (AS-IA) in the FD (25 CFR §83.11(e)(8)).<sup>1</sup>

Under provisions at §83.11(f)(2),<sup>2</sup> the IBIA also referred three issues to the Secretary of the Interior (Secretary) as outside of its jurisdiction. The first issue is whether an erroneous statement occurring two times in the FD Technical Report relating to the enumeration of the Cowlitz métis on 1878 and 1880 Indian censuses, the "Milroy censuses," had an effect on BIA's analysis or the AS-IA's decision. The second issue referred to whether the BIA misapplied the burden of proof under 25 CFR §83.6(d). The third issue concerned whether the BIA's analysis of the evidence was arbitrary and inconsistent. ("In Re Federal Acknowledgment of the Cowlitz Indian Tribe," IBIA 00-76-A, May 29, 2001.) The CIT and interested parties then had 30 days from receiving notice of the IBIA's decision to submit comments to the Secretary, according to

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<sup>1</sup> The regulations read:

For purposes of review by the Board, the administrative record shall consist of all appropriate documents in the Branch of Acknowledgment and Research relevant to the determination involved in the request for reconsideration. The Assistant Secretary shall designate and transmit to the Board copies of critical documents central to the portions of the determination under a request for reconsideration. The Branch of Acknowledgment and Research shall retain custody of the remainder of the administrative record, to which the Board shall have unrestricted access (25 CFR§83.11(e)(8)).

<sup>2</sup> The regulations read:

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 (83.11(f)(2)).

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the acknowledgment regulations at §83.11(f)(4) and did so. These regulations at §83.11(f)(5) also provide a 60-day deadline for the Secretary to review the comments and decide whether to request the AS-IA to reconsider the FD.

In a letter written July 25, 2001, to the CIT attorney, the Secretary directed the Branch of Acknowledgment and Research (BAR) to submit its views concerning the three referred issues. On August 8, 2001, the BAR transmitted its recommendations to the Secretary through the Deputy Commissioner for Indian Affairs (Blackwell to Secretary, August 8, 2001). BAR recommended that the Secretary refer issue one to the AS-IA so that the inaccuracy, which it had admitted previously (Coen to IBIA, "Transmittal of Documents in Administrative Record|Central to Request for Reconsideration," July 10, 2000, p. 4), and its impact, if any, could be addressed. Additionally, it recommended that the Secretary refer issue two to the AS-IA, but only to the extent that the inaccuracy covered in issue one impacted it. The Secretary gave the CIT and interested parties 12 days to submit their responses to the BAR's recommendations to her. The CIT responded, as did the Quinault (Whittlesey to Norton, August 17, 2001, p. 3; Reich to Roberts, August 17, 2001).

In a September 4, 2001, memorandum, the Secretary requested that the AS-IA reconsider the CIT decision. She stated, "Without in any way passing on the merits of these issues identified by the IBIA, I hereby request that you address the first issue and the portion of the second issue concerning unambiguous previous federal recognition and, in accordance with the regulations, issue a reconsidered determination within 120 days of receipt of this request. 25 CFR §83.11(g)(1)" (Norton to AS-IA, September 4, 2001).

This reconsidered FD relates only to the issues referred to the AS-IA and supercedes any previous findings in the Proposed Finding (PF) or FD with which it may conflict. This reconsidered FD is in two parts. The discussion of the mistake in the FD pertains to issue one and corrects the technical report accompanying the FD. The section on issue two contains a discussion of the evaluation of the evidence pertaining to previous acknowledgment (§83.8) and clarifies and augments the FD Summary under the Criteria.

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### Issue One

#### *Background to Issue One*

The Secretary referred the first issue identified by IBIA to the AS-IA, in accordance with 25 C.F.R. §83.11(f)(2). This issue was:

- I. “Whether erroneous statements in the Final Technical Report relating to the enumeration of the Cowlitz métis in the 1878 census had an effect on the BIA’s analysis and/or the AS-IA’s decision to issue the Final Determination, which is sufficient to warrant reconsideration of the Final Determination.”

Specifically, the Secretary found that “further review is necessary in order to provide a more complete explanation of the Department’s final decision in this matter.” She observed that the IBIA had “noted that the erroneous statements regarding the 1878/80 censuses in the Final Technical Report were probably inadvertent and had a minimal impact on the BAR’s analysis” (Norton to AS-IA, Sept. 4, 2001, p. 2). The inaccurate statement said that Cowlitz métis appeared on the Office of Indian Affairs’ (OIA) censuses of Lower Cowlitz taken under the direction of Indian Agent R. H. Milroy.

The draft FD initially reviewed by the Deputy Commissioner for Indian Affairs and the AS-IA did not contain the mistake concerning the censuses. Editing introduced this inaccuracy late in the surnaming process, meaning that the mistake did not affect the BIA analysis of the evidence and also that it probably did not influence decision-makers. The signed FD, however, contained two occurrences of this mistake. It is possible, although highly unlikely, that the inaccuracy in the final draft was critical to the reasoning of the decision-maker. This reevaluation clarifies the description of the evidence found at two places in the written finding and discusses the relationship between the Cowlitz métis and other Lower Cowlitz.

The Cowlitz métis were descendants of Indian women, who were part of the Lower Cowlitz tribe, and French-Canadians, generally Hudson Bay Company employees or associates who had moved into what is today Oregon and Washington. The term métis was used in many parts of North America to refer to individuals of French-Canadian and Indian heritage. The PF and FD treated the Cowlitz métis as a mixed-blood social component of the Lower Cowlitz. In contrast, Quinault argued that the métis formed a distinct social entity separate from the Cowlitz tribe. They criticized the FD not only for its inaccuracy but also for not explaining why the 1878 census did not name any métis, especially since, according to their own estimates<sup>3</sup>, a substantial portion

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<sup>3</sup> Quinault has argued that without the membership lists and other data protected from disclosure by the Privacy Act, they are unable to compute the actual percentage of descendants

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of the petitioner's members descended from these unions (QIN Petition for Reconsideration, pp. 4 & 19-20, May 16, 2000). Quinault did not accept the Department's position that the Government considered the métis "mixed bloods" to be part of the previously acknowledged entity.

The CIT PF and FD evaluated the CIT petitioner under §83.8, a provision in the 1994 amended regulations which decreases the evidentiary requirements on petitioners that show that they were previously recognized by the Federal government. The last date of Federal recognition used in the PF was 1855, based on the date of treaty negotiations.<sup>4</sup> The date used in the FD was 1880, predicated in part on evidence contained in the 1878 "Milroy census" and Agent Milroy's 1881 letter describing an 1880 enumeration. According to Quinault, an error concerning these censuses could conceivably change the date of previous acknowledgment or the composition of the previously recognized tribe and significantly alter the FD.

The 1878 Milroy census of the Lower Cowlitz, the census specifically mentioned in the Secretary's referral, was one of four separate Cowlitz censuses, including those of the Lower Cowlitz Band in 1878 and 1880 and the Upper Cowlitz Band in 1878 and 1880. The FD discussed these censuses. Most at issue in this reconsideration is the 1878 census of the Lower Cowlitz, because the Cowlitz métis were members of that tribe through births, marriages, and associations. No party posits that the métis "mixed bloods" were part of the Upper Cowlitz in the mid-1800's.

### *The 1878 and 1880 Milroy Censuses*

In 1878, a census of the "Cowlitz tribe residing on the Lower Cowlitz River in Cowlitz Co. Wash. Territory," or Lower Cowlitz, enumerated 66 individuals. A separate census of the "Cowlitz Klickatat band of Indians residing in Louis County, Wash. Ter.," or Upper Cowlitz, enumerated 105 individuals.<sup>5</sup> Both censuses named heads-of-household, thereby making it possible to determine whether household heads were Cowlitz métis, but not whether unnamed individuals designated as "wives," "children (boys or girls)" and "relatives in families" living in the household were métis. Comparison with other documentation on Cowlitz métis families (See PF GTR for a discussion of available material) shows that none of the household heads on either 1878 census had Cowlitz métis background. It is not possible to determine whether these two censuses included métis dependents in these households. Further, it is unclear as to whether OIA agents of

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who descended from the historical tribe as they define it. The Genealogical Technical Report (GTR) that accompanied the PF explained how the BIA computed the petitioner's descent

<sup>4</sup> The Lower Cowlitz did not sign a treaty; they, however, participated in treaty negotiations, activity which indicated that the Federal Government recognized the negotiating entity as a tribe.

<sup>5</sup> See PF GTR, Appendix I, p. 109, and Appendix II, p. 110.

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that time period enumerated “half-breeds” in this listing of “Indians,” as agents sometimes, but not always, distinguished them from Indians.

In an 1881 letter discussing these censuses, Indian Agent Milroy wrote to the Commissioner of Indian Affairs, “All Indians within the limits of this Agency both taxed and untaxed were included in the Census of 1878.”<sup>6</sup> This statement indicated that the Office of Indian Affairs (OIA) may not have considered the Cowlitz métis part of the recognized Lower Cowlitz tribe enumerated in 1878 because the names of household heads, “taxed and untaxed,” were enumerated and did not include any Cowlitz métis. Because many of the métis, born between 1827 and 1850, were in 1878 between the ages of 27 and 51 years old, one would expect that the agent would have named them on the 1878 census as household heads, if he had viewed them as Cowlitz Indians. This interpretation is supported by Milroy’s 1881 letter saying that the 1878 census included both taxed and untaxed Indians. This interpretation, however, is presumptive and circumstantial because: 1.) it is not known whether the 1878 census actually listed “taxed” Indians; 2.) it is unclear if agents intended to include or exclude “half breeds,” and whether métis would have been considered “Indians taxed and untaxed;” and, 3.) the 1878 census only listed male heads of households and any métis who were not heads of household would not have been named, even if included in the enumeration. No instructions for this census nor other statements indicated that métis or “mixed bloods” were actually excluded from the tribe or were not among the unnamed household members on the census.

The two 1878 censuses and Milroy’s 1881 letter, however, were clear evidence that agents of the OIA recognized a Lower Cowlitz Tribe and an Upper Cowlitz Band in 1878, the position taken in the FD. The mistake in the FD could have only affected the government’s view of the membership composition of the Lower Cowlitz Tribe in 1878, and did not affect whether the Government recognized a Lower Cowlitz Tribe, which it clearly did.

Two years later in 1880, the OIA took two more censuses of the Upper Cowlitz and the Lower Cowlitz tribes. The 1880 population totals for each tribe appeared in the Annual Report of the Commissioner of Indian Affairs for the year 1881.<sup>7</sup> The actual census sheets with names enumerated on them have not been located. The Indian agent counted 71 “Upper Cowlitz” and 56 “Lower Cowlitz.” These 1880 materials did not list Cowlitz Indians by name. It is impossible

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<sup>6</sup> R.H. Milroy to the Commissioner of Indian Affairs, Puyallup Nesqually Agency, Olympia Washington, May 30, 1881. French fathers of métis children tended to hold property and their households would most likely have been listed as “taxed.” Most Cowlitz métis would not be listed on census rolls of “untaxed” Indians, irrespective of tribal membership.

<sup>7</sup> Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1881, Washington, GPO, 1881. The chart with the Cowlitz statistics appears on pp. 342-343 “Table of statistics relating to population, industries, and sources of subsistence of various Indian tribes, together with religious, vital and criminal statistics.”

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to determine, based on these census totals alone, whether enumerators included any métis in their 1880 counts of either the Upper Cowlitz Band or Lower Cowlitz Tribe. It is not documented whether enumerators were instructed to include or exclude the métis. Neither contemporary government officials nor documents in the record specifically denied that the Cowlitz métis were considered to be part of the Cowlitz tribe in 1880.

Agent Milroy discussed the 1880 census in his 1881 letter as he attempted to explain the drop in the total number of Cowlitz Indians counted between the years 1878 and 1880 (Milroy 1881, 164 in COIA Report 1881). He stated that the 1880 decennial Federal census of the general population (not just Indians) included many taxed Indians. He said further that the purpose of the 1880 Indian census was to count only those untaxed Indian individuals not already counted on the Federal census. Milroy wrote in his May 30, 1881, letter that the difference

is occasioned by the fact that more or less Indians of every Reservation, tribe and band have taken homesteads or otherwise become possessed [sic] of land outside of reservations, and being liable to taxation were enumerated with the whites last year and of course left out of the Indian Census. In this County alone, 164 Indians and 8 half breeds were enumerated with the whites (Milroy 1881, 164 in COIA Report 1881).

This statement indicates that agents considered certain Indians and “half-breeds” to be members of the tribe(s) who would have been listed by the Indian agent with the 1880 tribal enumerations except for being taxed. Milroy implied the 1880 census differed from the 1878 listing only because the land-owning or taxed Indians, presumably listed in 1878, were on the 1880 Federal census and thus were not listed on the 1880 Indian census (Milroy 1881, 164 in COIA Report 1881). Since métis were most likely “taxed,” and since no Cowlitz métis were known to be listed among household heads on the 1878 Lower Cowlitz OIA census enumeration, it was unlikely, although not impossible considering that household members were not listed by name in 1878, that any were part of this latter enumeration in 1880. Without actual enumeration sheets, it can not be determined whether any métis members were counted as part of the Lower Cowlitz populations on the 1880 Milroy censuses or which eight “half-breeds” were omitted, if any were. The BIA did not see the 1880 Milroy census as a complete enumeration of tribal members. Rather, Milroy described it as only a listing of untaxed Indians. Thus, the mistake in the FD technical report pertaining to the 1880 enumeration again reflected only on tribal composition, not on tribal recognition. The Milroy census provided clear evidence that the Upper Cowlitz Tribe and the Lower Cowlitz Tribe were recognized in 1880.

The erroneous statement concerning the 1878 Milroy censuses appeared in the FD Technical Report on pages 39-40. With the mistake bolded below, the paragraph in question stated

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The two enumerations answer one specific question: did the OIA enumerate Cowlitz métis as Cowlitz Indians in 1878? *Yes it did.* They do not answer the broader question: were the Cowlitz métis considered to be Cowlitz Indians or to be part of the federally recognized Lower Cowlitz Tribe at that date; either by the Cowlitz full-bloods, external observers, or by the Federal Government. (CIT FD Technical Report, pp. 39-40).

Based on the above discussion of the censuses, the phrase "Yes it did" should have been omitted. The answer is unclear. As indicated in the foregoing discussion, in 1878 only male heads of households were listed making it impossible to determine the full composition of the Lower Cowlitz tribe. No Cowlitz métis, however, were known to have been included in the counts of Cowlitz on the 1878 Milroy censuses. The FD Technical Report repeated the same mistake on page 44 which referred to "the 1878 and 1880 censuses of the Lower Cowlitz which were of the Lower Cowlitz taken by a Federal agent **which included the Cowlitz métis.**" The bolded part should be removed from the sentence. As indicated in previous discussion, no schedule is available for the 1880 enumeration which makes it impossible either to determine the names of individuals counted on this census or to use it to determine the composition of the Lower Cowlitz tribe. As pointed out above, the BIA already stated in the memorandum transmitting documents to the IBIA that these two statements were inaccurate (Coen to IBIA, "Transmittal of documents in Administrative Record Central to Request for Reconsideration," In Re Federal Acknowledgment of the Cowlitz Indian Tribe, July 10, 2000, p. 4).

Elsewhere, official documents correctly described the situation regarding the métis' apparent absence from the 1878 census. The PF discussed the 1878 Milroy censuses. For example, the CIT PF Genealogical Technical Report (GTR) stated on page 61 that métis were not listed:

*1878 Milroy Census, Lower Cowlitz.* This BIA [OIA] listing omitted all the Cowlitz métis families. For a full picture of the petitioner's ancestral community at this time period, the BIA [OIA] enumerations must be correlated with the Federal and territorial censuses (CIT PF GTR 61-62).

The PF GTR also included actual transcriptions of the 1878 Lower Cowlitz censuses as appendices (CIT PF GTR, 109-110).

Accurate statements that Indian agents did not enumerate the métis on the 1878 and 1880 censuses appeared in the Historian's Technical Report (HTR) accompanying the PF. The HTR stated:

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In 1878 and 1880, the OIA took censuses of both the Lower Cowlitz and Upper Cowlitz bands. These censuses omitted the French-Canadian métis families (CIT PF HTR 2).<sup>8</sup>

Also, the BAR historian stated in the on-the-record technical assistance meeting, “Some of the correspondence of 1878 included references to some of the métis families, but the censuses did not include them” (TA Meeting transcript, p. 27).<sup>9</sup>

In addition to these correct statements concerning the censuses, the PF and FD provided contextual evidence about the relationship of the Cowlitz métis and the rest of the Lower Cowlitz tribe. The documented absence of the Cowlitz métis from a listing of Lower Cowlitz household heads on the 1878 census and presumed absence from the 1880 census did not necessarily mean that the métis were not part of the actual Lower Cowlitz tribe, but only that the government did not include the métis-headed households on the census. Quinault’s argument is based upon a false premise that the métis were separate and distinct in the late 19<sup>th</sup> century. Contrary to Quinault’s assertion and assumption that métis “mixed bloods” were not part of the Cowlitz tribe, significant evidence discussed in the FD showed the métis associating with the Lower Cowlitz after 1855.

### *The Relationship between the Cowlitz Métis and the Rest of Lower Cowlitz*

Aside from the census of the Lower Cowlitz in 1878, little evidence, other than prospective discussions about removal of landless Cowlitz in the late 1880’s, showed the Government distinguishing the métis socially from the Lower Cowlitz. This evidence of removal attempts showed that the Government did not discuss removal of the Cowlitz métis, most of whom owned land, but did discuss removal of non-métis Cowlitz, most of whom did not own land. The evidence, however, did not explain whether Federal agents, considering removals to reservations, distinguished Cowlitz people by their ethnicity, tribal relations, membership, and blood degree, or only by their land status. In addition, neither the petitioner nor the BIA found instructions from an OIA office instructing agents to exclude the taxed Cowlitz métis from removal efforts or explaining how to treat “mixed bloods” and their descendants.

In response to a question by the Quinault attorney concerning evidence for leadership in the Cowlitz community in the 1880’s, the BAR historian stated in the on-the-record TA meeting:

I would say that if you are defining a document as one letter, one item, it would be difficult to find. You have to look at it in the

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<sup>8</sup> Based on the preceding analysis, this sentence should indicate that the censuses included no households with métis heads.

<sup>9</sup> The BIA hosted an on-the-record technical assistance meeting at the Quinault’s request as provided by the regulations at §83.10(j)(2), for the purpose of inquiring into the reasoning, analysis and factual basis for the PF.

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context of the whole picture that is produced by the intermarriages, the marriage relationships, the existence of a close kinship community (TA Meeting transcript, p. 49).

The same methodological point applies to determining the composition and character of the Cowlitz community at any time between 1855 and 1910. The BIA specifically stated in its analysis in the FD that the Cowlitz métis were members of the Lower Cowlitz tribe. There is no complete list of the Indians present in 1855. No métis were named as Cowlitz speakers or negotiators in the 1855 Treaty minutes. The BIA concluded that they were not named as negotiators during the treaty negotiations because the oldest were in their teens and twenties and too young to act as leaders. These métis were born to Lower Cowlitz Indian women who married French-speaking Canadians beginning in the 1827, a pattern continuing through the 1850's. The presumption is that the half-blood children and quarter-blood grandchildren born in the 1800's also remained members of the Lower Cowlitz through the 19<sup>th</sup> century. No evidence contradicted these presumptions.

The Department does not assume that Indian women who married outside their tribe relinquished their tribal relations by doing so (see also Halbert). Similarly, the Department assumes that their children also maintained their tribal relations and that grandparents and grandchildren routinely interacted and communicated with one another. Analysis of several acknowledgment cases have relied on these interpretations. For example, the Jena Choctaw FD contained examples of how the BIA treated evidence which showed patterns of out-marriage producing half-blood and quarter-blood offspring. In the absence of evidence to the contrary, the BIA evaluators presumed in their analyses of the Match-E-Be-Nash-She-Wish Band of Pottawatomí FD that close relatives, (parents, children, siblings, and grandparents) interacted with one another. Thus, in the Cowlitz findings, the evaluation does not assume that marrying a non-Cowlitz severed a woman's tribal relations and membership in the Cowlitz tribe. Second, the Department assumes that the children or grandchildren of out-marrying individuals maintain relations with the tribe of their Indian parent or grandparents, absent other evidence demonstrating that they did not maintain such contacts.

The PF used these same presumptions to include métis as part of the Lower Cowlitz tribe in 1855, the last point of Federal recognition used in that finding, even though no métis were named among the Cowlitz treaty negotiators. The FD Summary under the Criteria discussed the métis' absence from lists of leaders or treaty negotiators in 1855:

It is unrealistic to expect that the métis would have been part of the Lower Cowlitz leadership in 1855. The oldest known Cowlitz métis was born in 1827. Aside from the marriage which produced this child, Cowlitz-French Canadian marriages had only begun to occur in the 1830's. Even the oldest métis offspring would have been only teenagers and young adults in 1855. They would

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probably not have had sufficient seniority to act as tribal spokesmen in 1855. More importantly, other evidence indicates that the métis were part of the historical tribe before the treaty negotiations and were part of the Cowlitz tribe that was present at the 1855 treaty negotiations. For example, Indian Agents before and after 1855 classified Cowlitz métis and “half-bloods” as Cowlitz. Quinault’s analysis does not change the conclusions of the proposed finding that Cowlitz métis were part of the Lower Cowlitz band beginning in the 1830’s (CIT FD, Summary under the Criteria, p. 3-4).

The FD primarily evaluated whether the métis were tribal members in the context of the 1855 treaty negotiations because Quinault raised in their response to the PF the issue that the Cowlitz métis were not documented as participating in those negotiations.

In their request for reconsideration before IBIA, Quinault expanded the argument. They asserted that evidence did not show the métis named or acting as part of the previously recognized tribe at any time before 1880, the last date of previous recognition utilized in the FD. Contrary to these claims, there is evidence discussed in the findings, which is summarized below, that generally indicates that the Cowlitz métis were part of the Cowlitz tribe prior to 1880. For example, various documents analyzed together indicate that the Cowlitz métis and the Lower Cowlitz full-bloods lived near to one another, particularly on Cowlitz Prairie. The PF HTR cited evidence indicating that social relationships existed among the variously identified Cowlitz populations. The BIA presumed that kinship relationships between Cowlitz métis and other Cowlitz defined and supported these social connections, in the absence of conflicting evidence. The record contains no evidence for the 1850’s showing the Government specifically excluding the métis from the Lower Cowlitz. The BAR historian also found in another BIA file on the Treaty of Medicine Creek (1854) some Cowlitz records, which the agent may have misfiled when the file originated. They had not been in the record for the PF, but were part of the record for the FD. According to the BAR historian, “Nothing in this additional data, either, showed any clear distinctions being made between métis or the parents of the métis and the Cowlitz. They simply didn’t address the issue” (TA Meeting Transcript, p. 25). There is no evidence in the record overcoming the standard presumptions based on marriage and kinship ties.

The PF HTR also found that “correspondence from the 1855-56 Indian war (CIT FD TR 118, f.n. 109; CIT PF HTR, pp. 48-50) and from a series of ‘disturbances’ in 1878 (CIT PF HTR 80-82, 84-85) demonstrated a continuing close relationship between the Cowlitz and the métis families who were their close relatives” (CIT PF HTR 2). In addition, the PF HTR found that Agent A. R. Elder’s 1862 report (25 Indian Claims Commission (ICC) 442; Horr 1974, 3/405), “stated that the Cowlitz Indians were ‘very few in number, and prefer living among the whites in their vicinity, who furnish them with employment upon their farms. Force would have to be resorted to in order to make them live upon the reservation’” (CIT PF HTR, p. 73). Elder was silent on the ethnic or racial composition of the “Cowlitz Indians” to whom he referred, but distinguished them from

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“whites.” He gave a location for the non-métis Lower Cowlitz which was close to where Lower Cowlitz métis families listed on the 1860 Federal census resided (1860 Census, Lewis Co., Washington - Federal, CIT PF GTR, p. 48). This census also listed the Indian wives of white men as “Indian.” The 1870 census found the majority of Cowlitz métis families together in Cowlitz Prairie precinct (CIT PF GTR, p. 48). Similarly, the 1878 letter by Milroy placing the Cowlitz on “Mr. Huntington’s land” was consistent with locations of several Cowlitz métis families listed on the 1880 Federal census (Milroy to Hayt, COIA, 1/7/1878, NARSM - 234 Roll 219, 92, CIT PF GTR, p. 8). Therefore, the combined evidence from the Federal censuses and Agent Elder’s report indicates that a significant number of Lower Cowlitz, including Cowlitz métis, continued to live near one another and interact through the 1880’s. Quinault’s arguments in the Request for Reconsideration asserted, but do not show when placed in context, that the métis were socially distinct from the Cowlitz in 1855 and in 1878 and 1880.

The above evidence also provided context for explaining documents that showed the métis developing cultural differences. The cultural practices of the Catholic, French-speaking Cowlitz métis and other Cowlitz, who were largely becoming English-speaking, diverged as the century progressed. The BAR historian stated in the on-the-record TA meeting that it “was in the 1870’s and 1880’s as these [métis] children grew older that the group was able – became culturally distinct in the sense that they by and large were French speaking, . . . Roman Catholic adults” (TA Meeting transcript, p. 21). The surviving Catholic Church records made no distinction among the Lower Cowlitz Indians and Lower Cowlitz métis. The BAR historian stated that the “Catholic fathers did not distinguish between the Cowlitz Indians and the métis or the Indian wives of French Canadian men to be baptized. . . . As potential converts they didn’t distinguish between the two categories, but there isn’t much data on it that I’m aware” (TA Meeting transcript, p. 23).

Despite developing cultural differences, Cowlitz métis acted on behalf of other Cowlitz, when in 1878, “a petition objecting to the proposed removal of the Lower Cowlitz and Upper Cowlitz bands from the Cowlitz River valley to a reservation was signed by a number of Lower Cowlitz métis men who were living in the Cowlitz River valley. They recommended Captain Peter as the man who should be appointed chief of the Upper Cowlitz Indians” (CIT PF HTR, p. 7). Some signers of this petition were ancestors to the petitioner.

The available evidence showing the Cowlitz métis actively participating in activities with other Cowlitz increased in the early 20<sup>th</sup> century. In 1900 and 1910, non-métis Cowlitz and Cowlitz métis families were identified as Cowlitz (and known variant terms) Indians on the Federal census special Indian population schedules. In addition, the leadership of the Cowlitz tribe in 1904 included Cowlitz métis and Cowlitz:

The original claims case was brought in 1904 by Atwin Stockum, who had been formally appointed chief of the Lower Cowlitz band by the OIA in 1878, and by his métis nephew (his sister’s son), Simon Plamondon, Jr. The resulting Cowlitz Tribal Organization,

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founded in 1912 before Atwin Stockum's death and formalized in 1915, alternated the presidency between Lower Cowlitz métis and Upper Cowlitz Taidnapam [another name for the Upper Cowlitz] full-bloods through the 1930's (CIT PF HTR, p. 2).

The métis, such as Simon Plamondon, Jr., were part of the Cowlitz group which formalized to pursue claims and undertake other activities in 1904. They associated with the same people in 1910 in establishing the formal Cowlitz organization. These later interactions were significant because they documented the success of OIA efforts to amalgamate the Lower and Upper Cowlitz.

In summary, the evidence established that after 1855, when the Government recognized the Lower Cowlitz Tribe during treaty negotiations, the Cowlitz métis and the other Cowlitz continued to act together, both socially and in a political sense, despite some cultural distinctions. Federal agents, who administratively combined the Lower and Upper Cowlitz, the two Cowlitz entities recognized by the Federal government in 1878, did not include Cowlitz métis household heads on the 1878 censuses. But these agents also did not identify métis as distinct from the tribe. Other evidence showed that cultural distinctiveness of the métis was just beginning to emerge, and that, even if the OIA in the late 1800's did not describe the métis as part of the tribe, the métis nonetheless interacted as part of the tribe at that time and in the following decades. This current evaluation finds that the métis were part of the Cowlitz tribe in the late 1800's, although the evidence available does not formally define the composition of the recognized Lower and Upper Cowlitz bands as defined by the Government in 1878 and 1880. Other evidence must be relied upon to determine the tribe's composition. Further, how the Cowlitz defined their tribal members and how the government defined them probably differed. When, in 1904, the Cowlitz métis and other Cowlitz jointly established an organization to pursue claims and undertake other activities, and in 1910 to establish a formal tribal organization, the Lower and Upper Cowlitz and the Cowlitz métis were represented in the group's composition and leaders. They have continued to act as a tribal entity under combined leadership to the present. Under the regulations, the evidence is sufficient to establish by a reasonable likelihood that the Cowlitz métis were part of the Lower Cowlitz at its point of last unambiguous recognition. The Department concludes that the two misstatements concerning the Milroy censuses do not impact the conclusion of the FD.

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### Issue Two

#### *Background to Issue Two*

The Secretary also referred to the AS-IA part of the second issue, “whether BIA misapplied the burden of proof in 25 C.F.R. §83.6(d)” (36 IBIA 151). The Secretary, however, limited her referral of this issue to “the portion that pertains to the application of the burden of proof in the context of unambiguous previous federal recognition” (Norton to AS-IA, Sept 4, 2001). She explained her reasoning:

The question of burden of proof with respect to unambiguous previous federal recognition is tied to the first issue. I am not referring the portions of this issue pertaining to the burden of proof for political authority and community to you because they are unrelated to the first issue and the IBIA did not specifically include these topics within the scope of its second referral. 36 IBIA 140, 150-151. Furthermore, the issue of burden of proof as it relates to political authority and community has been thoroughly addressed in the Technical Report to the Cowlitz FD and the Cowlitz Final Determination. Thus, further review of the burden of proof concerning political authority and community would be redundant and therefore, unlikely to change the Final Determination (Norton to AS-IA, Sept. 4, 2001).

As applied to a finding of previous Federal acknowledgment, the burden of proof standard requires that the petitioner provide substantial evidence of prior Federal recognition (25 CFR§83.8(a)) and establish by a reasonable likelihood that the current petitioner evolved from that previously acknowledged tribe (25 CFR§83.8(d)). Other acknowledgment decisions have found prior Federal acknowledgment without a list of members as of that date of previous acknowledgment and have reconstructed the membership.

The FD concluded that there was substantial evidence that Federal recognition of the Cowlitz existed as of 1878 and 1880 when the OIA enumerated the Upper Cowlitz and the Lower Cowlitz on the Milroy censuses and listed them in the Annual Reports as tribes under the jurisdiction of the agency. The Agency took these steps even though the Cowlitz had never signed a treaty and did not receive annuity payments, which would have generated lists of annuitants. The 1880 Annual Report listed the tribes together, treating them as two separately named but related tribes. The FD further found that the Government “administratively” amalgamated these two Cowlitz tribes during the two decades preceding 1880, and that, after 1880, the government categorized them together. In 1878, the OIA also appointed Atwin Stockum as Chief of the Lower Cowlitz following correspondence in 1877 in which the agent attempted to persuade him to assume

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responsibility for both bands (Stokum [sic] to Milroy 12/17/1877, NARS M-234, Roll 919, 101-102). These actions constituted unambiguous Federal recognition.

These Government actions did not immediately integrate the political processes of the two bands. The CIT FD Summary under the Criteria stated:

distinction should be made between the administrative amalgamation of the Upper and Lower Cowlitz by the Federal government, which acknowledged them first separately and then dealt with them together, and the amalgamation of the two band's political processes. . . . It is unclear whether the Upper and Lower Cowlitz were already acting together as one entity or acting as two separate entities as late as the 1870's. The documentation indicates that the process of political amalgamation occurred over several decades, in part as a result of the administrative actions of the government which treated them as amalgamated. Not until 1910-1912 was it clear that the Upper Cowlitz and Lower Cowlitz Indians were functioning as a single entity, although even at that date some cultural and linguistic distinctions remained (CIT FD Summary under the Criteria, pp. 4-5).

Federal policy toward Western Washington tribes during the late 1800's and early 1900's was to amalgamate historically distinct tribal entities. Such amalgamated tribes are dealt with today as federally recognized tribes. Indian Office officials also combined the Cowlitz tribes even though they were landless. Based on this administrative consolidation, the FD found that "both the Upper and Lower Bands were at first recognized separately and by 1878 were treated as one by the Federal government. The two bands acted together by the 1870's and were fully amalgamated by 1910" (CIT FD, Summary under the Criteria, p. 5). This reconsideration supports these conclusions of the FD.

Having demonstrated unambiguous prior Federal acknowledgment, the petitioner must demonstrate that it "evolved" from that entity. The regulations state at §83.8(d)(1):

The group meets the requirements of the criterion in §83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity (25 CFR §83.8(d)(1)).

The Quinault questioned the relationship of the Cowlitz métis to the previously recognized Lower Cowlitz tribe in 1878 because they were not listed among the heads of household named on the

## Cowlitz Reconsidered Final Determination

1878 Milroy census of the Lower Cowlitz (Milroy 1881, 164, in COIA Report 1881). Quinault stressed the requirement that the petitioner represent "the same tribal entity that was previously acknowledged." They argued first, that a predominant proportion of the petitioner descended from Cowlitz métis, and second, that the métis were not part of the previously acknowledged tribe in 1855, 1878, and 1880, asserting that these arguments meant that the petitioner was not eligible to proceed under §83.8.

Even though Government agents did not list the métis heads of household on the 1878 census of the Lower Cowlitz tribe, it is reasonably likely that the métis were part of the Lower Cowlitz Tribe the Government recognized in 1878 and 1880. It is also reasonably likely that the youthful métis were part of the recognized Lower Cowlitz Tribe which participated in treaty negotiations in 1855. Taking into account the "historical situations and time periods for which evidence is demonstrably limited or not available," as allowed by the regulations at §83.6(e), a reasonable likelihood exists that the current petitioner descends from the Lower Cowlitz Tribe recognized in 1855, 1878, and 1880, which amalgamated with the Upper Cowlitz Band recognized as late as 1880, and has evolved from those previously acknowledged entities. Therefore, the petitioner is entitled to proceed under the remaining provisions in the regulations at §83.8 for previously acknowledged tribes.

Other acknowledgment decisions have allowed amalgamation of tribes, specifically the Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians of Michigan (decision effective 8/23/1999). The CIT petitioner represents a tribe previously acknowledged in 1855, 1878, and 1880 (Lower Cowlitz) and another band previously acknowledged in 1878 and 1880 (Upper Cowlitz). The Government's perception of the composition of the tribes at each point of acknowledgment appears to have somewhat varied and changed depending on the purpose of the document demonstrating recognition, and thus, a definitive composition of the tribe(s) is not available. The treatment of the Lower Cowlitz and Upper Cowlitz is comparable to the disruptions suffered by other Western Washington tribes in the mid-1800's. Fluctuation in composition is also common in tribes, particularly in the Pacific Northwest, where out-marriage was preferred or even prescribed by custom. Because both historical tribes associated with the Cowlitz petitioner were previously acknowledged, and because the Government encouraged their amalgamation over several decades, the AS-IA correctly evaluated the petitioner under the provisions for previously recognized petitioners found at §83.8.

### **Review for the Reconsidered Final Determination**

This Reconsidered FD Summary under the Criteria clarifies and augments the section entitled, Prior Federal Acknowledgment under 25 C.F.R. 83.8, of the FD Summary under the Criteria

This text replaces the section which appeared on pages 2-5 of the *Final Determination Summary under the Criteria* and supercedes that portion of the FD.

## Cowlitz Reconsidered Final Determination

### Prior Federal Acknowledgment under 25 C.F.R. 83.8

#### *Overview of the Proposed Finding*

The AS-IA determined in the PF that the petitioner had previous unambiguous Federal acknowledgment through 1855. This date of previous Federal acknowledgment was based on the presence of Lower Cowlitz at the Chehalis River treaty negotiations. The PF determined that: 1.) the Cowlitz present at the negotiations, specifically the Lower Cowlitz band, had refused to sign the proposed treaty, but the Federal Government's willingness to negotiate with them constituted previous recognition; 2.) the Cowlitz métis, or "half-bloods" were part of the Lower Cowlitz at the time of the negotiations; and 3.) the Lower Cowlitz and another band, the Upper Cowlitz, were amalgamated later in the century. This determination enabled the petitioner to proceed under criteria §§83.7(a)-(g) as modified by the provisions of §83.8 for previously acknowledged tribes during the evaluation for the FD.

The PF did not determine that Federal acknowledgment of the Lower Cowlitz actually ceased in 1855. The 1855 date was used solely for preparation of that finding (CIT PF, Summary under the Criteria, p. 3). The BIA recommended that it was unnecessary to determine a post-1855 date of previous recognition because the Cowlitz had received the advantage of a reduced burden of evidence allowed previously recognized tribes based on the date of the treaty negotiations and had already completed the research process, so a later date would not serve to reduce the burden upon them.

#### *Review for the Final Determination*

Quinault's comments in response to the PF criticized the AS-IA's determination of previous unambiguous Federal acknowledgment for the Cowlitz petitioner on two points. First, they specifically challenged whether Cowlitz métis, or "half-bloods," were included in the 1855 treaty negotiations. They differentiated Cowlitz "half-bloods," or "métis," from other Cowlitz because they had French Canadian background and spoke French, owned land, were not named as Cowlitz treaty negotiators or had other distinguishing characteristics. Second, Quinault asserted that the Upper Cowlitz, a band which the CIT PF found that the Government had administratively joined with the Lower Cowlitz during three decades following the 1855 treaty negotiations, was not present at the treaty negotiations and was not part of the Lower Cowlitz entity at the negotiations. Quinault argued that the CIT petitioner, which included Lower Cowlitz, Cowlitz métis, and Upper Cowlitz descendants, should not proceed under the regulatory provisions for previously acknowledged tribes based on the 1855 treaty negotiations because the Cowlitz métis and the Upper Cowlitz had not participated. They argued that only a minority part of the present-day petitioner's members descended from ancestors who had been previously acknowledged, and therefore the petitioner was ineligible to proceed under §83.8. In short, Quinault argued that the current petitioner did not represent the previously acknowledged tribe, as required by the regulations at §83.8(d)(1).

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In response to the PF, Quinault submitted new material dealing with OIA contacts with the Lower Cowlitz and Upper Cowlitz bands between 1856 and 1880. These submissions also included some documents already in the record for the PF. In the PF, the BIA had not determined whether there was a date after 1855 when the Government recognized the amalgamated petitioner or any date when the Government recognized the Upper Cowlitz. Quinault relied on its submissions to argue that the métis were not involved in the treaty negotiations in 1855. In the final determination, the AS-IA found members of the Lower Cowlitz tribe listed among the leaders present at the Chehalis River Treaty Council. The AS-IA also found that the evidence was silent concerning the presence of Cowlitz métis at the Treaty Council. The AS-IA did not find that the Upper Cowlitz band was part of the Chehalis River Treaty negotiations in any of the findings.

The FD evaluation placed in historical context the absence of Cowlitz métis as treaty negotiators, and the Cowlitz métis' relationship with the Lower Cowlitz leadership in 1855. As stated previously, the oldest known Cowlitz métis was born in 1827. Aside from the marriage which produced this child, Cowlitz-French Canadian marriages had only begun to occur in the 1830's. Even the oldest métis offspring would have been only teenagers and young adults in 1855, and they would probably not have had sufficient seniority to act as tribal spokesmen and leaders in 1855. More importantly, other evidence indicated that the métis were part of the historical tribe before and after the treaty negotiations. For example, an Indian agent before 1855 included Cowlitz "half-bloods" as Cowlitz, and after 1855 white settlers referred to individuals of French Canadian and Cowlitz heritage as Cowlitz. Quinault's new analysis and new evidence did not change the conclusions of the PF that Cowlitz métis were part of the Lower Cowlitz tribe beginning in the 1830's and were part of the Lower Cowlitz treaty-era entity.

The FD also reevaluated the evidence concerning previous recognition for the petitioner, particularly focusing on whether the Government recognized the Upper Cowlitz at any time. Based on new analysis of all the evidence in the record, the FD extended the date of previous Federal acknowledgment of the Lower Cowlitz Indians at least to 1878-1880 and determined that the Upper Cowlitz Indians also had previous unambiguous Federal acknowledgment until at least 1878-1880. It further concluded that the government treated these tribes together; therefore, it recognized an amalgamated Cowlitz tribe in 1878-1880.

The AS-IA based the determination of previous Federal recognition on the previous acknowledgment of two entities, the Lower and the Upper Cowlitz, which the Government administratively amalgamated in a gradual way prior and subsequent to 1878-1880. When a Federal Indian agent appointed Atwin Stockum chief of the "Cowlitz Indians" in 1878, this act recognized the Lower Cowlitz. The OIA also enumerated both the Lower Cowlitz and Upper Cowlitz bands under a single general heading in OIA censuses taken in 1878 and 1880. In 1878, they compiled separate lists of household heads for each band, but then listed the two groups under one heading in the statistical tabulation. Quinault's documentary submissions concerning the 1878 and 1880 OIA enumerations showed that the OIA dealt with the Cowlitz Tribe at that

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time. Milroy's 1881 letter indicated that the OIA communicated with leaders when they produced these enumerations. Other Government documents of the 1860's and 1870's noted separate Cowlitz bands, but also categorized them under the same heading. They also made efforts before 1880 to remove landless members of both bands to the Chehalis reservation.

The evaluation observed a difference between the administrative amalgamation of the Lower and Upper Cowlitz by the Federal government, and the amalgamation of the two bands' internal political processes. The documentation indicated that the process of political amalgamation of the Lower and Upper Cowlitz occurred over several decades, in part as a result of the administrative actions of the government which treated them as amalgamated. Not until 1910 or 1912 did documents show the Lower Cowlitz and Upper Cowlitz Indians functioning as a single political entity internally, although even then cultural and linguistic distinctions remained.

### *Review for the Reconsidered Final Determination*

Before the IBIA, Quinault challenged the AS-IA's FD that the Lower and Upper Cowlitz had previous recognition as late as 1878 or 1880, the time of the Milroy Censuses. They cited a factual mistake in the FD which stated in two places that the Cowlitz métis were listed on the Milroy Censuses with the Lower Cowlitz, whose household heads were individually named in 1878. The documentation in the record for the 1880 census was only a statistical summary. The métis household heads were not listed on the 1878 census and presumptively were not included on the 1880 census. Quinault argued that the character and composition of the previously recognized tribe differed from that of the modern-day petitioner so much that they could not be considered the same entity.

In response to the IBIA referral, this reconsidered FD reevaluates the issue of the Cowlitz métis' relationship to the previously recognized tribe in 1878 and whether the mistake may have impacted the decision concerning previous recognition in 1878 and 1880. This reevaluation particularly focuses on the makeup of the group at those points. This reconsideration finds that the Government recognized both Lower and Upper Cowlitz entities in 1878 and 1880, but that the actual composition of these entities is not specified because only the household heads were listed in the 1878 census and the record contains only a statistical summary of the 1880 census.

The PF had found, however, that the Lower Cowlitz métis were earlier part of the previously acknowledged Cowlitz Tribe in 1855 and cited sufficient evidence in the FD and PF to demonstrate that the Cowlitz métis were part of the Lower Cowlitz tribe throughout the second half of the 19<sup>th</sup> century, even though the métis household heads were not listed with named household heads on the Milroy censuses of 1878 and presumably not enumerated on Milroy's 1880 census. Other evidence, such as petitions and letters to the Government from before 1878-1880, showed that the Cowlitz métis and other Lower Cowlitz: 1.) acted politically in each other's behalf and on behalf of the Upper Cowlitz; 2.) resided amongst each other despite attempts by Indian agents to remove the landless Indians from Cowlitz Prairie and other areas inhabited by non-Indians and métis; and 3.) remained closely related based on marriages forged

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before 1860. Evidence also indicates that the Upper Cowlitz and Lower Cowlitz, including the Cowlitz métis, ultimately joined together in pursuing claims and undertaking other activities in 1904 and in establishing a formal tribal organization in 1910 which had officers and leaders who were also Lower Cowlitz and Upper Cowlitz. Cowlitz sub-groups worked together on issues of tribal significance, such as designating a leader, despite cultural differences. Several of these leaders representing Upper Cowlitz and Lower Cowlitz, including Cowlitz métis, were kin by birth or in-laws to one another. Thus, sufficient evidence exists that the Cowlitz métis were part of the Lower Cowlitz Tribe in 1855 and before and after 1878 and 1880 when the Lower Cowlitz were previously acknowledged, without their métis members being specifically named.

Nevertheless, a finding that a petitioner was previously acknowledged requires a more rigorous standard of evidence than that used for determining whether a group meets the criteria at §§83.7(a)-(g) because previous recognition is meant to set a high preliminary threshold, which allows a reduced overall evidentiary burden on petitioners for subsequent periods. The petitioner provided substantial evidence of prior Federal acknowledgment, including the OIA censuses, appointment of chiefs and dealings predicated on a government-to-government relationship. The composition of the group, as in other cases, may be reconstructed, using a reasonable likelihood standard. The conclusion in the FD was not based solely upon the statements made concerning the Milroy censuses of 1878 and 1880. The AS-IA found that other evidence before and after 1878 demonstrated that the Cowlitz métis were part of the Lower Cowlitz tribe. The 1878 and 1880 dates of previous recognition are valid for the Lower Cowlitz, and the evidence establishes by a reasonable likelihood that the Cowlitz métis were part of the tribe at that time, even though unnamed. The Upper Cowlitz were also recognized at that time.

The analysis showing that the petitioner meets criteria §83.7 (a) through (g) as modified by §83.8 has already been made for the years 1878 to the present. The FD, therefore, is not changed by the mistake concerning the Milroy censuses that appeared in two places in the final determination.

Even if the 1878 and 1880 dates for previous acknowledgment were not deemed valid dates of previous acknowledgment for the Lower Cowlitz, the analysis and weighing of the evidence under criteria §§83.7 (a) through (g) could fall back on the 1855 date of previous acknowledgment for the Lower Cowlitz, when the tribe clearly included young métis and their full-blood Cowlitz parent. Such an analysis follows. It demonstrates that there would be no difference in result of an overall positive determination to acknowledge the CIT.

The alternative finding of previous recognition based on an 1855 date for the Lower Cowlitz and an 1878 date for the Upper Cowlitz triggers a reevaluation of the evidence under each of the criteria §§83.7(a)-(g) as modified by §83.8(d)(1)-(4). This alternate evaluation of the petitioner only involves the analyses of the Lower Cowlitz between 1855 and 1880, specifically on the issue of tribal composition. The PF has already dealt with the period 1855 to 1878 for the Lower Cowlitz. Only three criteria are affected: §83.7(a), §83.7(c) and §83.7(e) as modified by

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§83.8(d)(1)-(4). Criteria §83.7(a) requires that the petitioner demonstrate that they were identified as an Indian entity between 1855 and 1880, and criteria §83.7(c) requires that the petitioner demonstrate that it had leaders identified by authoritative, knowledgeable persons who were not part of the tribe between 1855 and 1880 and provide one other piece of evidence of political activity or authority. Criteria §83.7(e) requires that the petitioner descend from the previously acknowledged tribe, in this case, the Lower Cowlitz in 1855 and the Upper Cowlitz in 1880. The other four criteria, §83.7(b), §83.7(d), §83.7(f) and §83.7(g), do not require evaluation of evidence before the present day and therefore are not changed under this alternative evaluation.

Criterion §83.7(a) as modified by §83.8(d)(1) concerning “identification from the last point of previous recognition” would change only for the Lower Cowlitz before 1878. The Upper Cowlitz evaluation under this criteria does not differ from the FD. The PF has earlier concluded that the Lower Cowlitz entity involved in treaty negotiations in 1855, had been identified as an American Indian entity on a substantially continuous basis since that date. Such identifications existed in the earliest years in Federal records, census records, and church records. Later, anthropologists, ethnologists, local and regional historians, and local newspapers made similar identifications (CIT PF, Summary under the Criteria, pp. 10-20).

Quinault disputed some of these identifications. The FD found that Quinault generally confused “identification” of a tribal entity as required by criterion §83.7(a) with Federal “recognition” of that entity. Previous findings have used these terms to denote different concepts. The former refers to identifications of tribal entities by any outsiders. The latter refers to the Federal Government’s dealings with a tribal entity based on a government-to-government relationship. Therefore, while recognition always qualifies as identification, identifications rarely rise to the level of Federal “recognition.”

Evidence in the record for the PF and FD demonstrated that the Lower Cowlitz, including the métis, meet §83.7(a) from 1855 to 1880, and thereafter the amalgamated Lower Cowlitz and Upper Cowlitz tribe meets §83.7(a) as modified by §83.8(d)(1) after 1880 and to the present. Therefore, the overall conclusion of the FD that the petitioner meets criterion §83.7(a) as modified by §83.8(d)(1) is affirmed.

Criterion §83.7(c), as modified by §83.8(d)(3), requires a listing of named leaders who exercise political influence or authority and one other form of evidence. This criterion requires that the petitioner demonstrate that it meets the requirements of criterion §83.7(c) only from the point of last Federal acknowledgment through the present, rather than from first sustained contact with non-Indians. It provides for a reduced burden of evidence. In this case, using the 1855 date of Federal recognition for the Lower Cowlitz means that the petitioner must demonstrate that the Lower Cowlitz had named leaders until 1880, when the amalgamated tribe was identified. As the PF pointed out in the Summary under the Criteria, “From 1855 until his death in 1875, Federal officials identified Kiskox as the Lower Cowlitz leader, but no evidence indicates that he was

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leader of the Upper Cowlitz as well” (CIT PF Summary under Criteria, 2/12/1991, p. 32). Federal agents then noted that Atwin Stockum was chief of the Lower Cowlitz in 1870 and the OIA officially “appointed” Stockum as chief of the Lower Cowlitz in 1878. Stockum refused to take responsibility for the Upper Cowlitz. His followers suggested to the Government that the Upper Cowlitz man named Captain Peter be their chief. No separate leadership was ever denoted or mentioned for the Cowlitz métis (CIT PF Summary under the Criteria, p. 34). Other evidence needed to demonstrate the petitioner meets §83.7(c) as modified by §83.8 between 1855 and 1878 is that members refused to sign the 1855 treaty, refused removal to reservations and refused to accept material goods from the OIA fearing their acceptance would lead to removal between 1855 and 1878. After 1878 and 1880, the discussions of the amalgamated Cowlitz tribe in the PF and FD detailed the evidence accepted to meet criterion §83.7(c). The united actions of the amalgamated Cowlitz tribe to refuse removal of full-bloods later in the century demonstrates that the petitioner meets §83.7(c) as modified by §83.8(d)(3).

In summary, the petitioner submitted evidence that shows that leaders of the Lower Cowlitz have been identified since 1855, their last point of previous acknowledgment, and the Upper Cowlitz since 1880, their last point of previous acknowledgment and provided other evidence under criterion §83.7(c). The evidence and evaluation under this criteria after 1880 were made in the PF and FD and do not need to be revisited here. In addition, it is determined that between 1855 and 1880, the Lower Cowlitz met criterion §83.7(c) as modified by §83.8.

Therefore, the conclusion of the FD that the petitioner meets criterion §83.7(c) as modified by §83.8(d) is reaffirmed whether the analysis is based on a Lower Cowlitz recognition of 1855 and Upper Cowlitz recognition of 1878, or is based on an amalgamated Cowlitz recognition of 1880.

The regulations at §83.7(e) require the petitioner to show that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Because of questions over the composition of the previously acknowledged Lower Cowlitz tribe, this criterion is potentially most affected by this augmented and revised FD.

Quinault’s comments questioned the inclusion of métis descendants in the Lower Cowlitz on two grounds. One ground was based on a misinterpretation of the PF: Quinault discussed the Cowlitz métis as if the PF treated them as a separate Indian entity which amalgamated with the Lower Cowlitz and the Upper Cowlitz. The PF explained that the Cowlitz métis were descendants of Lower Cowlitz Indians and French Canadians. The proposed finding never stated that a separate métis entity had amalgamated with the Lower Cowlitz. It stated that individual French Canadians had married into the Lower Cowlitz before treaty times, and their descendants have acted as part of the Cowlitz since then.

The second argument presented by Quinault had already been considered in detail in the PF (CIT FD Summary under the Criteria, p. 18). The “Cowlitz métis” included the mixed-blood

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descendants of several women from other tribes. These women and their children functioned as members of the Cowlitz tribe prior to the 1855 date of previous unambiguous Federal acknowledgment. They had been incorporated into the historical tribe. Thus their offspring descend from the historical tribe as it existed at the time of the Chehalis River Treaty negotiations. The Quinault also assert that a disproportionately large majority of present-day Cowlitz members descend from the métis. The proportion of members who descend from the métis does not preclude this petitioner from meeting criterion §83.7(e). For demographic reasons, the métis are currently more represented than non-métis in the current group. This composition is the result of the métis' producing larger families than non-métis, and non-métis Cowlitz gaining membership in neighboring reservation tribes at Yakima, Puyallup, and Chehalis in Washington or Warm Springs in Oregon.

Virtually all CIT members (99.79 percent) have demonstrated that they descend from individuals who were part of the historical Cowlitz tribes which amalgamated during the second half of the 19<sup>th</sup> century. Of a total membership of 1,482, there are only three individuals whose genealogies have not been traced to a member of the historical Cowlitz Indian tribe as defined in the paragraph above.

Therefore, the conclusion of the proposed finding that the petitioner meets criterion §83.7(e) is affirmed whether the analysis is based on a Lower Cowlitz recognition of 1855 and Upper Cowlitz recognition of 1878, or is based on an amalgamated Cowlitz recognition of 1880.

Based on the above clarifications, and in response to the Secretary's request for the issuance of a reconsidered FD, this document, in conjunction with the original FD, as amended, constitute the final decision for the CIT petitioner. In accordance with 25 CFR §83.11(h)(3), this decision is final and effective upon publication of the notice of this reconsidered determination in the *Federal Register*.

The petitioner meets the seven criteria for acknowledgment at §§83.7 (a) - (g) and is therefore acknowledged as an Indian tribe.