



United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

Mr. Herman A. Williams, Jr.
Chairman
The Tulalip Tribes
6700 Totem Beach Road
Marysville, WA 98271-9694

OCT - 6 1999

Subject: Snoqualmie Tribal Organization (STO) Acknowledgment Proceedings

Dear Mr. Williams:

Secretary Babbitt has asked me to respond to your letter dated July 30, 1999. The letter consists of the comments of the Tulalip Tribes, together with supportive exhibits, on two issues that the Interior Board of Indian Appeals (Board) referred to the Secretary for possible reconsideration in a decision dated July 1, 1999. In re Federal Acknowledgment of the Snoqualmie Tribal Organization, 34 IBIA 22. In your letter, you ask the Secretary to order reconsideration of these issues. For the reasons discussed below, the Secretary declines to order reconsideration of this matter.

The Bureau of Indian Affairs (BIA) has promulgated regulations, 25 C.F.R. Part 83, under which groups can petition the BIA for acknowledgment of their tribal status. The STO submitted such a petition and on April 26, 1993, the Assistant Secretary promulgated a proposed finding acknowledging the STO as an Indian tribe. The proposed finding was published at 58 Fed. Reg. 27162 (May 6, 1993) to provide the opportunity for public comment. The Tulalip Tribes availed themselves of this opportunity and submitted detailed comments, including a narrative, a historian's report, an anthropologist's report, a series of genealogy reports, and underlying supportive exhibits and affidavits on September 27, 1994.

On August 22, 1997, the Assistant Secretary issued a Final Determination to acknowledge the STO as an Indian tribe (Final Determination), published at 62 Fed. Reg. 45864 (August 29, 1997). The Final Determination was accompanied by an 18-page "Summary under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the STO" (Summary) signed by the Assistant Secretary on August 22, 1997. This document explained how the STO met each of the criteria set out in the acknowledgment regulations for Federal acknowledgment. In addition, the Final Determination was accompanied by a 139-page Technical Report, together with a list of references, prepared by the BIA's Branch of Acknowledgment and Research (BAR) which addressed and assessed in detail the evidence on which the decision to acknowledge the STO was based.

On November 26, 1997, the Tulalip Tribes filed a request with the Board seeking reconsideration of the Assistant Secretary's Final Determination. Requests for reconsideration by the Board are governed by the acknowledgment regulations, which authorize the Board to review four stated grounds of alleged substantive error. 25 C.F.R. § 83.11(d).¹ The Tulalip Tribes raised each of the four grounds for review in their request to the Board. In an opinion dated July 1, 1999, the Board rejected the Tulalip Tribes' motion for reconsideration on each ground within its jurisdiction and affirmed the Final Determination. 34 IBIA 22.

Although it affirmed the Final Determination, the Board referred two issues to the Secretary for possible reconsideration. This was done in accordance with a process set forth in 25 C.F.R. § 83.11(f). Under the process, the Board is to describe in its decision any grounds for reconsideration alleged by a petitioner that are not within the four stated grounds for the Board's jurisdiction under 25 C.F.R. § 83.11(d). The Board is to send those grounds to the Secretary. The regulations provide, 25 C.F.R. § 83.11(f)(2), that the "Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds." The regulations provide for a stated time period during which a group petitioning for acknowledgment, or any interested party, may submit comments to the Secretary on whether reconsideration should be granted under 25 C.F.R. § 83.11(f)(2).

In its July 1, 1999, decision, the Board identified and referred to the Secretary the following two grounds for reconsideration that the Tulalip Tribes had raised:

1. Whether the Tulalip Tribes' regulatory right to participate in the acknowledgment proceedings and/or its due process rights were violated by BIA's decision not to review the evidence referenced at page 14 n.16 of the Technical Report: and

¹ The Board has authority under 25 C.F.R. § 83.11(d) to review a Final Determination for the following four grounds of alleged error:

- (1) [T]here is new evidence that could affect the determination;
- (2) [A] substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value;
- (3) [P]etitioner's or the Bureau's research appears inadequate or incomplete in some material respect;
- (4) [T]here are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7(a) through (g).

2. Whether the Final Determination must be modified to delete determinations barred by Washington II or to make clear that no such determinations were intended.

On July 30, 1999, following the Board decision, the Tulalip Tribes filed comments and supporting exhibits with the Secretary seeking reconsideration of these issues. On August 6, 1999, the STO submitted a statement, together with an exhibit, opposing further review. As mailed on August 6, the STO statement was incomplete. The complete statement prepared by the STO was received on September 17, 1999. Because counsel for the Tulalip Tribes informed us that they had not received a copy, the STO statement was telefaxed to them on September 17, 1999. Counsel for the Tulalip Tribes submitted a rebuttal statement by telefax on that same date. Because there is no provision in 25 C.F.R. § 83.11(f)(4) for interested parties to submit a rebuttal, the rebuttal statement was not considered.

Although the Secretary has discretion to request the Assistant Secretary to reconsider the Final Determination, he declines to do so in this instance. The acknowledgment regulations commit the decision on whether a group should be acknowledged to the Assistant Secretary with provisions for review by the Board. Once this process has run its course, as it has here, Secretarial review should be the exception rather than the rule. The regulations governing tribal acknowledgment, 25 C.F.R. Part 83, do not contemplate that the Secretary assume the role of final decision-maker. Rather the regulations place decision-making authority in the Assistant Secretary. That authority has been exercised in this matter by virtue of the issuance of the Final Determination. Thus, upon consideration of the process set out in the acknowledgment regulations, and the fact that the Assistant Secretary has issued the Final Determination, the Secretary has decided in this case not to request reconsideration because there has been no showing that further review would be likely to change the result or that the Tulalip Tribes were denied a fair opportunity to be heard.

With respect to the first issue referred by the Board, further review would be redundant and therefore unlikely to change the Final Determination. Within the grounds set out in 25 C.F.R. § 83.11(d), (quoted in footnote 1, above) the Board thoroughly reviewed and rejected the Tulalip Tribes' contention that relevant evidence had been ignored or that alternative explanations of the evidence had not been considered. 34 IBIA at 35,36. The referred issue simply repeats the same arguments under the guise of being denied due process.

Furthermore, the Tulalip Tribes have been accorded a full opportunity to participate at every stage of the acknowledgment process. The Technical Report indicates that they submitted material in 1991, before the issuance of the Proposed Finding. Following the issuance of the Proposed Finding, the Tulalip Tribes submitted extensive materials on September 27, 1994, as set out above. In addition, BIA staff met with the Chairman and other officials of the Tulalip Tribes, their legal counsel, and their researchers on September 27, 1994, at the time the Tulalip Tribes submitted their written comments on the proposed finding. The Technical Report prepared by the BAR in support of Federal acknowledgment meticulously addresses the

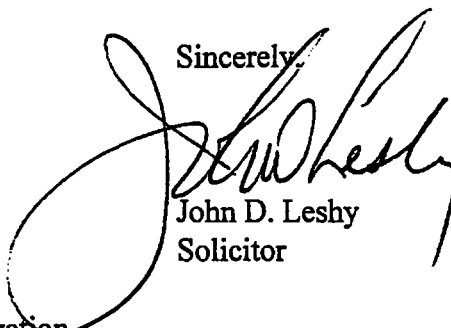
contentions advanced by the Tulalip Tribes. In addition, the Tulalip Tribes were heard before the IBIA, which found their allegations insufficient to establish grounds for reconsideration. 34 IBIA at 36. The Tulalip Tribes, therefore, have been accorded a fair opportunity to be heard before the Department.

The second issue referred by the Board does not challenge either the substance of the Final Decision or the process under which it was reached. Instead, the Tulalip Tribes seek certain changes in the language of the Final Decision to accommodate their understanding of the decisions of the Ninth Circuit in Greene v. United States, 996 F.2d 973 (9th Cir.1993) and Greene v. Babbitt, 64 F.3d 1266 (9th Cir.1995). In their July 30, 1999, letter to the Secretary, however, the Tulalip Tribes acknowledge that the decisions of the Ninth Circuit do not preclude the Department from acknowledging the STO through the administrative process. They write that "the disclaimer in the Final Determination of making any determination as to whether the STO group has treaty successor status is quite proper and in accord with the Federal District Court's ruling in the Samish case." Because there is no disagreement regarding the disclaimer, there is no need for further clarification or review.

For the reasons set out above, the Secretary has concluded that the Tulalip Tribes have been accorded a fair opportunity to participate in the acknowledgment process involving the STO and that further proceedings or referrals would operate only to delay the matter without changing the result. Thus the Secretary declines to refer either of the two issues referred by the Board to the Assistant Secretary.

This letter will notify all the parties to this proceeding of the Secretary's action and the Final Determination shall be effective as of the date of this letter.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "John D. Leshy".

John D. Leshy
Solicitor

cc: Snoqualmie Tribal Organization
Interested Parties
Assistant Secretary - Indian Affairs
Interior Board of Indian Appeals