

Reconsideration on Referral by the Secretary
and
Summary Under the Criteria and Evidence for the
Reconsidered Final Determination Against Federal Acknowledgment
of the
Chinook Indian Tribe / Chinook Nation
(formerly: Chinook Indian Tribe, Inc.)

Prepared in response to a petition submitted to the
Assistant Secretary - Indian Affairs for Federal
acknowledgment that this group exists as an Indian Tribe.

JUL 05 2007

Approved: _____
(Date)



Assistant Secretary - Indian Affairs

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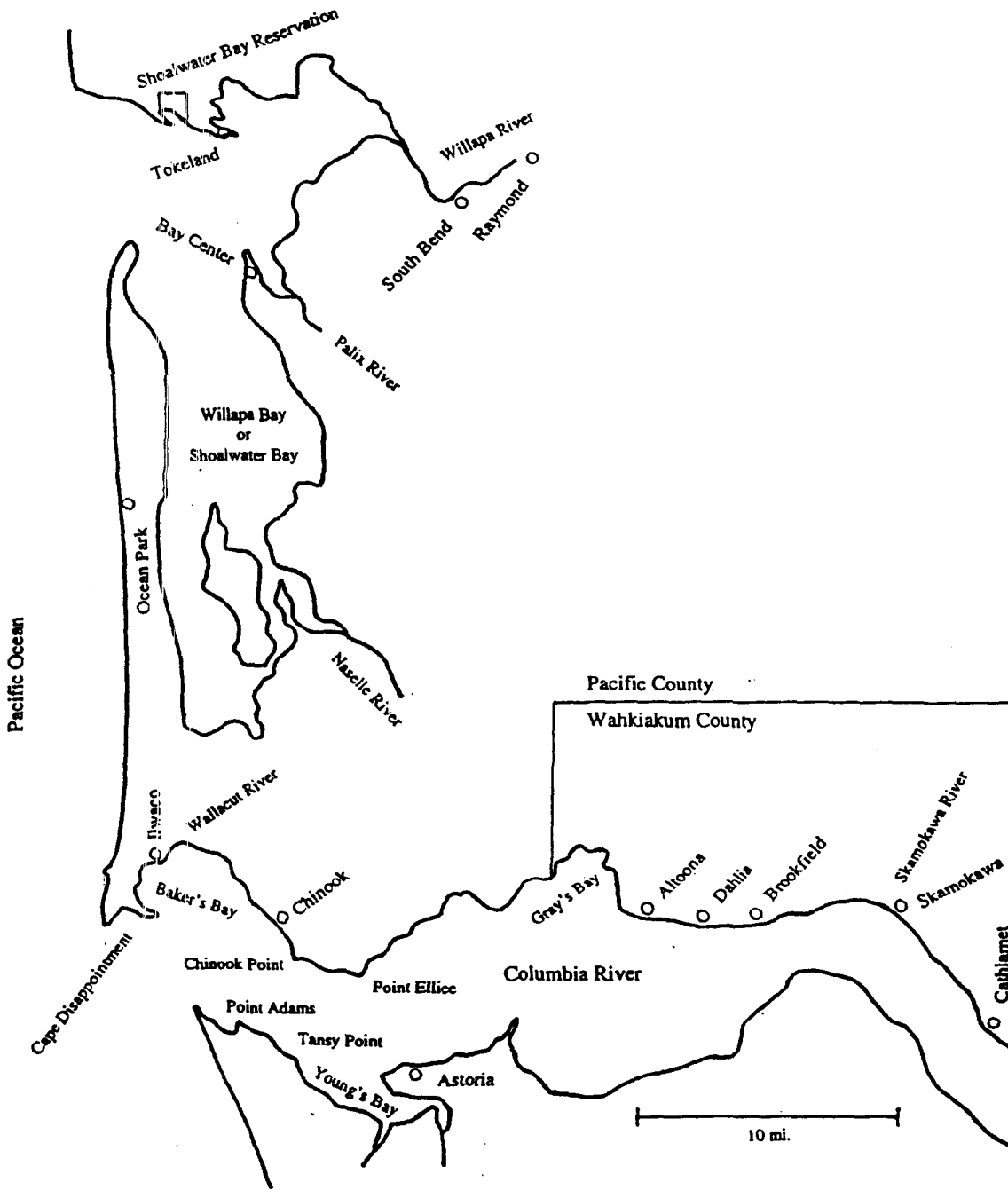
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ABBREVIATIONS AND ACRONYMS

AS-IA	Assistant Secretary - Indian Affairs
ATR	Anthropological Technical Report
BAR	Branch of Acknowledgment and Research, Bureau of Indian Affairs
BIA	Bureau of Indian Affairs
CIA	Commissioner of Indian Affairs
CIT	Chinook Indian Tribe, Inc. (the Petitioner, prior to January 10, 1998)
CIT/CN	Chinook Indian Tribe/Chinook Nation (the Petitioner)
CN	Chinook Nation, Inc.
Cong.	Congress
CT	Chinook Tribes, Inc.
DM	<i>Departmental Manual</i>
Ex.	Documentary exhibit submitted by the petitioner or third party
FD	Final Determination
F.R.	<i>Federal Register</i>
GTR	Genealogical Technical Report
HTR	Historical Technical Report
IBIA	Interior Board of Indian Appeals
IRA	Indian Reorganization Act
PF	Proposed Finding
P.L.	Public Law
RG	Record Group
sess.	Session
Summary	Summary Under the Criteria (the AS - IA's decision)
TR	Technical Report

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AREA MAP

Source: Branch of Acknowledgment and Research

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Reconsideration on Referral by the Secretary

and

Summary Under the Criteria and Evidence for the Reconsidered Final Determination

on the

CHINOOK INDIAN TRIBE / CHINOOK NATION

(formerly: Chinook Indian Tribe, Inc.)

THE ISSUES REFERRED BY THE SECRETARY OF THE INTERIOR

This matter is before me for reconsideration of the January 3, 2001, Final Determination (notice at 66 Fed. Reg. 1690) to acknowledge the Chinook Indian Tribe/Chinook Nation petitioner as an Indian tribe under Federal law, applying the Department's acknowledgment regulations, 25 C.F.R. Part 83. The Quinault Indian Nation (Quinault Nation) challenged that determination by filing a request for reconsideration ("Quinault Request") with the Interior Board of Indian Appeals (IBIA), as allowed by 25 C.F.R. § 83.11. On August 1, 2001, the IBIA affirmed the Final Determination with respect to issues over which the IBIA had jurisdiction, but referred nine issues outside the IBIA's jurisdiction to the Secretary. On November 6, 2001, the Secretary exercised her discretion and requested that I reconsider the Final Determination with respect to eight of the issues raised in the Quinault Request.

I have carefully considered the issues referred to me by the Secretary. I have considered whether the decision could be sustained with a more complete explanation, or whether it improperly departed from the standards contained in the acknowledgment regulations. After giving due consideration to the policy prerogatives and discretion used to make the final determination, I nevertheless conclude that the January 3, 2001, Final Determination improperly departed from Departmental precedent and from the standards contained in the acknowledgment regulations, and cannot be sustained with a more complete explanation. On reconsideration, I reverse that final determination and issue a Reconsidered Final Determination.

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Before proceeding to my examination of the issues, it is worth providing a brief historical overview, which provides some context to the evidence in this case and the outcome of this petition. A large majority of the membership of the petitioner Chinook Indian Tribe/Chinook Nation descends from the historical Wahkiakum, Willapa, Kathlamet, or Lower Band of Chinook, or the historical Clatsop tribe, also a Chinookan people. The petitioner claims to be the successor to the Lower Band of Chinook of Washington State. There is no doubt that the Lower Band and other Chinook bands, and the Clatsop tribe, existed at the time the early explorers arrived at the mouth of the Columbia River. Nor should there be any question about the significant role that Chinook bands and the Clatsop tribe had in greeting the Lewis and Clark expedition when it arrived at the mouth of the Columbia in November 1805 and wintered there. These contacts with European and early American explorers and settlers also brought devastating diseases and other disruption to the Native American tribes. The Chinooks suffered horrible losses in a series of epidemics in the 1780's, the 1830's, and the late 1850's. But in 1851 and 1855, the Chinook were recognized by the United States in treaty negotiations.

After the mid-1850's, however, the evidence of Chinook band or tribal organization becomes scarce to nonexistent and, by the latter part of the 19th century and early part of the 20th century, outside observers were noting that the Chinook no longer had a tribal organization, in contrast to the neighboring Cowlitz tribe. In 1866, the Government created the Shoalwater Bay Reservation for the "Indians on Shoalwater Bay," who were intermixed Chinook and Chehalis Indians. Many individual Chinooks joined tribes on reservations such as the Quinault, Shoalwater Bay, and Grande Ronde Reservations. In 1899, thirty-seven Chinooks seeking to pursue historic tribal claims represented themselves as individuals, without tribal leaders or headmen, and as descendants pursued the claim on behalf of the historic tribal entity. In 1906, the Court of Claims concluded that the Lower Band of Chinook had long ago ceased to exist as a band. From the mid-1850's until 1951, when Chinook descendants organized to pursue historic Chinook claims, there is scant evidence to suggest that any Chinook community or organization existed as a distinct entity, and no evidence to show the existence of a Chinook tribal organization or informal leaders among ancestors of the petitioner.

It must be recognized that many descendants today – whether part of the petitioner's membership or members of tribes such as the Quinault Indian Nation and the Shoalwater Bay Indian Tribe – can trace their heritage back to the leaders or members of the historic Chinook bands. But in reviewing the issues referred to me by the Secretary, and reviewing the Chinook petition on reconsideration for those referred issues, I have concluded that the acknowledgment regulations and federal law, applied impartially to the facts of this case, do not support a finding that this petitioner, the Chinook Indian Tribe/Chinook Nation, has established a substantially continuous tribal existence from the treaty times to the present.

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Issues Referred on Reconsideration and Summary of Decisions

Issue No. 1. Did the previous Assistant Secretary - Indian Affairs have authority to review the Chinook petition under the 1994 acknowledgment regulations? If he had that authority, did he abuse his discretion in doing so? Was a waiver of the regulations considered and/or appropriate? Should this reconsideration be made under the 1978 or the revised 1994 acknowledgment regulations?

I conclude that the previous Assistant Secretary had the authority to review the Chinook petition under the 1994 revised acknowledgment regulations, even though the Chinook did not request that consideration within the regulatory time frame. I also conclude that I need not decide whether the previous Assistant Secretary abused his discretion in doing so, because the potential procedural defects in the Assistant Secretary's decision to apply the 1994 regulations have been cured through the reconsideration proceedings before the IBIA and the Secretary. Finally, I conclude that a Reconsidered Final Determination should be made under both the 1978 and 1994 regulations to resolve the questions raised in this case about whether the result would be different under the 1994 revised regulations than under the original 1978 regulations.

Issue No. 2. Was the previous Assistant Secretary's interpretation of the 1911 Quinault Allotment Act, and the 1912 and 1925 claims legislation, as evidence of prior congressional acknowledgment of the existence of a Chinook tribal entity, contrary to longstanding Departmental interpretations of those Acts?

I conclude that the significance given to the 1911, 1912, and 1925 legislation, in considering the Chinook petition, was erroneous and contrary to the Department's historical interpretation of the meaning and effect of those statutes, and inconsistent with the historical evidence regarding those statutes.

Issues No. 3 and 4.

Do prior contrary Departmental interpretations of the 1925 Western Washington Claims Act preclude the previous Assistant Secretary's conclusion that the Act constitutes "unambiguous" previous Federal acknowledgment of the Chinook as a tribal entity existing in 1925? Did the previous Assistant Secretary improperly depart from the acknowledgment regulations when he found that the 1925 Act constituted unambiguous previous Federal acknowledgment of a Chinook tribe?

I conclude that the conclusion that the 1925 Act constitutes "unambiguous" previous Federal acknowledgment was contrary to the Department's historical understanding of the Act and was inconsistent with the acknowledgment regulations' standard for demonstrating unambiguous previous Federal acknowledgment.

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Issue No. 5. Did the previous Assistant Secretary improperly depart from the acknowledgment regulations and prior Departmental interpretations of those regulations, when he concluded that evidence that a subgroup of the petitioner constituted a community under criterion (b) [25 C.F.R. § 83.7(b)] was an adequate substitute for a demonstration that the Chinook petitioner as a whole meets criterion (b)?

I conclude that the interpretation used in the Final Determination departed from the correct standard under the acknowledgment regulations in finding that the petitioner constituted a community under criterion (b), and that when interpreted under the correct standard, the evidence in this case is insufficient to support the conclusion of the Final Determination.

Issue No. 6. Did the previous Assistant Secretary improperly depart from the acknowledgment regulations and prior Departmental interpretations of those regulations, when he relied on claims activities as evidence of community and political authority under criteria (b) and (c) [25 C.F.R. § 83.7(b) and (c)]?

I conclude that although in some cases claims activities may constitute evidence of community and political authority, the Department has not previously considered claims activities to be inherently evidence of community or of the existence of a political, bilateral relationship between the claims organization and its membership. When the 1911, 1912, and 1925 Acts are given their proper evidentiary character and weight under the acknowledgment regulations, the remaining evidence does not support the Final Determination's conclusion that Chinook claims activities constituted evidence of actual community and actual political authority.

Issue No. 7. Did the previous Assistant Secretary improperly give the Chinook petitioner a presumption of continued existence?

There is no general "presumption of continued existence" for petitioners who previously have been unambiguously federally acknowledged, and the evidentiary benefits afforded previously acknowledged petitioners are already reflected in the acknowledgment regulations. Although it is unclear whether there was an intention to give the Chinook a presumption of continued existence, there is language in the Final Determination (FD) that implies such a presumption, even though the FD elsewhere disclaims such a presumption. Furthermore, the FD explicitly acknowledged that it rested on an incorrect interpretation of the 1911, 1912, and 1925 legislation. Because I conclude on other grounds that a reconsidered final determination must be issued, any general "presumption of continued existence" -- to the extent it may be reflected or embedded in the FD, will be corrected in my Reconsidered Final Determination.

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Issue No. 8. Was the previous Assistant Secretary's decision improperly based on the advice and recommendation of a "consultant" retained by the Assistant Secretary to provide input outside of the regular Departmental decision making process?

I conclude that the Assistant Secretary has authority to retain and rely upon the expertise of outside consultants in considering matters before him, including acknowledgment petitions. It cannot be determined from the record how the consultant may have affected the conclusions of the Final Determination, and thus I cannot determine whether or not the use of a consultant improperly affected the Chinook proceedings. More importantly, because of my conclusions on the other issues referred by the Secretary, I do not rely on the use of a consultant as a ground for issuing this Reconsidered Final Determination. For that reason, I need not further address the use of the consultant.

Summary of Proceedings

The administrative history of the Department's consideration of the Chinook petition for acknowledgment is set out in detail in the January 3, 2001, Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Chinook Indian Tribe/Chinook Nation ("Final Determination" or "FD"). Briefly stated, however, on August 22, 1997, Assistant Secretary - Indian Affairs Deer, applying the 1978 acknowledgment regulations as requested by the Chinook petitioner, published a notice of proposed finding against acknowledgment. 62 Fed. Reg. 44714. The proposed finding concluded that the Chinook petitioner failed to satisfy its evidentiary burden to demonstrate three of the seven mandatory criteria for acknowledgment under the regulations: (a) identification from historical times until the present on a substantially continuous basis as an American Indian or aboriginal entity; (b) maintenance of a distinct community; and (c) maintenance of tribal political influence or other authority over its members throughout history until the present. See 25 C.F.R. § 83.7(a), (b), and (c) (1982). The proposed finding afforded the Chinook petitioner and interested parties an opportunity to respond with comments and additional evidence, for consideration in a final determination.

Subsequent to the 1997 proposed finding, the petitioner sought to have its petition considered under the revised acknowledgment regulations, which were promulgated in 1994. The Bureau of Indian Affairs (BIA) declined the request, which was untimely, 25 C.F.R. § 83.3(g) (1994), and the Assistant Secretary affirmed the BIA's decision.

After providing the petitioner and the public with an opportunity to provide additional evidence and to comment on the proposed finding, the Branch of Acknowledgment and Research (BAR) drafted and the BIA submitted to the Assistant Secretary - Indian Affairs a recommended final determination. The BIA recommended a final determination against acknowledgment which, while modifying in some respects the conclusions to be drawn from the evidence based on new evidence submitted during the

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comment period, concluded that the petitioner still failed to satisfy criteria (a), (b), and (c) of the 1978 acknowledgment regulations.

On January 3, 2001, after considering the BIA's recommendation and after retaining an outside consultant to review the case and assist in developing a final decision, Assistant Secretary Gover signed the Final Determination to acknowledge the Chinook petitioner as an Indian tribe. The notice of the Final Determination was published in the *Federal Register* on January 9, 2001. The Final Determination was decided under both the 1978 regulations and the 1994 revised regulations. The 1994 regulations provide special streamlined evidentiary requirements for petitioners who can demonstrate "previous Federal acknowledgment" as an Indian tribe, as that phrase is defined in the regulations. The favorable determination rested on the Final Determination's finding that a 1911 allotment statute, 1912 claims statute, and 1925 claims statute, constituted strong evidence of Federal acknowledgment of a Chinook tribe as still existing as a tribal entity when those statutes were enacted. The Final Determination went even further for the 1925 statute, concluding that it constituted "unambiguous Federal acknowledgment" under the 1994 regulations. The effect of giving this construction and evidentiary weight to these statutes was to tip the scales in this case in favor of petitioner with respect to criteria (a), (b), and (c).¹ The Final Determination expressly found that "[w]ere it not for the acts of Congress in 1911, 1912, and most importantly, 1925, it would not have been possible to make a positive determination on the evidence presented." *Chinook FD*, 79 (emphasis added).

In addition to interpreting the effect of these three statutes, the Final Determination addressed several other issues that are the subject of this reconsideration. First, the FD treated Chinook claims organizations and activities as governmental in nature – "transitional political groups," *Chinook FD*, 74 – thus providing evidentiary support for satisfying criterion (c) ("political authority"). Second, the FD concluded that petitioner satisfied criterion (b) ("community"). Although the FD specifically concluded only that the portion of the petitioner's members residing in and around Bay Center, Washington satisfied the "community" criterion under the regulations to the present, it also concluded that this fact, when combined with Chinook claims activities in the 1950's and acknowledgment activities beginning in 1971, were sufficient for the petitioner as a

¹ The underlying substantive requirements contained in criteria (a) - (c) of the 1994 regulations remained essentially the same as they had been in the 1978 regulations. 59 Fed. Reg. 9280 (Feb. 25, 1994). Criterion (a) in the 1994 regulations requires that the petitioner have been identified by external or independent sources "as an American Indian entity on a substantially continuous basis since 1900." 25 C.F.R. § 83.7(a) (1994). Criterion (b) requires that "[a] predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present." 25 C.F.R. § 83.7(b) (1994). Criterion (c) requires that "[t]he petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present." 25 C.F.R. § 83.7(c) (1994). As will be discussed later, the 1994 regulations did adopt certain streamlined evidentiary standards for petitioners who can demonstrate previous Federal acknowledgment.

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whole to satisfy the “community” criterion from 1950 to the present. Third, the FD concluded that even though there is no “presumption of continued existence” for an Indian tribe that has been previously federally acknowledged, there also is no “presumption” that the group has abandoned tribal relations. In applying these principles, the FD concluded that the evidence in the record, considered with the weight and significance accorded to the 1911, 1912, and 1925 Acts, and in the absence of affirmative evidence indicating abandonment of Chinook tribal relations, was sufficient to satisfy the regulatory criteria for acknowledgment.

The Quinault Indian Nation, as authorized by the acknowledgment regulations, requested reconsideration of the Final Determination before the IBIA. On August 1, 2001, the IBIA affirmed the FD with respect to matters within its jurisdiction. *In re Federal Acknowledgment of the Chinook Indian Tribe/Chinook Nation*, 36 IBIA 245 (2001). The IBIA concluded that the Quinault Nation had failed to show by a preponderance of the evidence that the FD’s conclusions that Chinook met the requirements of 25 C.F.R. § 83.7(b) (community) and (c) (political authority) were not supported by reliable or probative evidence. 36 IBIA at 249. The IBIA concluded also that with respect to the 1911, 1912, and 1925 Acts, the Quinault Nation had shown that the three statutes were interpreted differently by the Assistant Secretary in the FD than by his immediate predecessor and by the Department prior to that, but not that he had failed to consider the prior interpretations or that his research was incomplete. 36 IBIA at 249. While upholding the FD with respect to matters within its jurisdiction, the IBIA referred nine additional issues to the Secretary, which were outside of its jurisdiction. As described above, the Secretary then referred eight of those issues to me as grounds for reconsideration of the Final Determination. 25 C.F.R. § 83.11(f)(2) (1994).

Because this matter involved reconsideration of a final determination issued by a previous Assistant Secretary, and because that determination had rejected the BIA’s recommended determination, I decided it would be appropriate to obtain an independent evaluation of the issues referred to me by the Secretary. At my request, the Acting Deputy Solicitor assigned an attorney with experience in Indian law, but who was outside the Division of Indian Affairs and had no previous involvement in this case. After considering the advice of that attorney, and of the Associate and Deputy Associate Solicitor for Indian Affairs, I have reached this decision.

I now address each issue in turn.

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Issue No. 1

Did the previous Assistant Secretary - Indian Affairs have authority to review the Chinook petition under the 1994 acknowledgment regulations? If he had that authority, did he abuse his discretion in doing so? Was a waiver of the regulations considered and/or appropriate? Should this reconsideration be made under the 1978 or the revised 1994 acknowledgment regulations?

Regulatory Background

The acknowledgment regulations were adopted in 1978. 43 Fed. Reg. 39361 (Sept. 5, 1978). The purpose of promulgating regulations for Departmental administrative decisions acknowledging tribal status was to provide a fair and equitable approach to the acknowledgment process through uniform procedures and substantive standards that would apply to such petitions. *Id.*

In 1994, the regulations were revised to make substantial changes in the administrative process, to clarify the requirements for acknowledgment by defining more clearly the kinds of evidence used to meet the criteria and the standards for interpreting the evidence, and to reduce the evidentiary burden for petitioners that demonstrated previous Federal acknowledgment. 59 Fed. Reg. 9280 (Feb. 25, 1994). The 1994 regulations did not change the general standards applied to acknowledgment petitions, nor did the Department believe that the outcome of a petition on the merits would be different when considered under the 1994 regulations as compared to the 1978 regulations. 59 Fed. Reg. at 9280.

One of the significant changes in the 1994 regulations was the addition of new provisions expressly addressing the effect of unambiguous previous Federal acknowledgment. *See* 25 C.F.R. § 83.8 (1994). If a petitioner can show unambiguous "previous Federal acknowledgment," as defined in section 83.1, the time periods for which evidence must be submitted under "identification" criterion (a), "community" criterion (b), and "political influence" criterion (c) are modified, and there is available a streamlined demonstration for criterion (c). 25 C.F.R. § 83.8(d) (1994). As with the other changes made in 1994, the Department did not intend that the streamlined requirements and reduced evidentiary burden afforded to previously acknowledged petitioners would change the outcome, but only that unnecessary requirements would be eliminated. The fundamental substantive standards and burden of proof as resting on all petitioners, whether or not previously acknowledged, remained unchanged. 59 Fed. Reg. at 9280, 9282.

The 1994 regulations provide that "Indian groups whose documented petitions are under active consideration at the effective date" of the 1994 regulations "may choose to complete their petitioning process" under either set of regulations. 25 C.F.R. § 83.3(g)

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(1994). This subsection provides further that “[t]his choice must be made by April 26, 1994. This option shall apply to any petition for which a determination is not final and effective.” Section 83.5(f) of the regulations provides in part that “[a]ll petitioners under active consideration shall be notified, by April 16, 1994, of the opportunity under § 83.3(g) to choose whether to complete their petitioning process under the provisions of these revised regulations or the previous regulations.”

The 1994 regulations provide that when a petition is evaluated under the 1994 regulations, a determination of the adequacy of the evidence concerning the last date of unambiguous previous Federal recognition “shall be made during the technical assistance review.” 25 C.F.R. § 83.8(b). This section also provides that “if a petition is awaiting active consideration at the time of adoption of these regulations, this review will be conducted while the petition is under active consideration unless the petitioner requests in writing that this review be made in advance.” *Id.*

Section 1.2 of Title 25 C.F.R. provides that the Secretary “retains the power to waive or make exceptions to his regulations as found in chapter I of title 25 C.F.R. in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.” This power has been exercised in the past by the Assistant Secretary in the acknowledgment process in the context of certain procedural provisions contained in the regulations. *See, e.g., Match-e-be-nash-she-wish Band of Pottawatomí Indians PF, 6; Paucatuck Eastern Pequot Indians PF, 65 Fed. Reg. 17299* (waiver of priority provisions of § 83.10(d) upon an express finding that a waiver is in the best interest of the Indians).

Factual Background

The Chinook petitioner elected to proceed under the 1978 regulations by letter dated April 21, 1994, and the August 1997 proposed finding was issued under those regulations. Subsequently, on December 31, 1997, the Chinook inquired “whether or not the BAR would allow the Chinook Indian Tribe’s petition for Federal acknowledgment to proceed under the ‘New Regulations’ of 1994.” *Chinook FD, 2*. By letter dated March 13, 1998, the BIA informed the Chinook that it would not evaluate the petition under the 1994 revised regulations for the Final Determination. By letter dated May 29, 1998, the previous Assistant Secretary affirmed the BIA decision not to evaluate the petition under the 1994 regulations and informed the petitioner and interested parties during the comment period that he would not apply the 1994 regulations. On July 28, 1998, in its comments on the proposed finding, the Quinault Nation requested that it be notified and afforded an opportunity to comment if the issue of applying the 1994 regulations was still open. Quinault 1998. The public comment period closed on July 30, 1998, and the petitioner’s reply period closed October 17, 1998. *Chinook FD, 2, 3*.

In the January 2001 Final Determination, without prior notice or additional opportunity for the petitioner or interested parties to comment, the Assistant Secretary concluded “that he erred in denying the request to proceed under the 1994 regulations.” *Chinook*

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FD, 2. The Final Determination then proceeded to evaluate the petition “both under the 1978 regulations and under the provisions of the 1994 regulations concerning petitioners who have demonstrated previous Federal acknowledgment.” *Id.* at 2. No opportunity to comment either on the decision to apply the 1994 regulations or on a date of last previous Federal acknowledgment was provided prior to issuing the Final Determination. The Final Determination does not explain whether the Assistant Secretary intended to formally waive the regulations in order to allow the petitioner to make an election after April 26, 1994, to be considered under the 1994 regulations. Neither does the FD explain whether the Assistant Secretary construed the acknowledgment regulations themselves as allowing him discretion not to enforce the April 26, 1994, deadline, which would make a waiver unnecessary. The FD simply states that “[b]arring prejudice to the petitioner, the Assistant Secretary is vested with discretion and may apply [the 1994] regulations.” *Chinook FD*, 9. The only specific explanation provided for applying the 1994 regulations was “because of the unambiguous statutory recognition of the Chinook,” *Chinook FD*, 54, although the FD also stated that “even under the 1978 regulations, the Assistant Secretary cannot ignore the passage of two legislative acts that unequivocally recognized the Chinook Tribe,” and “[e]ven under the 1978 regulations, a statutory recognition is definitive.” *Chinook FD*, 9.

The Quinault Nation argues in its request for reconsideration that the terms of the regulations (“must” elect “by April 26, 1994”) do not permit the Assistant Secretary the discretion to consider an untimely request. Quinault 2001, 32. The Quinault Nation argues that the Assistant Secretary’s decision to apply the 1994 regulations to the Chinook petition after the comment period closed denied Quinault, as an interested party, the opportunity to comment on significant issues unique to those regulations, particularly the issue of unambiguous previous Federal acknowledgment. Quinault argues that such a decision could not occur after issuance of the proposed finding or without an opportunity to comment. *Id.* Quinault states that the failure to provide notice of the application of the 1994 regulations and to allow comment “severely prejudiced” it and other interested parties and constitutes a denial of the right to comment provided for in the regulations and also constitutes an abuse of discretion. *Id.* at 8, 31-33. Quinault also challenges the merits of the findings in the Final Determination concerning unambiguous previous Federal acknowledgment under the 1994 regulations. *See* issues 2 - 4, below.

The Chinook petitioner argues in its comments to the Secretary dated September 7, 2001, that the Assistant Secretary is obligated to consider the Chinook’s petition for Federal acknowledgment under the “new and more favorable regulations, with or without tribal election concerning application of those regulations.” Petitioner 2001a, 2. Further, the petitioner contends that a refusal to apply the 1994 regulations, “despite the fact that the new regulations clearly were more favorable to petitioning tribes than the old regulations,” would be a “denial of equal protection.” *Id.* at 2-3. Chinook asserts that the finding of previous unambiguous Federal acknowledgment mooted “virtually all” of the negative analysis of the proposed finding. *Id.* at 4.

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Analysis and Conclusion on Reconsideration

Issue one asks whether the Assistant Secretary had authority to apply the 1994 regulations in the Final Determination on the Chinook petition and, if so, whether he abused that discretion. The Secretary's referral also asks the related question whether a waiver of the 1994 regulations under 25 C.F.R. § 1.2 was considered and/or appropriate, and also raises the question whether this reconsideration should be made under the 1978 regulations or under the 1994 revised regulations.

The revised regulations were intended to codify the standards for interpreting evidence used to evaluate petitions under the previous regulations and to maintain the same requirements regarding the tribal character and continuity of existence of a petitioner. As stated in the preamble to the regulations, "[t]he revisions . . . still maintain the same requirements regarding the character of the petitioner. . . . [T]he revisions maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence. Thus, petitioners that were not recognized under the previous regulations would not be recognized by these revised regulations." 59 Fed. Reg. at 9282; see *Miami Nation of Indians of Indiana v. Babbitt*, 112 F. Supp. 2d 742, 760 (N.D. Ind. 2000), *aff'd* 255 F.3d 342 (7th Cir. 2001), *cert. denied*, 1225 S. Ct. 1067 (2002). The 1994 regulations were not intended to be more favorable in result than the 1978 regulations,² and as discussed below, I have found no basis to conclude in this particular case that the outcome would be different under the 1994 regulations than under the 1978 regulations.³

Petitioners in active consideration under the 1978 regulations were entitled to elect, by April 26, 1994, to proceed under the 1994 regulations for the Final Determination. 25 C.F.R. § 83.3(g) (1994). This option was available to "any petition for which a determination is not final and effective." *Id.* (emphasis added); see also § 83.5(f) (all

² The revised regulations were written based on knowledge of Indian policy, knowledge of the history of the Department's extensive dealings with Indian tribal governments, and on "the basis of 13 years experience dealing with a wide variety of cases." 65 Fed. Reg. at 9280. Based on this predicate, the intent of the previous-Federal-acknowledgment provision of the 1994 regulations was that if the petitioner provides "substantial evidence" of unambiguous previous Federal acknowledgment, which under section 83.1 is "clearly premised" on government-to-government relations with the United States, any analysis under the criteria in the regulations predating that point would find that the group is a tribe. 25 C.F.R. § 83.8(a); see 65 Fed. Reg. at 9283. Thus, it was reasonably presumed that an accurate finding of unambiguous Federal acknowledgment would coincide with a positive finding under the criteria up to that time.

³ Whether, in fact, a different result from the two sets of regulations could ever occur in an acknowledgment case, e.g., one with highly unusual facts, is not at issue in this reconsideration. The Chinook evidence does not present such a case, and indeed the Final Determination concluded that the result would be the same under either regulation.

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petitioners under active consideration “shall be notified . . . of the opportunity . . . to choose whether to complete their petitioning process” under the 1994 or 1978 regulations). The inclusive language of “all” and “any” afford a right to a petitioner on active consideration who has received a proposed finding under the 1978 regulations, to have the 1994 regulations applied to a final determination, subject only to the April 26, 1994, election deadline. Further, there is no language in the regulations which excludes petitioners with proposed findings from having their final determination issued under the 1994 regulations. At least two petitioners with proposed findings issued under the 1978 regulations had their final determinations issued under the 1994 regulations. See *Snoqualmie FD* (1997), *Ramapough Mountain Indians FD* (1996).

Section 83.8(b) provides that when a petition is evaluated under the 1994 regulations, a determination of the adequacy of evidence of unambiguous previous Federal acknowledgment shall be made during the technical assistance review,⁴ which under the regulations occurs before a petitioner is declared ready for active consideration. If a petition is ready and awaiting active consideration, then the review of the last date of previous Federal acknowledgment “will be conducted while the petition is under active consideration,” unless the petitioner requests otherwise. *Id.* There is no provision under the regulations indicating when the determination of unambiguous previous Federal acknowledgment is to be made if a proposed finding has been issued under the 1978 regulations.

Therefore, I conclude that the issuance of a proposed finding under the 1978 regulations did not preclude the Assistant Secretary from making a final determination under the 1994 regulations, or from determining the last date of previous Federal acknowledgment in the Final Determination. The weight of the regulatory language does not support the Quinault’s argument that because a finding of unambiguous previous Federal acknowledgment was not made during the technical assistance review or before the proposed finding, the Assistant Secretary was thereafter precluded from making such a finding.

The Quinault Nation also contends, however, that the time limit in the regulations of April 26, 1994, by when a petitioner’s choice “must” be made, removes discretion from the Assistant Secretary to apply the 1994 regulations. The Chinook petitioner made its choice by April 26, 1994, but that choice was to proceed under the 1978 regulations. The petitioner’s subsequent inquiries as to the possible application of the 1994 regulations were either withdrawn or denied. Nevertheless, in the Final Determination, the Assistant Secretary applied the 1994 regulations, apparently believing it was warranted and appropriate because of the Assistant Secretary’s determination that the 1925 Act

⁴ This determination at the technical assistance stage is preliminary, and may be revised, altered, or reversed during the full review of the petition for the proposed finding or final determination.

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constituted unambiguous statutory recognition of the Chinook, and because application of the 1994 regulations would not be detrimental to the petitioner. *Chinook FD*, 9.

Section 1.2 of Title 25 C.F.R. provides that the Secretary “retains the power to waive or make exceptions to his regulations as found in chapter I of title 25 C.F.R. in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.” This authority has been delegated to the Assistant Secretary - Indian Affairs. 209 DM 8. It has been invoked previously in acknowledgment cases in the context of the priority provisions of 25 C.F.R. § 83.10(d). *See, e.g., Match-e-be-nash-she-wish Band of Pottawatomis Indians PF*, 6; *Paucatuck Eastern Pequot Indians PF*, 65 Fed. Reg. 17299 (waiver of priority provisions of § 83.10(d) upon an express finding that a waiver is in the best interest of the Indians). I now conclude that the Assistant Secretary has the authority, pursuant to 25 C.F.R. § 1.2, to apply the 1994 regulations to the Chinook petition upon an express finding that a waiver of the regulatory deadline and of the previous Chinook election is in the best interest of the Indians.⁵ For the reasons stated below, however, I need not determine if the former Assistant Secretary properly exercised that authority.

The Quinault Nation argues that the application of the 1994 regulations “severely prejudiced” them because they were not permitted to comment on a last date of unambiguous previous Federal acknowledgment. Thus, according to Quinault, even if the Assistant Secretary had discretion to apply the 1994 regulations, he abused that discretion by not permitting them to comment on the issue.

Not every argument or analysis of the Assistant Secretary relies upon in a final determination is subject to prior comment by the petitioner or interested parties. The Assistant Secretary can change a position from the proposed finding based on comment or based on additional research by the Department. 25 C.F.R. § 83.10(l)(1) (1994). Any suggestion that all analysis in a final determination must be subject to comment by petitioner and third parties does not conform to the regulations and could result in an inability to reach conclusions in a final determination.

The Quinault Nation argues, however, that the regulations contemplate a procedure whereby a petitioner and third parties are made aware in a timely fashion of the date of “previous Federal acknowledgment” under the 1994 regulations, to allow them to focus their research or comment under the criteria. Thus, according to Quinault, section 83.8(b) provides that the determination of the date of previous Federal acknowledgment be made during the technical assistance review, or in the proposed finding, or earlier for those awaiting active consideration. In the present case, this determination was not done

⁵ Because I conclude that the waiver authority under 25 C.F.R. § 1.2 can apply to this issue, I am declining to decide whether the mandatory language in section 83.3(g) (“choice must be made by April 26, 1994”) applies only to the *right* of a petitioner to make the election, or whether it also limits the discretion of the Assistant Secretary to grant a petitioner’s out-of-date request, even though the petitioner itself no longer is entitled to make an election of *right*.

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in the proposed finding because the Chinook had elected to proceed under the 1978 regulations.⁶

Whether the petitioner and third parties were entitled to specific notice that the 1994 regulations might or would be applied, and whether there was a right to notice of a date of previous Federal acknowledgment for the Chinook petitioner, need not be decided in this reconsideration. Interested parties and the petitioner had the opportunity to submit comments on the merits of the Final Determination's finding of the last date of Federal acknowledgment and other issues before both the IBIA and the Secretary, in response to the Quinault Request and the IBIA's referral. This reconsidered determination is based on this fuller administrative record. Those provisions in the regulations that provide for notice and permit comment on issues under the 1994 regulations were fully met by the procedures before the IBIA and the Secretary. I conclude, therefore, that any alleged procedural harm to the Quinault or other interested parties caused by the Final Determination's application of the 1994 regulations to the petition has now been cured.

Further, I find under 25 C.F.R. § 1.2 that based on the record before me, it is in the best interest of the Indians, both the petitioner and the Quinault Nation, to proceed with an evaluation of the petition in a reconsidered determination under both the 1978 and 1994 regulations. This approach addresses the concerns of both the Chinook and the Quinault by providing a clear analysis of how the issues referred to me on reconsideration would be addressed under either set of regulations. In light of the opportunity to comment on the merits before IBIA, I do not find any prejudice to the Quinault in evaluating the Chinook petition under the 1994 regulations in this reconsidered decision.

Because the Reconsidered Final Determination supercedes the Final Determination to the extent inconsistent with it, any alleged procedural harm to petitioner or interested parties based on the question of whether the former Assistant Secretary abused his discretion has been cured. Therefore, the question of whether there was an abuse of discretion by the previous Assistant Secretary in applying the 1994 regulations without notice to the petitioner or interested parties is now moot and need not be decided here.

⁶ Prior to 2001, there was only one case under the acknowledgment regulations where (1) the question of prior Federal acknowledgment was an issue and (2) a proposed finding had been issued under the 1978 regulations. There the Department issued a final determination under the 1994 regulations when the petitioner did not elect to remain under the 1978 regulations. *Snoqualmie FD* (1997). The proposed finding on that petition, under the 1978 regulations, made detailed factual conclusions as to the time period in which they were treated as an acknowledged tribe. See 62 Fed. Reg. 45864, 45865 (1997). Thus, interested parties and the petitioner had notice of the last date of previous Federal acknowledgment, and the parties were provided an opportunity to comment on the key underlying facts relating to previous Federal acknowledgment prior to the preparation of the Final Determination. In that case, comments concerning the last date of unambiguous previous Federal acknowledgment resulted in a modification of the date. *Snoqualmie FD*, 1-3.

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Issues No. 2, 3, and 4

Issues #2 - #4 raise questions about the Final Determination's interpretations of three separate statutes – a 1911 Quinault Allotment Act, 1912 claims legislation, and 1925 claims legislation. The Final Determination gave strong evidentiary weight to each of these statutes, and concluded that the 1925 legislation unambiguously showed Federal acknowledgment of a Chinook tribe as existing in 1925.

The Quinault Nation argued in its request for reconsideration that the Final Determination's reliance on the 1911, 1912, and 1925 legislation as evidence of prior congressional acknowledgment of the Chinook as a tribe is not supported by the evidence and is inconsistent with the previous interpretations of these acts and similar legislation by the Department. The Quinault Request discussed the language, legislative history, and contemporaneous interpretation or implementation of these statutes, and contended that the significance and weight given to these statutes by the FD, for purposes of acknowledging the petitioner, cannot be sustained.

The petitioner's submissions to the Secretary (Sept. 7, 2001; Oct. 9, 2001) did not directly address the legislative history or historical context of the 1911, 1912, or 1925 legislation, or the language of the latter two statutes. Petitioner 2001a, 2001b. Instead, the petitioner contended that "the Chinook Tribe was unambiguously recognized by the federal government through the allotment to tribal members of lands within the Quinault Reservation in their capacity [as] Chinook tribal members as recently as 1934." Petitioner 2001a, 4.⁷ Thus, according to the petitioner, it is not even necessary for me to further consider the 1925 legislation.

I conclude that under either the 1978 or the 1994 regulations, the Final Determination misinterpreted the effect and evidentiary character and weight to be given to the 1911, 1912, and 1925 legislation. Further, the FD improperly departed from prior Departmental interpretations and the historical evidence regarding those statutes, in construing them as strong evidence of Federal acknowledgment within the meaning of the acknowledgment regulations. I conclude also that the FD erred in finding that the 1925 Act constituted unambiguous previous Federal acknowledgment of a Chinook tribe as existing in 1925, within the meaning of the 1994 regulations. While none of these statutes is inconsistent with the existence of a Chinook tribe at the time they were enacted, none can fairly be construed as affirmative evidence that either Congress or the

⁷ The Final Determination has already expressly rejected the petitioner's allotments-as-unambiguous-federal-recognition argument. That conclusion is not before me on reconsideration, although it is fully consistent with the conclusion I reach here regarding the 1911 allotment statute. As noted in the Final Determination, the Chinook petitioner did not make the argument that the 1912 and 1925 statutes constituted affirmative evidence of Federal acknowledgment or identification of the Chinook as existing as a tribe when those statutes were enacted. *Chinook FD*, 9.

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Executive Branch at the time in fact believed that a Chinook tribe still existed as an intact political entity. The contemporaneous evidence either is ambiguous on this point, or more often suggests that the Federal Government did not believe that a Chinook tribe still existed. Clearly, the Federal Government recognized that historical Chinook bands had existed, which were dealt with on a government-to-government basis in the treaty negotiations of 1851. Clearly, the Federal Government sought to provide allotments to remaining members and descendants of members of those historical Chinook bands. And just as clearly, the Federal Government agreed to pay or authorize claims by Chinook “tribes or bands” as named legal parties-in-interest for purposes of satisfying those historic claims. But the statutes and relevant evidence, upon careful examination, simply do not support the strong evidentiary weight afforded the statutes in the Final Determination.

1911 Quinault Allotment Act (Issue No. 2)

Was the previous Assistant Secretary’s interpretation of the 1911 Quinault Allotment Act as evidence of prior congressional acknowledgment of the existence of a Chinook tribal entity, contrary to longstanding Departmental interpretations of that Act?

Introduction

The 1911 Quinault Allotment Act⁸ authorized allotments for “members” of certain “tribes” affiliated with the Quinault and Quilleute tribes “in” an 1855/56 treaty. The Department granted allotments to individual Chinooks without requiring membership in a Chinook tribe, and contended at the time that a Chinook tribe no longer existed. The Final Determination concluded that the 1911 Act was strong evidence that the Federal Government treated a Chinook tribe as existing in 1911, because the Act referred to “members” and “tribes,” and “the Chinook Tribe” was later determined to be within the scope of the Act. *Chinook FD*, 12. I now conclude that the interpretation and evidentiary weight afforded the 1911 Act in the FD was in error, and the FD must be reversed on this issue.

⁸ The Act of March 4, 1911, 36 Stat. 1345, provides in relevant part:

[T]he Secretary of the Interior . . . is . . . authorized and directed to make allotments on the Quinaielt Reservation, Washington, under the provisions of the allotment laws of the United States, to all *members* of the Hoh, Quileute, Ozette or other *tribes* of Indians in Washington who *are affiliated* with the Quinaielt and Quileute tribes *in the treaty of* [July 1, 1855, and January 23, 1856], and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes. (Emphasis added.)

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1997 Proposed Finding

The 1997 proposed finding did not contain any specific discussion of the 1911 Act as itself indicating that a Chinook tribe was a still-existing entity at that time.⁹ The proposed finding did discuss the historical evidence prior to enactment of the 1911 Act regarding Chinook claims, noting views expressed in congressional hearings in 1905 by an advocate of payments to Chinook descendants, and by the Court of Claims in 1906, that the Chinook no longer had tribal relations and had ceased to exist as a band. *Chinook PF*, 5-6, 28. In reference to litigation by Chinook and other Indians to obtain allotments under the 1911 Act, the notice of the proposed finding also stated that “a Federal district court in 1928 concluded that the Chinook had lost their tribal organization.” 62 Fed. Reg. 44714, 44715 (Aug. 22, 1997).

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The Final Determination discusses the 1911 Act both with respect to whether it constitutes unambiguous Federal acknowledgment of a Chinook tribe, and with respect to whether it constitutes affirmative evidence supporting a conclusion that a Chinook tribe in fact still existed in 1911. Though finding that the 1911 Act fell short of unambiguous Federal recognition of a Chinook tribe,¹⁰ the FD found “that the reference in the 1911 Act to ‘members’ of the subject tribes, in combination with the ultimate judicial finding that the Chinook Tribe was one of the subject tribes, is persuasive evidence that the petitioner meets criteria (a) and (c) as of the date of the Act.” *Chinook FD*, 12; *see id.* at 8 (“Obviously, there had to be a tribe of which to be a member.”). The *Federal Register* notice of the FD stated that the implementation of the 1911 Act, providing allotments to ancestors of the petitioner, indicated “that both Congress and the Interior Department regarded the Chinook as a ‘tribe’ having ‘members’ as of 1911.” 66 Fed. Reg. at 1691.

⁹ The Historical Technical Report prepared for the proposed finding did discuss in detail the 1911 Act, its implementation, and related litigation, but did not afford it affirmative evidentiary weight that the Federal Government considered or identified a Chinook tribe as still-existing in 1911.

¹⁰ The FD concurred with the PF and rejected the petitioner’s arguments that the distribution of Chinook allotments on the Quinault Reservation pursuant to the 1911 Act, and the subsequent Supreme Court decision in *Halbert v. United States*, 283 U.S. 753 (1931), constituted unambiguous previous Federal acknowledgment. That issue is not before me on reconsideration. However, to the extent that the FD relied upon an interpretation of the 1911 Act in finding that the allotment evidence supported a finding that criteria (a) and (c) had been satisfied, *see, e.g., Chinook FD* at 12, 49, my conclusion regarding the 1911 Act necessarily affects and requires reconsideration of those portions of the FD.

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Analysis and Conclusion on Reconsideration

Although the Final Determination's interpretation of the 1911 Act appears to be supported by language on the face of the statute referring to "members" and "tribes," and the Chinook were subsequently determined to be among the "tribes" included within the scope of the statute, the actual historical evidence and contemporaneous interpretation of the 1911 Act quite uniformly indicate that "membership" in a still-existing Chinook "tribe" was not considered essential in order for a Chinook individual to receive an allotment on the Quinault Reservation pursuant to the Act.

Neither the language of the 1911 Act itself nor the legislative history expressly lists or names a "Chinook" tribe or band. The Act refers to "other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute tribes" in the treaty of 1855/1856, but does not identify those "other tribes." Even if Congress understood that allotments would be provided to "members" of "tribes" existing in 1911, nothing on the face of the statute indicates that Congress itself, when it passed the statute, had identified who those "other tribes" were, or whether it thought that all, or only some, of the "tribes" affiliated in the 1855/1856 treaty still existed in 1911. The language "are affiliated . . . in" the 1855/1856 treaty is itself ambiguous – the temporal point of reference for the word "tribes" would appear to be 1855/1856, and not 1911. Therefore, the 1911 Act by itself cannot properly be construed as evidence of an actual congressional understanding or acknowledgment that a Chinook tribe was existing in 1911. The Act is simply silent -- and therefore at most neutral -- in this regard.

Because the 1911 Act, on its face, does not identify or acknowledge a "Chinook tribe," the evidentiary value of the 1911 Act must be determined by looking at the historical evidence outside the statute itself. In particular, I must look at the contemporaneous interpretation and implementation of the statute, in order to determine whether the Federal Government identified or acknowledged a Chinook tribe as still existing in 1911. The historical evidence preceding the 1911 Act, which was recited in the proposed finding, indicates that there was a common understanding -- reflected in executive branch, congressional committee, and judicial documents and proceedings -- that the Chinook had ceased to exist as a tribe sometime before the end of the 19th century. (*See* United States ca. 1906, 541; Court of Claims 1906, 4; Senate 1905, 105). Even if this understanding was false and a Chinook tribe in fact continued to exist,¹¹ I am simply not convinced that the 1911 Act constitutes affirmative evidence that *Congress and the Interior Department* actually recognized a Chinook tribe as existing in 1911. Had that

¹¹ The issue on reconsideration is a narrow one – the evidentiary value of the 1911 Act – so the proper inquiry is what Congress and the Executive Branch most likely understood, not whether they were correct. However, I would note that as indicated in the proposed finding and not refuted by supplemental evidence, the historical evidence contemporaneous to the 1911 Act does not indicate that the Lower Band or other bands of the Chinook still existed as tribal entities at that time.

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been the case, such a reversal of the common understanding prior to 1911 likely would be reflected somewhere in the historical record. To the contrary, the historical record after 1911 continued to reflect an understanding by the Executive Branch and within congressional committees that the Chinook no longer still existed as a tribal entity.

Significantly, the historical evidence indicates that the Department implemented the 1911 Act in a way that allowed individual Chinook Indians to receive allotments on the Quinault Reservation based on criteria other than membership in a then-existing Chinook tribe. A September 2, 1916, Solicitor's Opinion, addressing which "bands or tribes" were entitled to enrollment and allotment under the 1911 Act, specifically discussed Indian Office instructions issued in 1911 and 1912 to implement the Act. Department of the Interior 9/2/1916. The Indian Office instructions distinguished between past membership in one of the affiliated bands or tribes, and present enrollment on the Quinault reservation. An individual not then enrolled could submit an application indicating, among other things "affiliation of the band or tribe to which they belonged" – i.e., past tense. In addition, "poor and homeless Indians" who did not otherwise fall within the provisions of the Act could seek to become adopted into one of the eligible tribes. As such, the 1911 Act, as interpreted and implemented at the time, was understood to allow individuals to obtain allotments on the Quinault Reservation even if the tribe to which they had belonged no longer existed.

A November 27, 1916, letter from the Commissioner of Indian Affairs to Special Indian Agent Charles Roblin is even more explicit in demonstrating that the Department did not consider present "membership" in a then-existing "tribe" as a prerequisite to receiving an allotment under the 1911 Act. The letter stated that "it is now necessary for an applicant in order to obtain enrollment and allotment to establish by satisfactory evidence that he *was once* a properly enrolled and recognized member of an Indian tribe and *sustained* tribal relations therewith." BIA 11/27/1916 (emphasis added). Indeed, even the FD quotes testimony of Agent Roblin that includes a reference to past – not present – membership. *Chinook FD*, 7-8 ("was a member and recognized as such"). What the Department did require, however, was that the individual be enrolled on the Quinault Reservation. The process for enrollment required acceptance by the tribal council on the Quinault Reservation, was overseen by the Federal Indian agent, and could result in a decision that was not favorable to the "remnant" members or descendants of members of the historic tribes covered by the Act.

In the 1920's, dissatisfied applicants for allotments sued the Federal Government, seeking to obtain allotments under the 1911 Act. The most notable case, for purposes of interpreting the 1911 Act, was *Halbert v. United States*. District Court 1928. In *Halbert*, Chinook, Chehalis, and other descendants of tribes covered by the 1911 Act sued the United States to obtain allotments on the Quinault Reservation. The Government argued that the Chinook descendants were without tribal affiliation or tribal relations, and implied that they were "descendants who have separated from tribal life." *United States ca. 1928, passim*, quote at 44.

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The Federal district court in *Halbert v. United States*, accepting the factual premise of the Government's argument, concluded that the Chinook tribe had "no tribal organization."¹² District Court 1928, 330. Rejecting the Government's conclusion regarding allotment eligibility, however, the court held that certain individual Chinook Indians were nevertheless entitled to allotments on the Quinault Reservation, even if they were not enrolled by the tribal council on the Quinault Reservation. The court's interpretation of the 1911 Act is directly contrary to the FD's interpretation, as evidenced by the excerpts of the court's opinion quoted below:

The evidence in the present case indicates that the Indians at Chinook, Dahlia, Shoalwater Bay and Oakville have no tribal organization [but instead] are 'remnants of bands and tribes.' . . . They still cling together at and about the old haunts of the former tribal organization and are therefore 'tribes' within the meaning of the Executive Order and Act of March 4, 1911.

District Court 1928, 330.

The present case is not a case under the General Allotment Act. It is a case arising under a special allotment act, that of March 4, 1911, and the Executive Order of November 4, 1873, applicable to particular Indians shown to be and have been without tribal organization, which fact it must be inferred was considered in making the Executive Order, for that order was made upon the recommendation of the Superintendent of Indian Affairs for Washington Territory, a part of which recommendation recited not that these were members of organized bands or tribes but that they were the 'remnants' of tribes. The Indian Office has evidently recognized that something more than organized tribes with a governmental leadership was contemplated.

Id. at 331.

It has been contended in these cases that in the absence of an adoption by the tribe, approved by the Secretary, recognition by representative members of the tribe of membership in the tribe was necessary to the allotment right. While recognition by representatives of the Quinaielt and Quillehute tribes of membership or rights to allotment, being against interest, would be most persuasive, if not controlling, yet, insofar as the Chehalis, Cowlitz and Chinook are concerned it is not a sine qui non, for

¹² The Chinook Final Determination misstated the district court's opinion when the FD said: "There was tribal organization, as the district court in *Halbert* recognized." *Chinook FD*, 52. That was correct for the Cowlitz Tribe, but not for the Chinook. The district court referred to the "tribes here in question which – other than the Cowlitz – have no tribal organization." District Court 1928, 337.

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the headmen of the Quinaielt and Quillehute tribes can not be expected to have any peculiar knowledge concerning the membership of these other tribes here in question which – other than the Cowlitz – have no tribal organization.

Id. at 337.

[Plaintiff's] residence among and association with these Indians as well as the residence and association of her mother are sufficient to show her membership in the Chehalis tribe of Indians, in view of the fact that it has long had no tribal organization.

* * * *

While the mother, a Chehalis, has not been recognized by the Quinaielt and Quillehute tribes there could have been no further recognition of her by the Chehalis under the circumstances and condition of that tribe, being without tribal organization.

Id. at 362, 364.

The Supreme Court's decision in *Halbert*, which upheld the district court decision, must be understood in the context of the district court's very explicit discussion about what it meant in referring to "members" of "tribes" covered by the 1911 Act. As such, even though the Supreme Court referred to the plaintiffs as "members of the Chehalis, Chinook and Cowlitz tribes," and referred generally to the "members" of these "tribes" as being entitled to take allotments on the Quinault Reservation, the Court did not consider or decide the meaning of the words "members" and "tribes" under the Act, and therefore the Court's decision cannot be interpreted as indicating a departure from how the district court expressly addressed this issue. Therefore, I conclude that the FD erred in finding that the Supreme Court in *Halbert*, ruling on the 1911 Act, "did recognize the Chinook Tribe existed [in 1911], and that its members were entitled to allotments on the Quinault Reservation." *See Chinook FD*, 14.

In conclusion, in light of the historical evidence regarding the 1911 Act and the Department's implementation of the Act, I conclude that the Final Determination erred in finding that the 1911 Act constituted affirmative evidence that "both Congress and the Interior Department regarded the Chinook as a 'tribe' having 'members' as of 1911," 66 Fed. Reg. at 1691, for purposes of criteria (a) and (c) in the acknowledgment regulations. The evidence does not demonstrate that Congress, the Department, or the courts understood or interpreted the 1911 Act as requiring that Indian descendants of affiliated tribes establish "membership" in a still-existing affiliated "tribe." I conclude that the Final Determination's conclusion that the 1911 Act constitutes strong evidence of Federal acknowledgment or identification of a Chinook tribe as existing in 1911 was in error and that reconsideration of those portions of the Final Determination that were affected by this error is appropriate.

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1912 Claims Legislation (Issue No. 2)

Was the previous Assistant Secretary's interpretation of the 1912 claims legislation, as evidence of prior congressional acknowledgment of the existence of a Chinook tribal entity, contrary to longstanding Departmental interpretations of that Act?

Introduction

Legislation enacted in 1912 provided for the payment of claims for various named Indian tribes or bands. Act of Aug. 24, 1912, 37 Stat. 518, 535. The legislation directed the Secretary to pay \$20,000 "to the Lower Band of Chinook Indians," "to be apportioned among those now living and the lineal descendants of those who may be dead." *Id.* It also provided that if all the Indians and their lineal descendants for a beneficiary tribe or band were dead, no money for that tribe or band would be paid out. The FD concluded that because the 1912 legislation specifically named the Lower Band of Chinook Indians, it was strong evidence that the Federal Government acknowledged or identified a Chinook tribe as still existing in 1912. I conclude that the FD was incorrect, under either the 1978 or 1994 regulations. Neither a complete reading of the statutory language nor the legislative history or other historical evidence relating to this legislation supports the evidentiary effect and weight given to the 1912 legislation in the FD.

1997 Proposed Finding

The 1997 proposed finding did not contain any specific discussion of the 1912 Act as itself indicating that a Chinook tribe was a still-existing entity at that time.¹³ The proposed finding did discuss the history of the pursuit of Chinook claims legislation and the advocacy leading up to the 1912 Act, in relation to the relevant criteria in the 1978 regulations. But the proposed finding did not discuss the effect of the 1912 Act as affirmative evidence of Federal acknowledgment or identification of a Chinook tribe or band as existing in 1912. For example, the proposed finding noted that the 1899 contract between an attorney and "37 individual Chinook descendants" to pursue claims based on the 1851 unratified treaty and the loss of reserved rights "itself stated that the Lower Band no longer had chiefs or headmen." *Chinook PF*, 28. As discussed above, the proposed finding also noted views stated in congressional hearings and by the Court of Claims that the Lower Band of Chinook no longer existed as a band or had tribal relations. *Chinook PF*, 5-6, 28.

¹³ The Historical Technical Report prepared for the proposed finding did discuss the 1912 Act and its legislative history, but did not afford it affirmative evidentiary weight that the Federal Government considered a Chinook tribe as still existing in 1912.

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The *Federal Register* notice for the FD stated that both the 1912 and 1925 claims statutes,

clearly denominate the Lower Band of Chinook Indians, or Chinook Tribe, as one identified by Congress and the Interior Department. The [1912 Act] appropriates a sum which had been promised to be paid in the 1851 Point Tansey Treaty, and the [1925 Act] vests jurisdiction in the Court of Claims to hear and determine legal and equitable claims arising out of the unratified treaty. Both were passed with a specific object in mind, but both explicitly recognized the Lower Band of the Chinook Tribe as such, both as, respectively, the recipient for the appropriated monies and the party plaintiff in whose favor the United States explicitly waived its sovereign immunity in a case before the Court of Claims.

66 Fed. Reg. at 1692. The FD characterized the 1912 legislation as an “express statutory reference[] to the historic Chinook Tribe,” *Chinook FD*, 10, but the FD did not conclude that the 1912 Act constituted unambiguous Federal acknowledgment. The *Federal Register* notice for the FD stated that the 1912 Act “strongly suggest[ed]” such acknowledgment, but that it “need not be relied upon, because the 1925 Act is an unambiguous Federal acknowledgment.” 66 Fed. Reg. at 1692. The FD characterized the 1912 Act as a “constructive ratification of the Point Tansey Treaty.” *Chinook FD*, 10.

Analysis and Conclusion on Reconsideration

The 1912 legislation specifically denominates the “Lower Band of Chinook Indians,” and provides that the claim amount be “paid to” the Lower Band of Chinook.¹⁴ Without reading further into the statute, it would appear that this language at least implies that the denominated band was in existence at the time. Ambiguity arises, however, from other language in the statute. First, the statute provides that the claim amount be “apportioned among those now living and the lineal descendants of those who may be dead,” indicating that the actual beneficiaries and ultimate payees of the claim monies were individuals – and not even necessarily “members,” past or present, of a still-existing tribe or band. Indeed, a reading of the “paid to” language as perfunctory is supported by the historical evidence that the Secretary of the Interior actually distributed the money directly to individuals, and that claims releases were required of the individual Indian

¹⁴ The petitioner claims to be the successor to the Lower Band of Chinook of Washington State. A large majority of petitioner’s membership descends from historical Chinook bands, primarily the Lower Band of Chinook, but also the Wahkiakum, Willapa, and Kathlamet bands and the Clatsop Tribe.

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recipients, not of a tribal entity. See Treasury 1914; *Chinook PF*, HTR 38. Second, the statute specifically provided that if the Secretary determined that “all of the Indians of either of said tribes or bands and their lineal descendants are dead, then none of the money hereby appropriated for such tribe or band shall be paid to any person for any purpose.” 37 Stat. 535. This latter clause indicates that Congress was making no judgment whether all, any, or which ones of the denominated tribes or bands were still, in fact, in existence. Therefore, an analysis of the language and structure of the 1912 Act itself does not support the FD’s finding that the Act was strong affirmative evidence of Federal acknowledgment or identification of a Chinook tribe as still existing in 1912.

Similarly, the legislative history for legislation and legislative proposals prior to the 1912 Act and for the 1912 Act itself, do not support the strong evidentiary weight afforded to the Act in the FD. Instead, they indicate at best that Members of Congress possibly were uncertain whether a *Chinook* band still *did* exist, and in some cases the evidence indicates that certain Members believed or had before them information indicating that the band no longer existed.

The history of the 1912 claims legislation for the Chinook really began at the turn of the century. In 1901, the Senate referred the claims of the Lower Band of Chinook to the Court of Claims for its findings of fact, but not for judgment. In the subsequent proceedings, the questioning of witnesses by the United States indicated that the Executive Branch sought to establish that “the tribal bonds and relationships of the Lower Band of Chinooks have been dissolved and terminated.” Court of Claims 1902, 129. In its brief, the United States contended that “[t]he tribal relations of the Chinook Nation have long ceased to exist.” United States ca. 1906, 541.

The 1906 Court of Claims Report on the Lower Band of Chinook referred to the “claimants” in the plural, even though the claim is styled under the singular “The Lower Band of the Chinook Indians of the State of Washington,” indicating that the actual “claimants” were individual Indians who were acting on behalf of a no-longer-existing tribal entity. Court of Claims 1906, 1; see also *id.* at 4 (10 bands of Chinook Indians at the time of the treaties, “of which the claimants’ band was one”). In its findings of fact, apparently accepting the position of the Executive Branch, the court – now referring to the historical band as the “claimant” – stated that “[t]he claimant, as a band, has long ceased to exist.” *Id.* at 4 (under “Findings of Fact”).

The 1912 claims legislation, which covered several tribes or bands in addition to the Lower Band of Chinook, was an outgrowth of several years of congressional consideration of the payment of claims for lands appropriated by the United States from Indian tribes or bands who had been parties to the unratified treaties in the 1850's. The evidence, however, indicates that Congress was looking backward to make amends to historic tribes through their descendants. For example, in considering proposed amendments to the 1906 Indian Appropriation Bill, to refer Chinook and Clatsop claims to the Court of Claims, Senator Teller stated: “How would it do for us to make some provision for the Department to divide the money up pro rata amongst all of them – all

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the Indians who belonged to the original tribe?" Senate 1905, 104. The appropriations act for 1906 itself directed the Secretary to investigate the number of Clatsop, Tillamook, Kathlamet, and Lower Band of Chinook Indians "who can be identified as *belonging to said tribes at the time of executing*" the unratified treaties. 33 Stat. 1048 at 1073 (emphasis added). The report from the Secretary to Congress did not refer to the tribe or bands in the present tense, focusing instead on the compiled list of the individual Indians still living and the heirs of those who had died since 1851. House of Representatives 1906, 1-20.

In a 1911 hearing before the Senate Subcommittee on Indian Affairs on predecessor bills to the 1912 Act, Senator Curtis, addressed the attorney (Mr. Smith) for the Lower Band of Chinook, and referred to "the tribes who are extinct, that you represent." Senate 1911, 14.¹⁵ Mr. Smith responded by discussing the Lower Band of Chinook's claims action, and relied on the Court of Claims Findings of Fact to support his contention that there were still 240 Chinook Indian descendants, and eight of the "original Indians" who are alive to receive the payments provided in the proposed legislation. *Id.* at 15-16, 22. He did not, however, assert to the Committee that the Lower Band of Chinook as a tribal entity was still in existence.

Although not discussed in the FD, I would note that there are various individual statements contained in the legislative history of the 1912 Act that could appear to refer to, or it might be argued refer to the Chinook band in the present tense. *See, e.g.*, Senate 1905, 103, 105 ("this band ... *has never been paid anything*;" no doubt this Chinook band *is in Washington now*" (emphasis added)); Senate 1912b, 52 (referring to the "amount of money claimed by each tribe or band of Indians"); *id.* (January 20, 1912, Letter from the Acting Secretary refers to "final settlement with the said tribes"); House of Representatives 1912, 11422-23 ("final settlement with six different tribes;" "All of these six tribes have time and time again secured the passage of bills through the Senate for payment of these just claims.").

On the other hand, as recited above regarding the 1911 hearing, there are also numerous statements suggesting that members of Congress believed that even though the legal entity-in-interest was a historic tribe or band, the actual beneficiaries were the individual Indian descendants of a tribal entity that either no longer existed or might no longer exist. There are also statements suggesting a belief by some Members that it was attorneys – not tribal entities or even individual Indians – who were pushing the claims bills in order to obtain attorney fees. *See, e.g.*, Senate 1912a (refers to "the Indians" and "the claims of these Indians" with similar frequency as referring to the "tribes or bands"); House of Representatives 1912, 11423, 11424, 11426 ("The Indians and their descendants are now scattered all over the United States.") ("The attorneys who have been pushing these claims") ("the prime purpose of them being to pay attorneys' fees") ("The object of this

¹⁵ In determining the evidentiary weight to be afforded the 1911 Allotment Act, it is not insignificant that the 1911 Act was enacted on March 4, 1911, only one month after this hearing.

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amendment is to fulfill six treaties with six Indian tribes *and their lineal descendants*” (emphasis added)) (“These lineal descendants of these Indians are now full citizens of the United States.”).

The historical evidence subsequent to the 1912 claims legislation also does not support construing it as strong affirmative evidence of recognition or identification of the Lower Band of Chinook as a still-existing tribal entity in 1912. The Department of the Interior implemented the legislation by preparing a payment roll in 1914. It did so on the understanding that it first was to determine the members of the Chinook bands who were living at the time of the treaties in 1851, and next to identify the lineal descendants of those members alive in 1851 who had since died. The 1914 payment roll listed both the deceased ancestors and the eldest living generation of lineal descendants. BIA 1914. And as mentioned earlier, the funds appropriated by the 1912 legislation were paid not to a tribe or band, but to individual claimants. The Comptroller of the Department of the Treasury interpreted the legislation as providing for payment to “Indians in their individual capacity rather than any tribal or band capacity.” Treasury 1914.

The FD characterized the 1912 Act as a “constructive ratification of the Point Tansey Treaty, but passed by both houses of Congress.” *Chinook FD*, 10. In a very limited sense, that is correct, but not with the implications attributed by the FD. What Congress sought to achieve through the 1912 legislation was to make good on the unratified 1851 treaty by making payments to Chinook descendants based on what the bands would have received immediately after 1851 if the treaty had been ratified and implemented. As Senator Fulton, the sponsor of the legislation, stated: “Years ago the Government entered into a treaty with the Lower band of Chinook Indians, whereby the Government agreed to pay to the Indians a certain stipulated sum of money, and all their lands were to be ceded to the Government. The treaty was never ratified, but the Government, nevertheless, took their lands and the Indians were crowded off. . . . They never were paid a dollar for [their lands].” Senate 1905, 102. Thus, in a way, the 1912 Act was a partial retroactive “ratification” of the 1851 treaty for purposes of executing federal *payment* commitments reflected in the treaty to still-living members or descendants of deceased members of the historic tribe. But nothing in the statutory language or the legislative history demonstrates that in seeking to right an historic wrong, Congress was acknowledging a government-to-government relationship with one or more Chinook bands as still-existing in 1912, or as resurrected through the legislation.

The FD also inferred solely from the enactment of the 1911, 1912, and 1925 Acts that there must have existed a Chinook tribal entity that was the driving force behind the legislation, thus constituting evidence of political organization:

Given the nature of Federal Indian policy [at the turn of the 20th century], it seems most unlikely that such legislation was in response to individual Chinooks acting alone, or the simple largesse of the United States. Far more likely is that the organized and persistent entreaties of the Chinook

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leadership, whether formally empowered or otherwise, resulted in these congressional responses.

Chinook FD, 73; *see id.* at 75 (“The congressional actions directed at the Chinook in 1911, 1912, and 1925 indicate the influence of a political entity that pursued tribal political and legal objectives from the turn of the 20th century until 1925.”).

At the same time, however, the FD acknowledged that “[t]he record for this case lacks specific examples of an internal, informal political process among the petitioner’s ancestors, or of political leadership or influence over the petitioner’s ancestors as a group between 1855 and 1925.” *Chinook FD*, 75. In fact, there is some evidence that the impetus for the claims legislation came not from a Chinook tribal entity, but from individual Chinook descendants and their attorneys. First, the 1899 contract with attorneys to pursue claims on behalf of the Chinook tribe stated that “the said LOWER BAND of the said CHINOOK TRIBE of Indians having now no Chief of Chiefs or Headmen, but each and every member of said band living separate and apart from the band and tribe as a whole, . . . and each and every member of said band being desirous of enforcing the collection of the said amount mentioned in said Treaty.” Lower Band of Chinooks 1899, 3. While this evidence certainly cannot be construed as conclusive that there was no Chinook tribe still existing in 1899, it undercuts an assumption that the impetus for legislation necessarily came from a tribal entity. Second, the Lower Chinook Band’s own attorney appears to have accepted the characterization in the 1911 hearings that his client no longer existed as a tribe. Third, the House debate indicates that at least some members of Congress thought the real impetus came from the attorneys who wanted to obtain attorney fees. Again, while none of this evidence establishes the factual existence or non-existence of a Chinook tribe in 1912, the issue before me is whether the 1912 Act can fairly be construed as strong affirmative evidence that *Congress* believed that a Chinook tribe then still existed.

On balance, and giving full consideration to the statutory language and the legislative history of the 1912 Act, I conclude that the Act does not constitute affirmative evidence that the Congress recognized or identified the Lower Chinook Band, or a Chinook tribe, as still existing in 1912. At best, the evidence contained in the Act and its legislative history, considered as a whole, indicate that Congress expressed no views one way or the other whether a Chinook tribal entity still existed. For purposes of the 1912 Act, Congress appears to have considered the existence or non-existence in 1912 of the named tribes and bands as irrelevant to the legislation, except to the extent of precluding any payment if there were no remaining original members or lineal descendants of a given named tribe. For the reasons discussed above, I conclude that the FD erred in the evidentiary weight afforded to the 1912 Act, and that it must be reversed in this respect.

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1925 Claims Legislation (Issues No. 2, 3, and 4)

Was the previous AS-IA's interpretation of the 1925 claims legislation, as evidence of prior congressional acknowledgment of the existence of a Chinook tribal entity, contrary to longstanding Departmental interpretations of that legislation? Did the previous AS-IA improperly depart from contrary Departmental interpretations of that legislation, and from the acknowledgment regulations, when he found that the legislation constitutes unambiguous previous Federal acknowledgment of the Chinook as a tribal entity existing in 1925?

Introduction

Legislation enacted in 1925 authorized several "Tribes or Bands of Indians," including the "Chinook," to bring claims "as parties plaintiff" against the United States.¹⁶ The Court of Claims found that the claim brought in the name of the Chinook tribe was without merit, but did not dismiss it for lack of standing. The acknowledgment regulations define "previous Federal acknowledgment" to require Federal action "clearly premised" on identification of a tribal political entity and "indicating clearly" a government-to-government relationship between the tribal entity and the United States. The Final Determination concluded that the 1925 claims legislation constituted unambiguous previous Federal acknowledgment of the "Chinook Tribe" as existing in 1925. Evaluating the legislation under the specific regulatory definition of "previous Federal acknowledgment," however, and viewed in the context of the legislation's

¹⁶ Because the FD relied so heavily on the Act of February 12, 1925, 43 Stat. 886, I quote here the relevant parts:

Be it enacted . . ., that all claims of whatever nature, both legal and equitable, which the Muckelshoot, San Juan Islands Indians; Nook-Sack, Suattle, Chinook, Upper Chehalis, Lower Chehalis, and Humptulip Tribes or Bands of Indians, or any of them (with whom no treaty has been made), may have against the United States shall be submitted to the Court of Claims, with right of appeal by either party to the Supreme Court of the United States for determination and adjudication

Sec. 2. That the Court of Claims . . . shall have authority to determine and adjudge all rights and claims, both legal and equitable, of said tribes or bands of Indians, or any of them, . . . notwithstanding the lapse of time or statutes of limitations.

Sec. 3. That suit or suits instituted hereunder shall be begun within five years from the date of passage of this Act by such tribes or bands of Indians, as parties plaintiff, The petition or petitions may be verified by attorney or attorneys employed by such tribes of Indians under contract or contracts approved in accordance with existing law

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purpose and history, I conclude that the FD's finding with respect to the 1925 legislation cannot be sustained. It does not comport with the actual historical interpretation of the 1925 legislation, and improperly departs from the standard set forth in the regulations.

1997 Proposed Finding

The 1997 proposed finding contains no specific discussion of the 1925 Act as itself indicating that a Chinook tribe was a still-existing entity at that time.¹⁷ In a general reference to the claims statutes and resulting litigation, the proposed finding stated that “[f]rom the 1910's to the 1950's, the Congress and courts ruled that individual descendants of the historical Chinook band or bands had rights to compensation for aboriginal lands and to allotments of land on the Quinault Reservation, but these decisions and the identification of individual beneficiaries of these decisions were not based on the identification of an existing tribe or collective entity.” *Chinook PF*, 8.

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The Final Determination characterized the 1925 Act as,

clearly denominat[ing] the Lower Band of Chinook Indians, or Chinook Tribe, as one recognized by Congress. The 1925 statute recognizes the Chinook Tribe as a party plaintiff in whose favor the United States explicitly waives its sovereign immunity for a case before the Court of Claims. The use of the present-tense verb “may have” is a plain acknowledgment that the Chinook Tribe existed in 1925. Congress has not passed subsequent legislation that would effectively abrogate the 1925 acknowledgment. There is a major consequence flowing from the express statutory recognition. The [1925 Act] is not only prima facie evidence, it is also the substance of that which is being sought to be proved.

Chinook FD, 10-11; see *FD* at 32 (1925 Act constitutes an unambiguous prior Federal recognition). As quoted earlier, the *Federal Register* notice for the FD stated that the 1925 legislation “explicitly recognized the Lower Band of the Chinook Tribe.” 66 Fed. Reg. at 1692. As also previously noted, the *Federal Register* notice also stated that the 1911 and 1912 statutes “need not be relied upon, because the 1925 Act is an unambiguous federal acknowledgment.” *Id.*¹⁸

¹⁷ The Historical Technical Report did discuss evidence of organized efforts to bring the Chinooks' claims action under the 1925 Act, in relation to the relevant regulatory criteria. *Chinook PF*, HTR 44-45.

¹⁸ The FD characterized both the 1912 and 1925 Acts as “express statutory references to the historic Chinook Tribe.” *Chinook FD*, 10. In addition, the FD noted that “[f]or reasons best known to itself, the petitioner never identified or presented the *two* legislative recognitions.” *Chinook FD*, 9 (emphasis added). The FD did not, however, conclude that the 1912 Act

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Analysis and Conclusion on Reconsideration

The 1925 Act specifically names the “Chinook” as among the “Tribes or Bands” of Indians, and expressly authorizes that entity, or entities, as “parties plaintiff,” to submit claims on behalf of the Chinook to the Court of Claims. As with the 1912 legislation, the 1925 legislation’s explicit reference to the Chinook as among the “Tribes or Bands” denominated, without considering the statute further, would seem to suggest congressional recognition of a Chinook tribe or band as existing in 1925. But considering the purpose of the legislation and its subsequent history, and evaluating them under the regulatory standard, it becomes clear to me that the FD’s interpretation of the 1925 legislation cannot be sustained.

The 1994 acknowledgment regulations define “previous Federal acknowledgment” to mean “action by the Federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.” 25 C.F.R. § 83.1 (1994). As I noted in the Reconsidered Final Determination to Acknowledge the Cowlitz Tribe, at 20, “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 recognition is meant to set a high preliminary threshold, which allows a reduced overall evidentiary burden on petitioners for subsequent periods.” In my view, the characterization of a party plaintiff as a “tribe” for purposes of prosecuting an historic tribal claim against the United States is not “clearly premised” on that entity as still having a political character or as having government-to-government relationship with the United States. As such, it does not satisfy the rigorous standard of evidence for finding previous acknowledgment. Thus, even if the 1925 Act might be read as consistent with a congressional understanding that a Chinook tribe or band, or the Lower Band of Chinook, or even that more than one Chinook tribe or band still existed in 1925, I do not believe that the Act itself can properly be read as unambiguous in that respect.

In determining whether the 1925 Act constitutes evidence that satisfies the regulatory definition of “previous Federal acknowledgment,” the language of the statute must be evaluated in the context of its specific effect and function. In that respect, the Act must be understood in light of what Congress sought to accomplish in this legislation and in similar claims legislation that it enacted before and after 1925. In such legislation, Congress sought to allow tribal claims against the United States based on historical events and historical tribes, whether or not those tribes still existed as tribes. When

constituted unambiguous Federal acknowledgment. Thus, while in some respects it appears that the FD treated the 1912 and 1925 statutes similarly, it never reached the same conclusion regarding unambiguous Federal acknowledgment with respect to the 1912 Act as it did for the 1925 Act. While that issue is not specifically before me on reconsideration, my conclusion regarding the evidentiary weight to be afforded the 1912 legislation is also dispositive that it does not constitute unambiguous previous Federal acknowledgment.

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Congress restricted the nature of the claim to a tribal claim and the party plaintiff to the “tribe,” what it apparently sought to do was ensure that the statute did not authorize individual Indians to bring individual claims against the United States. *See* Senate 1925, 2-3; House of Representatives 1924, 3; House of Representatives 1923, 3.

Thus, I agree that in the 1925 Act, Congress authorized one or more Chinook “tribes or bands,” whether then already existing or as constituted by descendants pursuant to the Act, to bring a claim against the United States as an entity that would have the legal status of a “tribe or band” for purposes of that suit. But what the acknowledgment regulations require is Federal action “clearly premised” on identification of a “tribal political entity,” and “indicating clearly” the recognition of a *government-to-government relationship* with the United States. In that respect, the 1925 Act falls short, because a “Chinook Tribe” of descendants, organized for purposes of bringing a claim, did not *require* that it be organized as, or function as, a political or governmental entity, or that it have a government-to-government relationship with the United States. *See also* Cohen’s Handbook of Federal Indian Law 7, 12 (Strickland 1982 ed.) (Congress sometimes designated a “tribe” for claims purposes without recognizing that same entity as a “tribe” for political purposes). Lacking such requirements as a “clear premise,” the 1925 Act on its face does not satisfy the regulatory standard for “previous Federal acknowledgment,” as recently reaffirmed in the Cowlitz Reconsidered Final Determination.

Significantly, the Department in 1925 and the years following did not interpret the 1925 Act as congressional acknowledgment of the current existence of a Chinook tribe, in the political and governmental sense. In 1927, in response to claims filed under the Act, the Department of the Interior stated in a report to the Department of Justice that “the tribal organization of these [Chinook] Indians has long been abolished by the Indians themselves. . . .” Department of the Interior 6/21/1927, 28. The Interior Department concluded that “any claims they now have are individual and not tribal.” *Id.* There was nothing in the Department’s discussion of the Chinook claims that suggested that the Department construed – or understood Congress to have construed – the 1925 Act as recognizing a Chinook tribe as existing in 1925. Similarly, as previously discussed, in the late 1920’s and early 1930’s, in the *Halbert* litigation, the Executive Branch specifically argued that the Chinook no longer still existed as a tribe – an argument flatly inconsistent with “explicit” congressional recognition of a Chinook tribe. Yet there is no historical evidence in the record that Congress – or any Members for that matter – took exception to the post-1925 Executive Branch position regarding the status of the Chinook in this regard.

The Final Determination found it significant that the Court of Claims in 1934 – adjudicating the claims of the numerous tribes named in the 1925 legislation – did not question the Chinook tribe as having legal standing to bring its claim, but did question the standing of the San Juan Islands Indians -- also named in the legislation -- to bring their claim. But the distinction did not pertain to the status of either group in 1925 or 1934, but rather to their historical status. The Chinook bands undoubtedly were recognized during the treaty negotiations of 1851 as tribal governmental entities. On the

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other hand, the Court of Claims stated that “[i]t is doubtful if there has ever been a linguistic, racial, or ethnological entity known as the ‘San Juan Islands Tribe,’ or that there has ever been governmental recognition of a political entity of that designation.” *Duwamish et al. Tribes of Indians v. United States*, 79 Ct. Cl. 530, 560 (1934). Indeed, far from supporting the FD’s interpretation of the 1925 Act with respect to a Chinook tribe, the Court of Claims’ statements regarding the San Juan Islands Indians reinforce my conclusion that by naming a group in the 1925 legislation, Congress did not mean to legislatively recognize or acknowledge them as existing as a tribe. Otherwise, the Court of Claims presumably would have accepted at face value that the San Juan Islands Indians existed as a tribe and had standing, regardless of the ultimate merits of their claim.

Finally, I note that six groups have petitioned for Federal acknowledgment as successors of a historical tribe included in the 1925 claims legislation. (Samish, PF 1982, FD 1996; Snohomish, PF 1983; Snoqualmie, PF 1993, FD 1997; Duwamish, PF 1996, FD 2001; Steilacoom, PF 2000.) Except for the Chinook Final Determination now under reconsideration, in none of these cases has the Department viewed the 1925 legislation as unambiguous previous Federal acknowledgment. And while the Department’s failure to date to treat the legislation as previous Federal acknowledgment is not dispositive, it is of at least some significance that before the Chinook FD was issued, no previous Assistant Secretary had considered the 1925 legislation as constituting unambiguous previous Federal acknowledgment.

Conclusions on Reconsideration for Issues 2, 3, and 4 Regarding the 1911, 1912, and 1925 Legislation

The Final Determination’s conclusions regarding the 1911, 1912, and particularly the 1925 statutes were crucial to its positive determination for the Chinook. As the FD expressly found, “[w]ere it not for the acts of Congress in 1911, 1912, and most importantly, 1925, it would not have been possible to make a positive determination on the evidence presented.” *Chinook FD*, 79 (emphasis added). Because the FD erred in its interpretation of the effect and evidentiary weight to be given those three statutes, I must reevaluate the evidence regarding criteria (a), (b), and (c), and make a reconsidered final determination without giving these three statutes the weight and significance given them in the FD.

Criterion (a) (external identification of tribal entity)

For criterion (a) under the 1978 regulations, the FD cited the 1911 and 1925 Acts as evidence of an identification of the petitioner as an “Indian entity” existing at the time the statutes were enacted.¹⁹ More importantly, it used that legislation to overcome otherwise

¹⁹ The *Federal Register* notice, but not the Final Determination itself, cited the 1912 legislation as a Federal identification of a Chinook tribe. 66 Fed. Reg. at 1691. This difference is

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admittedly insufficient evidence. For example, the FD found that evidence submitted by the Chinook for the period before 1925 “would be inadequate to support a positive finding on criterion (a),” but that “when this evidence is evaluated in light of the 1911 and 1925 statutes addressing the Chinook as [a] then-existing tribe, it is of sufficient weight to meet” the criterion. *Chinook FD*, 48; *see also* FD at 45, 52; 66 Fed. Reg. at 1691. Under the 1994 regulations, finding that the 1925 legislation was unambiguous Federal acknowledgment, the FD concluded that the Chinook therefore satisfied criterion (a) through 1925. *Chinook FD*, 52.

The FD also relied on evidence of allotments being provided to some of the petitioner’s ancestors, and of post-1950 claims activities as “sufficient to show that a Chinook entity was identified on a ‘substantially continuous’ basis between 1927 and the present.” *Chinook FD*, 52. In the following sentence, however, the FD concluded that “[t]he identifications of Chinook organizations between 1951 and the 1970’s were of organizations which did not appear to include the petitioner as a whole and do not have clear continuity with the petitioner’s organization.” *Id.* While emphasizing the 1911 and 1925 Acts in the summary conclusion under criterion (a), the FD did not explicitly cite these two statutes as evidence to meet criterion (a) between 1925 and 1951. Thus, it is not entirely clear on what basis the FD concluded that criterion (a) was satisfied from 1927 to the present, under either the 1978 regulations or the 1994 regulations, but the conclusion apparently rested at least in part on the significance given to the 1911 and 1925 Acts. *See* 66 Fed. Reg. at 1692 (criterion (a) is satisfied “because the statutes have never been repealed, amended, or otherwise modified”).

Considering the FD’s erroneous interpretations of these two statutes, and its reliance on them for making a determination regarding criterion (a), I conclude that I must make a reconsidered final determination for criterion (a) without giving the statutes the weight and significance afforded them in the FD.

Criterion (b) (community)

For criterion (b) under the 1978 regulations, the Final Determination relied upon new evidence submitted during the comment period to conclude that the petitioner satisfied criterion (b) until 1950. Under the 1994 regulations, the FD’s finding that the 1925 Act constituted unambiguous previous Federal acknowledgment meant that the petitioner needed only demonstrate that it constitutes a distinct community “at present.” 25 C.F.R. § 83.8(d)(2). Although I have concluded that the FD erroneously interpreted the 1925 Act, I also find, as explained in the Reconsidered Final Determination part of this decision, that the Chinook *were* unambiguously federally acknowledged in 1855. Although the FD was in error with respect to last *date* of unambiguous previous Federal acknowledgment, its conclusion that the Chinook were previously acknowledged as a tribe was correct. As such, its conclusion was also correct that under the 1994

not significant in light of my similar conclusions regarding all three statutes.

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regulations the petitioner – if it demonstrates that it can claim to have evolved from the previously acknowledged tribe – need only demonstrate community at present in order to satisfy criterion (b). But as discussed in the next section addressing Issue 5, a reconsidered final determination for criterion (b) is still required on other grounds.

Criterion (c) (political authority/bilateral political relationship between tribe and members)

For criterion (c) under the 1978 regulations, the Final Determination used the enactment of the three statutes in 1911, 1912, and 1925, to presume that it was likely that the legislation was in response to “the organized and persistent entreaties of the Chinook leadership.” *Chinook FD*, 73; *see also id.* at 75. The FD found this presumption adequate support for concluding that the petitioner satisfied criterion (c) until 1925. Under the 1994 regulations, because the FD considered the 1925 statute as unambiguous Federal acknowledgment of the Chinook tribe, there was no need to determine whether petitioner satisfied criterion (c) prior to 1925. Because that interpretation on the 1925 Act was erroneous, it is necessary to make a reconsidered final determination for the period prior to 1925.

For the period following 1925, the FD relied upon the activities of Chinook claims organizations, “coupled with” previous Federal acknowledgment, to find that the petitioner had satisfied criterion (c). *Chinook FD*, 74. As discussed below in response to Issue 6, however, the FD also erred in the evidentiary weight given to Chinook claims activities in this case, and therefore a reconsidered final determination with respect to criterion (c) for the period following 1925 is required as well.

Issue No. 5

Did the previous Assistant Secretary improperly depart from the acknowledgment regulations and prior Departmental interpretations of those regulations, when he concluded that evidence that a subgroup of the Petitioner constituted a community under criterion (b) [25 C.F.R. § 83.7(b)] was an adequate substitute for a demonstration that the Chinook petitioner as a whole meets criterion (b)?

Introduction

The Final Determination relied upon a combination of evidence to find that the petitioner satisfied the “community” requirement of the regulations from 1950 to the present. That evidence included a finding that the petitioner’s members who reside in and around Bay Center, Washington, satisfy the “community” requirement to the present. The regulations require that a substantial or predominant portion of a petitioner’s membership comprise a community, and the Department has interpreted “predominant” to mean at least 50 percent. The other evidence relied upon in the FD consisted of Chinook claims

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activities in the 1950's to the 1970's (see discussion under Issue #6), the petitioner's present Federal acknowledgment petition, and a 1990 book on the Chinook by Clifford Trafzer.

The Quinault request for reconsideration contended that the FD improperly relied on the Bay Center "subgroup" of the petitioner in finding that the petitioner as a whole satisfied criterion (b). The petitioner argued that "there is no regulation precluding a finding that evidence that a subgroup of the Petitioner constituted a community under Criterion (b) was an adequate substitute for a demonstration that the Chinook petitioner as a whole meets Criterion (b)." Petitioner 2001a, 8. For the reasons discussed here, I conclude that the FD's use of a finding regarding Bay Center went beyond what can be supported by the regulations. In particular, the regulations require that a "predominant" portion – defined as at least 50 percent – of the petitioner constitute a community in order to satisfy criterion (b), and the Bay Center members comprise only a minority²⁰ of the petitioner's membership today, and less than half historically.

The issue raised by the Quinault Nation and referred to me on reconsideration may be based on an incorrect premise and may somewhat mischaracterize the Final Determination. The Final Determination did not, as the question seems to presume, conclude that a finding that Bay Center constituted a community under criterion (b) was by itself a "substitute" for a demonstration that the Chinook petitioner as a whole meets criterion (b). Instead, the FD used a finding that Bay Center satisfied criterion (b),²¹ in combination with findings that the Bay Center members joined "with others," 66 Fed. Reg. at 1692, to pursue Chinook claims and this acknowledgment petition, to conclude that the petitioner as a whole satisfied criterion (b).

While I believe that the issue as framed may mischaracterize the FD somewhat, the FD and accompanying *Federal Register* notice do contain confusing and incorrect language, which warrants clarification and correction here. In addition, because of the apparent significance given to Bay Center in the FD -- even in combination with other evidence --

²⁰ In 1995, 33 people, or 3 percent, of a total membership of 1,040 lived in the immediate vicinity of Bay Center. *Chinook PF*, 22 and ATR 82. Even if it could be shown that all 33 people formed a cohesive community – something that the Quinault Nation has not challenged – they would still not represent a predominant portion of the membership under the regulations.

²¹ The Final Determination relied on the Proposed Finding in stating that Bay Center satisfied the "community" criterion at present. In fact, that was a misreading of the PF, which found only that the evidence indicated that there was an Indian community at Bay Center until 1920. The Quinault Nation, however, did not challenge the FD's "finding" that Bay Center satisfied the "community" criterion at present under the 1994 regulations. Therefore, my examination of this issue on reconsideration does not reexamine the FD's finding that the portion of petitioner's members residing in and around Bay Center would satisfy the definition of "community" under the regulations, if subgroups were analyzed in such a way.

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it is appropriate to revisit the evidence with respect to whether petitioner satisfies the “community” criterion at present.

Regulatory Criterion (b) – Requirement of “Community”

As defined in the acknowledgment regulations, “[c]ommunity means any group of people which can demonstrate that *consistent interactions and significant social relationships exist within its membership* and that its members are differentiated from and identified as distinct from nonmembers. *Community* must be understood in the context of the history, geography, culture and social organization of the group.” 25 C.F.R. § 83.1 (1994) (emphasis added). To meet criterion (b), the 1978 regulations require “[e]vidence that a *substantial portion* of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area.” 25 C.F.R. § 83.7(b) (1982) (emphasis added). Similarly, the 1994 regulations require that a “*predominant portion* of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.” 25 C.F.R. § 83.7(b) (1994) (emphasis added). In its 1994 rulemaking, the Department interpreted the term “predominant” to mean “that at least half of the membership maintains significant social contact with each other.” 59 Fed. Reg. at 9287. For groups that have demonstrated unambiguous Federal acknowledgment, the 1994 regulations require that “[t]he group meets the requirements of the criterion in § 83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.” 25 C.F.R. § 83.8(d)(2) (1994).

Thus, under both the 1978 and 1994 regulations, a petitioner must satisfy its burden of proof to demonstrate the existence of community at present.

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The Final Determination concluded that, under the 1978 regulations, “the petitioner, as a whole” satisfied the community criterion from 1880 to 1950. *Chinook FD*, 70.²² For the period after 1950 to the present, the FD noted in particular that the “Tribe was sufficiently organized during this period to pursue its claim before the Indian Claims Commission and participate in the preparation of a judgment role [*sic*].” *Id.* In addition, the FD noted “further” that the tribe has pursued this petition for acknowledgment since the 1970's and created a tribal roll, “all of which requires social interaction to some degree.” *Id.* Summarizing, the FD stated that for the post-1950 period,

the evidence of social interaction consists mostly of tribal efforts to pursue legal and political objectives. Despite petitioner’s failure to respond more effectively to the AS-IA’s concerns regarding the post-1950 period, the

²² That finding is not within the scope of this reconsideration, and therefore I do not address it here.

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AS-IA nevertheless finds evidence of social interaction at a level sufficient to meet criterion 83.7(b) has been presented by the petitioner.

As an alternative basis for this positive determination, the petitioner was previously recognized in the 1925 statute. Under 25 C.F.R. § 83.8(d)(2) there is only the necessity to show a present community. The [Proposed Finding] found that the Bay Center community did meet the requirements of community in 83.7(b), and the tribe's current organization to pursue its legal and political objectives is adequate to meet criterion 83.7(b).

Chinook FD, 71. The *Federal Register* notice for the FD explained its finding regarding criterion (b) for the post-1950 period as follows:

[T]here is more limited evidence from 1950 to the present to show that the petitioner, as a whole, met criterion 83.7(b). The AS-IA finds that the evidence is adequate that the Bay Center community satisfies criterion (b) to the present. While this does not encompass the whole of the petitioner, the willingness of the Bay Center community to join with others to pursue the [Indian Claims Commission] claims and this [acknowledgment] petition process also tends to demonstrate the existence of a community. To recognize only the Bay Center community would be unproductive, since that group, once federally recognized, could simply enact membership criteria that would make the others eligible for membership. Additionally, the work of Clifford Trafzer supports a finding of community up to 1990. See Trafzer, *The Chinook* (1990), and Exhibit T. Therefore, by a combination of evidence and taking account of the limitations inherent in demonstrating the historical existence of community, the evidence which is available is sufficient to show that [the petitioner], as a whole, meets criterion 83.7(b).

Alternatively, the AS-IA finds that [the petitioner] meets criterion (b) as a result of its prior federal recognition in the 1925 Act. As noted above, we will not presume an abandonment of tribal relations once the tribe is recognized. While the record is not conclusive, there is no affirmative indication of abandonment, and the voluntary pursuit of the [Indian Claims Commission] claim and this petition argue against any such abandonment. Thus, the evidence is adequate to find that [the petitioner] meets criterion (b).

66 Fed. Reg. at 1692.

Analysis and Conclusion on Reconsideration

Even though I believe that Issue 5, as framed by the Quinault Nation in its request for reconsideration, may somewhat mischaracterize a careful reading of the Final Determination, the Final Determination does rely heavily on its finding that Bay Center

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constitutes a “community” in order to determine that the petitioner as a whole meets that requirement. Thus, while the FD also invokes other evidence to support a finding that criterion (b) has been satisfied, it did not suggest that the other evidence, standing alone, would be sufficient for criterion (b). Thus, it is appropriate to reconsider the FD in the context of Issue 5 to clarify this issue and to apply the regulations correctly.

First, if the Quinault Nation is correct in its reading of the FD, and the FD did in fact “substitute” the Bay Center subgroup’s “community” to satisfy criterion (b) for the petitioner as a whole, the FD would be in error. Both the 1978 and 1994 regulations clearly require that a “substantial” or “predominant” portion of the petitioning group satisfy the requirement. And there are a variety of ways – whether through direct evidence or inferentially – for a petitioner to demonstrate this requirement. But a finding that a subgroup comprising a minority²³ of a petitioner’s members, viewed separately, would satisfy the definition of “community,” simply cannot be construed as meeting the regulatory requirement that the “community” criterion must be evaluated for the entire petitioning group. Otherwise, the words “substantial” and “predominant” no longer have meaning.

Second, the FD is simply wrong in its discussion stating that if Bay Center “satisfied” criterion (b), it makes no sense to require that showing by the petitioner as a whole because Bay Center could separately be acknowledged as a tribe, and then simply adopt the remainder of petitioner’s members into the tribe, ending up with the same result. The acknowledgment regulations expressly preclude such a sequence of events. Petitioners who have been acknowledged cannot then expand their membership lists after acknowledgment to add individuals who, if included in the group’s membership during their evaluation under the regulatory criteria, would have changed the group’s history or character to such an extent that it would not have met the criteria for acknowledgment. *See* 25 C.F.R. § 83.12(b); Preamble to 1994 Regulations, 59 Fed. Reg. at 9292 (“If the membership after acknowledgment expands so substantially that it changes the character of the group, then the validity of the acknowledgment decision may become questionable.”). Thus, to the extent that this discussion by the FD can be construed as “substituting” a finding that Bay Center satisfied criterion (b) for a demonstration that petitioner as a whole must satisfy criterion (b), the FD is in error and must be set aside and a reconsidered determination be made without that error.

Finally, because the FD could not properly rely on the Bay Center members to make a determination that petitioner satisfied criterion (b), I conclude that it is appropriate in issuing a reconsidered final determination to examine whether the other evidence – cited

²³ Not only must the petitioner show that a predominant proportion of the petitioner's members are involved in the petitioner's political processes and social interactions, but also that the remainder of the membership is connected, albeit less intensely, to the core membership and to the leadership of the petitioner. For example, the petitioner should be able to demonstrate that its members have from time to time voted, or participated in activities, or received information about the group's activities through formal or informal means.

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by the FD in combination with the Bay Center finding – can sustain the FD’s conclusion that petitioner satisfied criterion (b). As will be discussed more fully under Issue 6, claims activities by themselves have not been considered evidence of community. Similarly, acknowledgment activities, by themselves and without additional evidence of how a predominant portion of members actually interact or can be presumed to interact with one another, have not been considered sufficient to demonstrate the existence of community. If they were, that would make the separate requirement of “community at present” meaningless for previously acknowledged petitioners, because general acknowledgment activities are common to *all* petitions. As will be discussed in the Reconsidered Final Determination section of this decision, I conclude that petitioner does not satisfy criterion (b).

Issue No. 6

Did the previous Assistant Secretary improperly depart from the acknowledgment regulations and prior Departmental interpretations of those regulations, when he relied on claims activities as evidence of community and political authority under criteria (b) and (c) [25 C.F.R. § 83.7(b) and (c)]?

Introduction

In its request for reconsideration, the Quinault Nation contended that claims activities are not inherently evidence of political activity. The Quinault argued that the FD improperly departed from the regulations in the weight and significance afforded to Chinook claims activities to support a favorable finding under criteria (b) and (c). The petitioner argued that “there is no regulation precluding a finding that claims activities constituted evidence of community and political authority.” There is, however, Departmental precedent as to the meaning and effect to be given to claims activities in evaluating the regulatory criteria, including my recent final determination on the Duwamish petition. 66 Fed. Reg. 49966, 49967 (Oct. 1, 2001). The issue is not whether the regulations necessarily “preclude” a finding that claims activities may constitute *some* evidence of community and political authority, at least when combined with other evidence, but whether Chinook claims activities, by themselves, or in combination with the other evidence cited by the FD, are sufficient evidence to satisfy criteria (b) and (c).

The FD characterized Chinook claims activities and claims organizations as evidence supporting a determination that the petitioner satisfied the “community” and “political authority” criteria in the regulations. In prior decisions, the Department has not considered claims activities or organizations, standing alone, as demonstrating community or the existence of a political, bilateral relationship between the claims organization and its membership. Instead, the Department has required a fact-specific analysis of the claims activities and organizations to determine their actual character. Although the FD refers to other issues of interest to the leadership of Chinook claims

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organizations, it does not provide a fact-specific evaluation of the evidence relevant to whether the membership as a whole interacted with one another to satisfy the community criterion. Nor did the FD cite or analyze evidence of how the claims organization leadership interacted with the membership as a whole, or whether the claims and non-claims issues were of actual significance to the membership as a whole. Although the FD does not expressly announce a different standard under which Chinook claims activities are being interpreted, when evaluated as a whole, the FD implicitly assumes that Chinook claims activities inherently involved “social interaction” that was sufficient to satisfy criterion (b), and necessarily were of a “political” character to satisfy criterion (c). In so doing, the FD improperly relied on Chinook claims activities and improperly departed from the fact-specific evaluation that is required to determine the evidentiary character and weight to be given to those activities. In reevaluating the evidence under the proper standard, I conclude -- as did the Proposed Finding -- that the evidence regarding Chinook claims activities and claims organizations is insufficient for petitioner to satisfy criteria (b) and (c).

Regulatory Criteria and Departmental Precedent

For criterion (b), as discussed for the previous issue, the 1978 regulations require that a substantial portion of a petitioning group lives as a distinct community. Under those regulations, “community” means “any people living within such a reasonable proximity as to allow group interaction and maintenance of tribal relations.” 25 C.F.R. § 83.1(o) (1982). The 1978 Guidelines under those regulations provided under criterion (b) that “the petitioning group should demonstrate that a sizeable number of members live close enough to each other to meet, associate, and conduct tribal business on a regular basis, and that they do so.” BIA 1978, 8.

The 1994 revised regulations modified the definition of community to de-emphasize geographical proximity (although it may still be pertinent) and to focus instead on the underlying substance of the requirement -- “that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers.” 25 C.F.R. § 83.1 (1994). This change was consistent with the Department’s interpretation of criterion (b) to require social rather than geographical community. See BIA, 1978, 8; *Indiana Miami*, 112 F. Supp. 2d at 747.

While criterion (b) requires the existence of community, criterion (c) requires that a petitioning group demonstrate the governmental character of the group, and the existence of a bilateral political relationship between the group and its members. Both the 1978 and 1994 regulations require that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. 25 C.F.R. § 83.7(c) (1994); 25 C.F.R. § 83.7(c) (1982). For previously

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acknowledged petitioners like Chinook,²⁴ however, the 1994 regulations reduced the evidentiary burden. They must only demonstrate that they meet section 83.7(b) at present, and show political influence from the point of last Federal acknowledgment by “substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in § 83.7(c).” 25 C.F.R. 83.8(d)(3) (1994). Alternatively, if a petitioner cannot make this showing, the petitioner may demonstrate criterion (c) from the last point of Federal acknowledgment to the present by standard evidence under § 83.7(c). 25 C.F.R. § 83.8(d)(5) (1994).

Except for the Chinook Final Determination, the Department has never taken the position that Indian claims organizations by themselves demonstrate social interaction among the organizations’ members to satisfy criterion (b). Such interaction cannot be inferred simply from the existence of the organization and a membership list. Similarly, the Department has not viewed evidence of claims activities, by itself, as sufficient to demonstrate criterion (c). *Duwamish FD*, 66 Fed. Reg. at 49967; see *Cowlitz FD*, TR 76-79 (distinguishing between voluntary claims organization and tribal organization). Claims organizations have sometimes represented individual descendants who were not in tribal relations, sometimes represented tribal entities, and sometimes represented both descendants and tribal entities in a combined organization. Because a claims judgment award may be distributed based on Indian ancestry, without regard to present-day tribal relations, the Department has taken the position that claims activity is not *inherently* a political activity. See, e.g., Memorandum in Support of Defendant’s Motion for Summary Judgment 39-40 (July 30, 1999), *Miami Nation of Indians of Indiana v. Babbitt*, No. S92-586 RM (D. Ind.); *Indiana Miami*, 112 F. Supp. 2d at 750 (Department didn’t consider the activities of the three different Miami claims organizations to be sufficient to show bilateral political relations between tribal leaders and members). Thus, the Department has found it necessary to look behind the existence of the claims organization and to engage in a fact-specific analysis to determine the character and evidentiary weight to be afforded to claims organizations and their activities.

The Snoqualmie Final Determination explained that claims are likely to be a significant political issue where the loss directly affected living members of the group. On the other hand,

where land was lost many generations earlier, this would not *in itself* show that a claim for recovery or payment is now an issue of such political significance among the membership that it is good evidence to show the group meets the requirements of criterion 83.7(c). It would not

²⁴ Although I conclude that the 1911, 1912, and 1925 statutes, separately or in combination, do not constitute previous Federal acknowledgment within the meaning of the acknowledgment regulations, it is not disputed that historical Chinook bands were recognized on a government-to-government basis at the time of the treaty negotiations in the 1850’s.

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automatically meet the test of substantially affecting the lives of the individuals. The petitioner instead would be required to show directly by specific evidence that the loss for which a claims settlement was being sought had direct relevance to the members.

Snoqualmie FD, 91 (1997); *see also Indiana Miami FD*, TR 61 (1992).

To summarize, the character and evidentiary weight to be afforded claims organizations and their activities depends on specific evidence in addition to the existence of such organizations or the identification of issues addressed by the organizations. If the sole focus was claims, what evidence shows that it was or was likely to be of significance to the membership as a whole? If other issues were of interest to the leadership, what evidence shows that those other issues were or were likely to be of significance to the membership as a whole? And for demonstrating community, what specific evidence shows that the broader membership had consistent and significant social interaction, either with one another or with members of a core group?

1997 Proposed Finding

The Proposed Finding, evaluating the evidence for criterion (b) under the 1978 regulations, discussed in detail Chinook claims organizations and related activities. It concluded that the evidence available from 1880 to the present was not sufficient to satisfy criterion (b).

Similarly, for criterion (c), the Proposed Finding extensively discussed the evidence of Chinook claims organizations and the activities those organizations undertook. It noted that there “is no available evidence of any activities of a formal Chinook tribal organization between 1925 and 1951, or even of the existence of such an entity.” *Chinook PF*, 29. For the post-1951 period to the present, the PF discussed the Chinook claims organizations, but concluded that the evidence of activities by and issues of interest to the leadership was insufficient to satisfy criterion (c), which requires political processes involving membership as a whole. The PF noted also that there was insufficient information concerning internal political processes from 1970 to the present. *Chinook PF*, 32-36. The PF concluded that the petitioner did not satisfy criterion (c) from 1856 to the present.

2001 Final Determination

Claims Activities and Criterion (b) – Community Requirement

The Final Determination contains little discussion of how Chinook claims activities fit into its finding that the requirements of criterion (b) have been satisfied. The FD appears to have relied at least in part on claims activities as evidence of social interaction, although the FD also refers to the acknowledgment petition for evidence of community at present. The *Federal Register* notice for the FD stated that “the willingness of the Bay

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Center community to join with others to pursue the [Indian Claims Commission] claims and this [acknowledgment] petition process also tends to demonstrate the existence of a community.” 66 Fed. Reg. at 1692.

Discussing the specific evidence, however, the FD noted that “[b]y the 1950's, the interviews describe interactions with other Chinooks who are not immediate relatives as rare and remarkable. Their entree to other Chinook, for many of those interviewed, is through their parents and grandparents, rather than their own personal experience.” *Chinook FD*, 69. The FD also described the types of research and evidence that had been suggested to the Chinook in the Proposed Finding, but noted that documentation subsequently submitted by the petitioner “did not include significant documentation concerning 1950 to 1994.” *Id.* at 69-70.

Despite this evidence or lack of evidence, the FD concluded,

a dearth of community participation, small groups allying themselves to make their voice heard, and obscure modes of decision-making, do not necessarily show a lack of community, as many communities, both Indian and non-Indian, function the same way today. Moreover, the Tribe was sufficiently organized during this period to pursue its claim before the Indian Claims Commission, and participate in the preparation of a judgment role [*sic*], although the claim has not yet been paid. Further, the tribe has pursued this petition since the late 1970's and created a tribal roll, all of which requires social interaction to some degree.

Chinook FD, 70.

Thus, the FD relied upon Chinook claims organizations for a showing of community from the 1950's to the 1970's, and on the petitioner's pursuit of the acknowledgment petition since the late 1970's (in combination with the Bay Center portion of petitioner's members), in finding that petitioner constituted a community and satisfied criterion (b). As described above, the Proposed Finding's analysis of this evidence concluded that it did not satisfy the requirements of criterion (b).

Claims Activities and Criterion (c) – Political Authority Requirement

The Final Determination relied heavily on the Chinook claims organizations to find that criterion (c) had been satisfied:

The AS-IA concludes that the [Proposed Finding] insufficiently analyzed the claims organizations. These were not merely paper creations of lawyers wanting to recover large contingent fees when the claims were won. They were transitional political groups, which gave an opportunity for the Chinook people to coalesce around a central goal. Although at first voluntary organizations, they were only open to persons who could show a

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degree of Chinook blood, and they all proved to be precursors of the formalized, complex, political organization that petitioner now reflects. Moreover, the Chinook's first, rather rudimentary organization was not confined to claims, but [was] also involved in health issues, union organizing and fishing issues. Chinook Historical Technical Report, p. 47; Chinook Anthropology Technical Report, pp. 93-97. Clearly the Chinook were looking to improving their welfare by improving their organization. After passage of the 1946 Indian Claims Commission Act, there was a formal "Chinook Tribal Council," formed in 1951, which split into two factions in 1953. Chinook Historical Technical Report, pp. 55-57; Chinook Anthropology Technical Report, pp. 98-100, 103-114. Although the two groups were at first concerned primarily with the claims case, the constitutions adopted by the two factions were governmental in nature, and were not confined to pursuing litigation. Chinook Historical Technical Report, p. 59. For example, the Chinook Tribes, Inc., concerned itself with the handling of human remains and artifacts, and expressed an interest in further archaeological investigation of their past. Chinook Historical Technical Report, p. 61; Chinook Anthropology Technical Report, pp. 126-129. This activity has continued to the present-day, although now the focus is on tribal recognition. In organizing to support their claims, the Chinook grew from an embryonic political entity, mobilizing its members and their resources for a group purpose, and even the internal factionalization provided in 25 C.F.R. § 83.7(c)(1)(v) has not been absent. Coupled with the overarching fact that the Chinook were legislatively recognized on two occasions, the political influence criterion, section 83.7(c), has been met in the judgment of the AS-IA.

Chinook FD, 74. Similarly, the *Federal Register* notice for the FD stated that the Chinook "claims organizations were effectively transitional governing bodies and, from the 1920s until the 1950s were evolving into bodies exercising modern political authority and influence. For this reason, they must be accorded the status of organizations wielding political authority and meeting the requirement of political influence or other authority in 25 C.F.R. 83.7(c)." 66 Fed. Reg. at 1693.

In summarizing its conclusion for criterion (c), the FD specifically acknowledged that "[t]he record for this case lacks specific examples of an internal, informal political process among the petitioner's ancestors, or of political leadership or influence over the petitioner's ancestors as a group between 1855 and 1925." *Chinook FD, 75.* Based on Congress' enactment of the 1911, 1912, and 1925 legislation, however, the FD inferred that a Chinook political entity, exercising political authority, must have existed from the turn of the 20th century until 1925. Alternately, the FD concluded that the unambiguous previous Federal acknowledgment embodied in the 1925 Act also provided the basis for concluding that petitioner satisfied criterion (c) through 1925.

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Thus, under the 1978 regulations, the FD relied on congressional enactment of the 1911, 1912, and 1925 Acts as sufficient evidence for demonstrating that a Chinook tribal entity existed and that political influence or authority was exercised within that group from 1855 through 1925. Under both the 1978 and 1994 regulations, for the period between 1925 and approximately 1970, the FD relied primarily on the Chinook claims organizations and their activities as sufficient evidence for meeting criterion (c). At the same time, however, the FD noted that there was “no evidence describing how a political process within a group of Chinook descendants actually functioned prior to 1951.” *Chinook FD*, 74. And in discussing criterion (a), the FD stated that while it concluded that the evidence was sufficient to demonstrate that a Chinook entity existed between 1927 and the present, “[t]he identifications of Chinook organizations between 1951 and the 1970's were of organizations which did not appear to include the petitioner as a whole and do not have clear continuity with the petitioner’s organization.” *Chinook FD*, 52. For the present period, the FD apparently relied on the petitioner’s pursuit of its acknowledgment petition as demonstrating the exercise of political influence or authority within the group.

Analysis and Conclusion on Reconsideration

Claims Activities and Criterion (b) – Community Requirement

I have already concluded that, to the extent the FD relied on Bay Center as constituting a community, in finding that the petitioner as a whole satisfied criterion (b), it was in error. The FD also relied in part on the petitioner’s claims organizations as necessarily showing the existence of community among the petitioner’s members during the time when those organizations were active. I now conclude the FD also erred in this respect, not because claims organizations and activities *cannot* constitute some evidence, when combined with other evidence, of social interaction and community, but because in this case the record is lacking sufficient evidence to demonstrate that the Chinook claims organizations did in fact function in a way that involved social interaction among a predominant portion of the membership, or that other evidence, in combination, demonstrated community. On reconsideration, this issue is relevant to evaluating criterion (b) under the 1978 regulations. Under the 1994 regulations, however, the claims activities are not directly relevant to whether or not petitioner satisfies the “community” requirement at present, because those activities pre-date the present period.

Claims Activities and Criterion (c) – Political Authority Requirement

The demonstration of a substantially continuous existence of a petitioning group, as an Indian tribe, throughout history until the present, is a fundamental requirement in the acknowledgment regulations. 25 C.F.R. § 83.3(a). Under those regulations, the Department may exercise authority to acknowledge tribes that have existed continuously since historical times to the present, but may not acknowledge groups that do not establish such continuity with a historical tribe. By describing the presumed Chinook organization in the 1920's as “the Chinook’s first, rather rudimentary organization,” the

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FD in essence conceded that there was discontinuity between the historical Lower Band of Chinook and the organization purportedly formed in the 1920's. The same is true when the FD characterizes the Chinook claims organizations as "at first voluntary organizations," and "precursors" to petitioner's present "political organization." In other acknowledgment decisions, the Department has distinguished between voluntary organizations and tribes. See, e.g., *Snoqualmie FD*, 15 and TR 90. And rather than describing political continuity between the historical Lower Band of Chinook and the Chinook claims organizations, the FD describes the petitioner as growing "from an embryonic political entity." *Chinook FD*, 74. Thus, even aside from how the FD treated the *character* of the claims organizations and activities themselves for purposes of criterion (c), it erred by not showing the *continuity* necessary to satisfy criterion (c).

In addition, I conclude that the FD improperly departs from how the Department has evaluated claims organizations and activities in the acknowledgment process. As previously discussed, claims organizations may represent the activities of a tribe and its members, or they may only represent the committed efforts of a small group of individual descendants, having no interaction with the broader "membership," and exercising no political authority at all over that membership. What is critical in evaluating claims organizations and their activities is to consider what other evidence may exist to demonstrate the actual character and evidentiary weight to be given to such claims activities.

Chinook claims activities were all centered around historical claims arising from the treaty negotiations with the United States in the mid-19th century, and the Government's subsequent appropriation of Chinook aboriginal lands and territory. The Senate had not ratified the 1851 treaty with the Chinook bands, the Government did not pay the Chinooks the amounts negotiated in the unratified treaty, and yet the Government still allowed non-Indian settlers to appropriate lands in Chinook territory. It need not be questioned that the leadership of the Chinook claims organizations that were formed in the 20th century were deeply committed to obtaining compensation for Chinook descendants. But the losses on which the claims were based were not losses experienced by living members of the groups.²⁵ Thus, it cannot be assumed that these claims were of significant or widespread actual interest to the descendants who formed the "membership" of these groups by virtue of their descendancy and entitlement to share in a potential judgment. The FD did not identify or discuss leaders within the group, identified by knowledgeable outside sources, as permissible under section 83.8(d)(3) of

²⁵ The first evidence of Chinook claims activity is in 1899, when 37 Chinooks signed a contract with an attorney to pursue claims. If some or all of these individuals were living members of the Lower Band of Chinook in 1851, the alleged losses would have occurred in their lifetime. The signators of the contract, however, did not purport to sign as representatives of an organized tribe or group. Instead, they signed as individuals, and the contract recited that they no longer had tribal leadership. The organizers and leaders of subsequent Chinook claims organizations were not individuals who had directly experienced the loss of Chinook lands, but were instead descendants of such individuals.

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the 1994 regulations. Nor did the FD cite evidence for, nor make an analysis of, the actual political processes deemed to be at work in the Chinook claims activities. It did not analyze the Chinook claims activities to determine whether actual political influence or authority existed and incorporated a predominant portion of the petitioner's membership. Instead, the FD relied on the existence of Chinook claims organizations as a substitute for the evidence required by the regulations and by Departmental precedent to establish criterion (c). No attempt was made to find that the 1925 and 1951 claims organizations actually were "political," were evolutionary stages of a single entity, and had political continuity with the Lower Band of Chinook. The FD made no attempt to determine the nature, composition, and actual decision-making processes of any of these claims organizations or their continuity with the petitioner. Indeed, the FD specifically notes that the evidence does not demonstrate clear continuity with petitioner. *Chinook FD*, 52. The FD did not evaluate the nature of the variously named organizations, their memberships, the relationship between the leadership and the membership, the way in which the leadership asserted authority over members or how members influenced leaders, as required under the regulations if external identification of the leaders or a governing body is not available.

Issue number 6 asks whether the FD improperly relied on Chinook "claims activities" as evidence of political authority. Although these claims activities, by themselves, are not sufficient to demonstrate criterion (c), it is still possible that evidence of other activities by the Chinook claims organizations could indicate that there were, in fact, political processes at work. In other words, the additional question to be addressed here is whether the FD's reliance on the *claims organizations* to demonstrate criterion (c) was improper.

In relying on the Chinook claims organizations as "transitional governing bodies" that demonstrated the exercise of political authority, the FD does not rely solely on the claims activities of those organizations. Instead, the FD refers to additional issues purportedly of interest to the organizations – health, union organizing, fishing, preservation of cultural artifacts and human remains. Therefore, in order to determine whether the FD improperly departed from the regulations and acknowledgment precedent in relying on the Chinook claims organizations' evidence of political authority and a bilateral political relationship between the entity and its members, it is necessary for me to examine the other activities referred to in the FD. On close examination, the evidence relied on by the FD does not support the conclusion that these claims organizations exercised political authority over their membership or that there existed a bilateral political relationship between the organization and its members.

The FD's reference to "health" issues as being of concern to the Chinook claims organizations apparently relies on recent recollections of a non-Indian woman, described in the Historical Technical Report:

An 82-year-old woman said that during her service with a county Tuberculosis League from 1935 to 1952, the "Chinook Tribal Council"

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requested a report for its “annual meetings” in June. She recalled that, in 1937, a “Chinook Tribal Council” had organized examinations of Chinooks for tuberculosis.

Chinook PF, HTR 47. There is no contemporaneous evidence or documentary record of a “Chinook Tribal Council” as functioning during the 1930's or 1940's. Nor is there evidence of the composition of such a group, or continuity between it and the petitioner. This isolated recollection of a single individual, remembered years later, is not sufficient evidence to show that Chinook claims organizations were actively involved in health issues or that it was a significant issue for a predominant portion of the membership.

The FD also referred to “union organizing” as an activity in which Chinook claims organizations were involved. But the source relied upon -- the PF Historical Technical Report -- does not indicate that a Chinook entity was involved and does not provide evidence that the Chinook petitioner was involved as a group in fishing labor issues, making group decisions, or influencing the president of the union:

An 81-year-old man, who served as president of a fishermen's union from 1938 to 1962, recalled attending Chinook meetings in the early 1930's. Meeting minutes listed him as a committee member during the 1950's, however, so he may have misstated the decade.

Chinook PF, HTR 47. Again, this recollection of a man who apparently was not Indian (or at least not Chinook) is simply too vague to constitute sufficient evidence that the petitioner, or a predecessor organization of petitioner, was involved in union organizing for a Chinook tribal membership. Also, the evidence indicates that the fishermen's union itself was not an “Indian” union. See *Chinook PF*, HTR 46 n.10.

Similarly, the Indian fishing activities led by George Charley in the 1920's, also cited in the FD as evidence of political activities, are not clearly linked to a “transitional” Chinook tribal entity -- whether a claims organization or something else. And they are not clearly linked to the activities of a political entity of which the petitioner is the successor. The FD relies on the Anthropology Technical Report, which discussed the activities of George Charley, the chief of the Shoalwater Bay Reservation before 1929 (citing *Chinook PF*, ATR 30, 93-96). George Charley undoubtedly was a leader of Indian fishermen, hop-pickers, and a baseball team. But the evidence does not demonstrate that his leadership or those he led were part of a Chinook organization that was a predecessor to the petitioner. At most it indicates that some of the ancestors of the petitioner's members were among a larger group of Indian fishermen led by George Charley.

For example, the names of people standing with George Charley in a photograph -- one of the only documents available showing some of his associates -- are described in the ATR as “from the north end of Shoalwater Bay, with the exception of Joe Mechals, whose family lived in the town of Chinook [on the Columbia]. There is no one . . . from Dahlia

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[on the Columbia].” *Chinook PF*, ATR 94.²⁶ An Indian fishing case in 1924 included testimony from some Bay Center Indians and William Elliott from Dahlia, although there was no indication that Elliott actually fished with Charley. *Chinook PF*, ATR 94.²⁷ Instead, he testified about historical fishing areas. A newspaper article discussed George Charley’s fishing contract on the Columbia River in 1924, stating that “he was leader of about 100 Indians on Willapa harbor.” *Id.* The ATR explained that this reference was not referring only to Indians on the Shoalwater Bay Reservation, and that the author apparently had in mind the Indians of Bay Center as well. *Id.* at 94 n.48. But there was no evidence that the Chinook descendants living in Dahlia or Ilwaco were included in this group. Thus, while some of petitioner’s ancestors appear to have been among the fishermen led by George Charley, the evidence is not sufficient to conclude that Charley’s activities encompassed a predominant portion of the petitioner. Instead, it indicates leadership activities of the chief of a recognized tribe – the Shoalwater Bay Indian Tribe – and perhaps some individuals who lived in nearby Bay Center.

The preservation of Chinook cultural artifacts and human remains is also identified in the FD as one of the non-claims issues relied upon to demonstrate that the claims organizations were exercising political influence, as required by criterion (c). The FD cites to the Historical Technical Report, p. 61, and Anthropology Technical Report, pp. 126-29. Those reports, however, do not describe evidence sufficient to give these issues the character or evidentiary weight afforded them in the FD. The HTR describes a visit by an anthropologist to one of the Chinook Tribe, Inc., meetings, in which she encouraged them to do “family trees.” Information from the same meeting refers to another anthropologist’s fees paid through their attorney – indicating that these activities were claims-related. The ATR discussed Grant Elliott’s leadership in 1951, and indicated that he showed “some interest” in cultural preservation, and hunting and fishing rights. *Chinook PF*, ATR 128-129. This evidence of claims-related genealogical work and Grant Elliott’s interest in cultural preservation is insufficient to indicate the existence of a bilateral political relationship between the leaders and the group’s members. The evidence in the record does not indicate what portion of the overall membership were involved in the claims-related genealogical activities, nor does it indicate actual activities undertaken by Grant Elliott regarding cultural preservation, hunting, and fishing rights. However interested Grant Elliott was in these issues, the evidence does not demonstrate the level of interest among the membership as a whole or of a political process between the leadership and members.

In summary, the evidence of these issues – health, union organizing, fishing, preservation of cultural artifacts and human remains – in this case is insufficient to demonstrate that they were associated with or of interest to a significant number of petitioner’s ancestors,

²⁶ Joe Mechals’ descendants are members of petitioner.

²⁷ William Elliott has descendants in who are members of the petitioner.

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or that the Chinook claims organization activities relied on in the FD demonstrated the exercise of political authority by those organizations.

The FD also refers to “factionalism” between the Chinook claims organizations between 1951 and 1958 as evidence of a political structure. Factionalism refers to political divisions within a single political and social system, and not to arguments among individuals or a conflict for power between two distinct groups that are unconnected except for overlapping membership lists. *See Eastern Pequot PF*, 149.

The Proposed Finding did not find sufficient evidence to confirm that the split referred to in the FD was “factional” and represented two political groupings within a single organization. Instead, the supporting Anthropological Technical Report came to the conclusion that the two Chinook groups in the 1950's appeared to be geographical, and to have somewhat distinct histories. *Chinook PF*, ATR 128-129. The 1951 “Chinook Tribe,” organized under the leadership of John Grant Elliott at the time he signed a petition to the Indian Claims Commission on behalf of the Chinook tribe, was started in the Dahlia/Skamokawa area. The competing organization, Chinook Tribe, Inc., was formed in 1953, when Myrtle Woodcock – secretary to the original organization – called a meeting in Bay Center, and the group elected new officers of the new organization. *See Chinook PF*, HTR 55-57. Roland Charley, president of Chinook Tribe, Inc., apparently did not know John Grant Elliott. Historical Technical Report at 57. The evidence in the record does not indicate that these two groups had interacted on significant issues prior to 1951, or that the “split” in 1953 was based on political disagreements emerging within a single tribal entity. *See Chinook PF*, ATR 128-129. As such, the evidence of “factionalism” – particularly when viewed in the context of the absence of evidence that non-claims issues were and had been of significant interest to a predominant portion of the membership – is not sufficient to demonstrate political processes at work within a single political entity.

The Final Determination’s reliance on the constitutions and “organic documents” of the Chinook claims organization, as demonstrating actual political activity and processes, is similarly misplaced. The FD stated that “[a]n examination of the organic documents show[s] that the claims groupings were concerned with matters of wide-spread interest affecting the community as a whole, and were not merely instrumentalities for the pursuit of claims.” *Chinook FD*, 75; *see FD* at 74. No prior acknowledgment final determination has accepted statements in the organic documents as sufficient evidence that a group actually operated as the documents prescribe. Instead, it is necessary for petitioners to produce separate, sufficient evidence to confirm that the recitations of past or present issues and objectives are matched by actual activities involving the broader membership of the group. As stated in my Duwamish Final Determination, “[a] constitution’s statement of purposes . . . does not show the maintenance of actual political participation by members or the political influence of a group over its members.” *Duwamish FD*, 51.

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In summary, I conclude that the FD improperly relied on Chinook claims organizations and their activities in finding that criteria (b) and (c) were satisfied. Because the FD cannot be sustained in reliance on that evidence, I must make a reconsidered final determination whether other evidence in the record as a whole, and particularly evidence provided in response to the Proposed Finding, is sufficient to sustain the FD's conclusion that criteria (b) and (c) were satisfied. As discussed in the Reconsidered Final Determination section of this decision, I conclude there is not.

Issue No. 7

Did the previous AS-IA improperly give the Chinook petitioner a presumption of continued existence?

In its request for reconsideration, the Quinault Nation contended that the FD improperly presumes the continued existence of the Chinook tribe, contrary to the acknowledgment regulations. The petitioner argued that a presumption of continued tribal existence is consistent with the 1994 regulations. I disagree with the petitioner.

The Department's position in acknowledgment proceedings, upheld in litigation, is that there is no general "presumption of continued existence" for petitioners who previously have been unambiguously federally acknowledged. *U.S. v. Washington*, 641 F. 2d 1368, 1374 (9th Cir. 1981); *Indiana Miami*, 887 F. Supp. at 1169. Rather, the evidentiary benefits afforded previously acknowledged petitioners are already reflected in the streamlined provisions incorporated in the 1994 acknowledgment regulations.

Both the Final Determination itself and the *Federal Register* notice of that determination expressly reaffirmed the general principle that continuity of tribal relations is not presumed for previously acknowledged petitioners. At the same time, however, the *Federal Register* notice also asserted that the FD would not "presume an abandonment of tribal relations once the tribe is recognized," 66 Fed. Reg. at 1692, and that while the record was "not conclusive," there was "no affirmative indication of abandonment," *id.* In addition, the FD stated that "[s]uch a legislative recognition is definitive," that "because there has been no voluntary abandonment, the recognition stands," and that "the express statutory recognition . . . is . . . the substance of that which is being sought to be proved." *Chinook FD*, 9, 11. These additional statements seem to suggest for a group that has been previously acknowledged, a favorable determination is required unless the Department satisfies some burden to show evidence affirmatively indicating abandonment. If that is what was meant, the FD is incorrect, and not consistent with the burden of proof placed on petitioners by the regulations – including those who were previously acknowledged.

The regulations provide that the burden of proof is on a petitioner to demonstrate its continued tribal existence. As stated in the preamble to the regulations, the question before the Assistant Secretary is whether the level of evidence in the record is high

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enough, even in the absence of negative evidence, to demonstrate by a reasonable likelihood that a petitioner has satisfied the regulatory criteria. 59 Fed. Reg. at 9280. By stating that there was “no affirmative evidence of abandonment,” and that the statutory recognition was “definitive,” the FD appears incorrectly to imply that for previously acknowledged petitioners the absence of negative evidence may itself carry evidentiary weight in favor of the petitioner. That is not the case. Even though the 1994 regulations reduce and streamline the evidentiary burden for previously acknowledged petitioners, they still retain the burden of proof placed on petitioners to satisfy the regulatory criteria and standards.

The language in the FD appears to be internally inconsistent, and thus it is simply not clear whether the FD actually intended to apply a presumption of continuing existence or shift the burden of proof. What is apparent, however, is that the FD relied overwhelmingly – and improperly – on the 1911, 1912, and 1925 statutes, and on Chinook claims organizations between 1925 and 1970, to conclude that the petitioner had satisfied criteria (a), (b) and (c) of the regulations. It may be that the FD intended to give “greater weight” to the evidence upon which it was relying – claims organizations and the acknowledgment petition activities, based on the existence of the three statutes. See Notice of Cowlitz Final Determination, 65 Fed. Reg. 8436 (February 18, 2000) (stating that “evidence submitted by previously acknowledged petitioners concerning their continued existence is entitled to greater weight,” and referring to the preamble to the 1994 regulations). However, the statement in the 1994 preamble about giving “greater weight” to evidence of continued existence for previously acknowledged petitioners was referring to the streamlined demonstration of criterion (c) in section 83.8. In other words, the 1994 regulations already incorporate the “greater weight” concept in the regulatory requirements themselves, both as to the reduced evidentiary requirements and the appropriate timeframes for which evidence is required. There is no separate “greater weight” generically given to evidence submitted by previously acknowledged petitioners.

The Final Determination relied on the three statutes as evidence demonstrating the existence of community and the exercise of political authority. As the FD specifically noted, “[w]ere it not for the acts of Congress in 1911, 1912, and most importantly, 1925, it would not have been possible to make a positive determination on the evidence presented.” *Chinook FD*, 79. Because the FD’s interpretations of the three statutes was incorrect, the weight given to the statutes as evidence, and any suppositions or “greater weight” afforded to other evidence, based on the interpretation of those statutes, are necessarily invalidated. In addition, to the extent that the FD’s “no affirmative evidence of abandonment” and “greater weight” language can be construed as adopting an implicit “presumption of continued existence” independent of what is already reflected in the regulations themselves, for petitioners who have been previously acknowledged, it was incorrect.

I believe that this clarification suffices to respond to the Secretary’s referral on this issue, and that it need not be addressed further. In addition, because I have already concluded that a Reconsidered Final Determination for criteria (a), (b) and (c) is required on other

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grounds, any general “presumption of continued existence” – to the extent it may be embedded in the FD -- will be corrected in my reconsideration of those criteria.

Issue No. 8

Was the previous AS-IA’s decision improperly based on the advice and recommendation of a “consultant” retained by the AS-IA to provide input outside of the regular Departmental decision making process?

The Secretary referred this question to me because it “raises questions about the authority of the AS-IA to retain and rely on the findings of consultants and whether the use of a consultant by the previous AS-IA in the Chinook proceedings compromised the decision making process.” I conclude that the Assistant Secretary has authority to retain and rely upon the expertise of an outside consultant in considering matters before him, including the Chinook acknowledgment petition. As to the second part of the question, it cannot be determined from the record how the consultant may have affected the conclusions of the Final Determination, and thus I cannot determine whether or not the use of a consultant improperly affected the Chinook proceedings. More importantly, because of my conclusions on the other issues referred by the Secretary, I do not rely on the use of a consultant as a ground for issuing this Reconsidered Final Determination on the merits. For that reason, I need not decide this second part of the question.

5 U.S.C. § 3109 Consultant Hiring Authority

The Department may appoint experts and consultants on a temporary or intermittent basis under the authority of 5 U.S.C. § 3109. The Office of Personnel Management (OPM) regulations at 5 C.F.R. Part 304 implement this authority and provide: “[w]hen authorized by an appropriation or other statute to use 5 U.S.C. § 3109, an agency may appoint a qualified expert or consultant to an expert or consultant position that requires only intermittent and/or temporary employment.” 5 C.F.R. § 304.103(a)(1). The Department’s appropriations acts provide authority to utilize 5 U.S.C. § 3109. *See e.g.* Public Law 106-291, Sec. 103 2000.

The Departmental Manual requires approval by the Assistant Secretary - Policy, Management, and Budget before a bureau or office may engage an expert or consultant. *See* 307 DM 304. The office must make certain determinations, including the necessity of the services and the rate of compensation.

The OPM regulations set out the primary limitations on the use of experts and consultants at 5 C.F.R. § 304.103(b). The term “consultant” means, “a person who can provide valuable and pertinent advice generally drawn from a high degree of broad administrative, professional, or technical knowledge or experience.” 5 C.F.R. § 304.102(b). A “consultant position” is one that “requires providing advice, views,

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opinions, alternatives, or recommendations on a temporary and/or intermittent basis on issues, problems, or questions posed by a Federal official.” 5 C.F.R. § 304.102(c).

As long as the consultant was retained and used in a manner consistent with the authorizing statutes and implementing regulations -- an issue I need not decide -- I conclude that the previous Assistant Secretary had the authority to retain and rely on a consultant in considering the Chinook acknowledgment petition. The actual final decision was made by the Assistant Secretary, and nothing precluded him from relying on assistance and advice from a consultant in reaching his decision.²⁸

Conclusion on Reconsideration of the Issues Referred by the Secretary

The Final Determination explicitly relied on the 1911, 1912, and 1925 statutes, and on Chinook claims activities between 1920 and 1970, in deciding that petitioner met criteria (a), (b) and (c), and in reaching a favorable decision to acknowledge the Chinook petitioner. On reconsideration, I conclude that none of these three statutes is properly interpreted as evidence that the Federal Government understood or identified the Chinook as still existing at the time the statutes were enacted. More importantly, I conclude that the 1925 claims statute was not “clearly premised” on the existence in 1925 of a Chinook political entity with a government-to-government relationship with the United States. That is what the acknowledgment regulations expressly require for finding that a petitioner has been unambiguously previously acknowledged by the Federal Government. I also conclude that the FD improperly relied on the petitioner’s members or ancestors living in Bay Center, combined with petitioner’s claims and acknowledgment activities, to find that the petitioner as a whole met the requirement of community, criterion (b). With respect to Chinook claims organizations and their activities, I conclude that the FD incorrectly relied on them as sufficient evidence for satisfying criteria (b) and (c) under either the 1978 or 1994 regulations. For the “presumption of continuing existence” issue, I have clarified and restated the Department’s position that there is no such presumption and that evidentiary benefits afforded to previously acknowledged petitioners are already incorporated in the regulations. To the extent that the FD contains erroneous or misleading statements concerning this issue, it will be corrected in the Reconsidered Final Determination. And

²⁸ The Department also has authority to procure the assistance of outside contractors. Unless legislatively prohibited, every agency has inherent authority to enter into contracts to procure goods or services for its own use, as long as the purpose of the procurement is reasonably related to the agency’s mission. GAO 1992, 10-11. *See also* Council on Environmental Quality and Office of Environmental Quality – Cooperative Agreement with National Academy of Sciences, B-218816, 65 Comp. Gen. 605 (1986) (“In general, every agency has inherent power to enter into contracts to provide for its needs.”). The procurement of services from an outside individual to provide assistance and recommendations to an Assistant Secretary in considering an acknowledgment petition is reasonably related to the Department’s mission.

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finally, I conclude that the previous Assistant Secretary had authority to retain an outside consultant to assist him in his consideration of the Chinook petition.

Because I have concluded that the FD erred with respect to the weight and relevance given to the three statutes, its reliance on petitioner's Bay Center's members, and its reliance on Chinook claims activities, I have determined that a Reconsidered Final Determination must be issued on the merits with respect to criteria (a), (b), and (c). The Reconsidered Final Determination, which follows, retains those portions of the Final Determination that are not affected by my decisions on the issues referred by the Secretary.²⁹

²⁹ Although the IBIA concluded that the Quinault Nation had failed to show that the Final Determination was not supported by reliable or probative evidence, the IBIA only examined the evidentiary issue in the context of accepting the Final Determination's interpretations of the three statutes, and its apparent interpretation of the acknowledgment regulations as consistent with its reliance on the Bay Center subgroup and the evidentiary weight and significance afforded to Chinook claims organizations and their activities. Because the Final Determination erred on these threshold issues of legal and regulatory interpretation, the IBIA's review and conclusions regarding matters within its jurisdiction do not preclude me from reexamining the evidence for criteria (a), (b), and (c), to the extent required by my conclusions on the issues referred to me by the Secretary.

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THE RECONSIDERED FINAL DETERMINATION

The scope of this Reconsidered Final Determination is limited to those questions reached by the eight issues referred for reconsideration by the Secretary of the Interior (Secretary of the Interior 2001). These issues require a reconsideration of only criteria (a), (b), and (c), the three criteria not met according to the Proposed Finding but met according to the original Final Determination. This Reconsidered Final Determination is based on a reconsideration of the original Final Determination and all the evidence in the record in accordance with the analysis, as presented above, of the eight referred issues.

This Reconsidered Final Determination is based on a consideration of the evidence available for the Proposed Finding and its supporting anthropological, genealogical, and historical technical reports; the new evidence and arguments submitted by the petitioner and third parties in response to the Proposed Finding, and charts that summarized that documentation for the original Final Determination; and the materials submitted by the petitioner and third parties to the Interior Board of Indian Appeals and the Secretary of the Interior after the original Final Determination. The Reconsidered Final Determination is based on all of the evidence before the Department.

For the reasons set forth above in response to the eight issues referred by the Secretary of the Interior, the original Final Determination has been modified by deleting from it all language which improperly departed from the Department's regulatory standards and precedent in acknowledgment determinations. The determination on the petitioner's status has then been reconsidered on the basis of the remaining analysis and the evidence in the record. Such a Reconsidered Final Determination follows below.

The original Final Determination on whether or not the Chinook petitioner meets criteria (a), (b), and (c) is superseded by this Reconsidered Final Determination. The *Federal Register* notice of the Chinook Final Determination published on Jan. 9, 2001, is superseded by the publication of a notice in the *Federal Register* of this Reconsidered Final Determination.

Administrative History

For the administrative history of the petition, and brief overviews of both the Proposed Finding and the original Final Determination, see the "Summary of Proceedings" above in the discussion of the issues referred by the Secretary of the Interior.

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On February 26, 2002, I requested from the Secretary an extension of 120 days in which to decide this matter on reconsideration. On March 5, 2002, the Secretary granted that request. In response to this request, however, the Department received a number of comments in the form of letters from persons outside the Department, some of which expressed views on how I should decide this matter on the merits. There is no provision in the regulations, however, for public comment following the Secretary's referral. Therefore, I have not considered these unsolicited comments, received outside of any public comment period, in making this Reconsidered Final Determination.

Historical Overview of the Chinook Petitioner

Several historical bands of the Chinookan linguistic group lived along the lower Columbia River. The largest was the Lower Band of Chinook, or the "Chinook proper" as they often were called, that resided north of the Columbia where the river reached the Pacific Ocean. The Chinook petitioner's members descend from the Lower Band, and also from the Wahkiakum, Kathlamet, and Willapa bands of Chinook, and the Clatsop tribe, also a Chinookan-speaking group. The Chinook also had winter villages and made seasonal use of resources north of the Columbia River along Willapa or Shoalwater Bay. The population of the Chinook bands was severely reduced by a series of epidemics, the most devastating of which occurred about 1830.

The United States negotiated treaties with these separate Chinook bands in 1851, but they were not ratified by the Senate. Chinook representatives refused to sign a treaty negotiated in 1855. The Government created the Shoalwater Bay Reservation by executive order in 1866 for the "Indians on Shoalwater Bay," who were intermixed Chinook and Chehalis Indians. The Government enlarged the Quinault Reservation by executive order in 1873 for the "fish-eating Indians on the Pacific coast," a definition that has been interpreted as including the Chinook. By 1900, some Chinook descendants were listed on the censuses of these and other reservations. Other Chinook descendants lived off reservations among the non-Indian population and tended to cluster geographically in three separate settlements: at Bay Center on Shoalwater Bay, at Ilwaco at the mouth of the Columbia, and upriver along the shore of the Columbia around Dahlia.

The available evidence does not demonstrate that the separate Chinook bands continued to exist or that they merged as a single tribe. The evidence in the record lacks examples of Chinook political leadership or activity in the last half of the 19th century. Chinook descendants participated in claims activities, seeking compensation for the loss of Chinook aboriginal territory, in the first decade of the 20th century, the decade after 1925, and the 1950's. However, these judicial proceedings also resulted in a conclusion by the Court of Claims in 1906 that the Lower Band of Chinook had "long ceased to exist" as a band and a conclusion by a Federal district court in 1928 that the Chinook had lost their tribal organization. The available evidence does not demonstrate that these claims activities either flowed from an existing group decision-making process, or produced a

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formal tribal organization or informal political process that continued to operate to pursue other issues between these periods of claims activities.

The Chinook petitioner claims to be the successor to the Lower Band of Chinook. It maintains an office in the town of Chinook on the Columbia River. The petitioner adopted its current constitution and by-laws in 1984. It requires its members to trace their ancestry to one of three lists of Chinook descendants created by the Government in 1906, 1914, and 1919. The petitioner had 1,566 members on its 1995 membership list. Its members are now geographically dispersed, mostly within Washington State. In addition to the petitioner's members, other Chinook descendants today are members of the Shoalwater Bay, Quinault, Chehalis, Grand Ronde, and other reservation tribes.

Waiver of the Regulations

The revised acknowledgment regulations issued in 1994 provided, in section 83.3(g), that petitioners whose documented petition was under active consideration at the effective date of the revised regulations could choose to complete the petitioning process either under the 1978 or the 1994 regulations. The regulations also provided that, "[t]his choice must be made by April 26, 1994." This provision applied to this petitioner. The Chinook petitioner made a timely request to complete the petitioning process under the 1978 regulations. After the Proposed Finding, which was prepared under the 1978 regulations, the Chinook petitioner made an out-of-time request for the Final Determination to be issued under the 1994 regulations.

The Secretary of the Interior "retains the power to waive or make exceptions to his regulations" when the Secretary finds that such a waiver or exception is in the "best interest of the Indians" (25 C.F.R. § 1.2). This power has been exercised in the past by the Assistant Secretary in the acknowledgment process regarding procedural provisions of the regulations. On the grounds that it is in the "best interest of the Indians," including both the Chinook petitioner and the Quinault Indian Nation, that the reconsideration of the Final Determination in this case should be made under both the 1978 and 1994 regulations to resolve the questions raised about whether the results would be different under the 1994 regulations than under the 1978 regulations, I waive the regulatory requirements of section 83.3(g) that a petition be completed under either the 1978 or the 1994 regulations, based on a timely election by a petitioner.

This Reconsidered Final Determination will evaluate the petition of the Chinook Indian Tribe / Chinook Nation under both the 1978 and the 1994 regulations.

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Previous Federal Acknowledgment (25 C.F.R. § 83.8)

1978 regulations:

The 1978 regulations contained no specific provisions for petitioners that had previous Federal acknowledgment.

1994 regulations:

83.8(a) Unambiguous previous Federal acknowledgment is acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of § 83.7 to the extent required by this section.

83.1 *Previous Federal acknowledgment means action by the Federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.*

If a petitioner can demonstrate that it was previously acknowledged as an Indian tribe by the Federal Government, then the requirements of the acknowledgment criteria in section 83.7 are modified by the provisions of section 83.8(d). The first aspect of the test of previous Federal acknowledgment is to determine whether or not the Government acknowledged, by its actions, a government-to-government relationship between the United States and an Indian tribe. The explanatory comments in the preamble to the regulations state that “the regulations require that previous acknowledgment be unambiguous and clearly premised on acknowledgment of a government-to-government relationship with the United States” (59 FR 9283).

The previous discussion of Issues # 2-4 referred by the Secretary of the Interior concluded that, contrary to the interpretation used in the original Final Determination, the Acts of 1911, 1912, and 1925 do not constitute unambiguous prior Federal acknowledgment of the Chinook petitioner. Therefore, this Reconsidered Final Determination will not rely upon such an interpretation in its evaluation of the petition under the 1994 regulations.

The Proposed Finding concluded, however, that, “[t]he United States Government recognized the Lower Band of Chinook Indians by negotiating a treaty with it, and with several other bands of Chinookans, in 1851.” It also noted that, “[i]n 1855, the

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Government made another attempt to negotiate a treaty with the Chinook and other tribes” (*Chinook PF*, 5; see also 26). Because the Federal Government’s treaty negotiations with Chinook representatives were clearly premised on an identification of a Chinook tribal political entity, these treaty negotiations meet the definition of previous Federal acknowledgment in section 83.1 of the regulations.

For the purposes of a finding of unambiguous previous Federal acknowledgment, it does not matter that the Chinook do not have a ratified treaty, as the Senate refused to ratify the 1851 treaties and the Chinook representatives refused to sign the 1855/1856 treaty. By undertaking negotiations with the Chinook to obtain a treaty, the Government treated them as a tribal political entity. This conclusion follows the precedent of the finding that the Cowlitz petitioner had unambiguous previous Federal acknowledgment on the basis of Cowlitz participation in the treaty negotiations in 1855 that also included the Chinook (*Cowlitz PF*, 3).

The second aspect of the test of previous Federal acknowledgment, based on precedent, is to determine whether or not the petitioner can demonstrate that it can claim to have evolved from the previously acknowledged tribe.³⁰ Since the regulations provide that a determination that a petitioner is eligible for evaluation under section 83.8 is usually to be made before active consideration of the petition begins, it follows that an evaluation under section 83.8 is not based on a determination that the petitioner has continued to exist as the historical tribe, or as a portion of that tribe, but on a preliminary finding that the petitioner can advance a claim meriting consideration that it has evolved as a group from the previously acknowledged tribe. The regulations do not envision a petitioner demonstrating that it *meets* the acknowledgment criteria in order to be able to be *evaluated* under section 83.8 (see 59 FR 9282).

To meet the second aspect of the test for previous acknowledgment, a petitioner must demonstrate a link to the previously acknowledged tribe, not that it has evolved as a tribe from the previously acknowledged tribe. Therefore, in addition to demonstrating that a tribe was historically acknowledged by the United States, to be evaluated under section 83.8 the petitioner must also show that the predominant portion of its members descend from the previously acknowledged tribe and that it will be able to advance a claim that some of its members or ancestors with descent from the historical tribe participated in group activities at various times since last Federal acknowledgment. The *merits* of that claim about continuous tribal existence are to be evaluated against the acknowledgment criteria, as modified by section 83.8, during active consideration.

³⁰ It does not appear that the original Final Determination considered this second aspect of a finding of previous Federal acknowledgment of the petitioner. If the 1925 Act (or 1911 or 1912 Acts) were accepted as Federal acknowledgment of a contemporaneous Chinook tribe, then this second test would need to be applied to ask whether the petitioning group had evolved from (but not necessarily evolved as a tribe from) the tribe acknowledged by the Act.

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It has been shown that the Chinook petitioner meets a threshold determination that its members are the descendants of the tribe acknowledged by the Government by the conclusion in the 2001 Final Determination that the petitioner meets criterion (e). Because some members or ancestors of the petitioner's members, with descent from historical Chinook bands, have been involved in Chinook organizations or activities at several different times since the date of last Federal acknowledgment in 1855, the petitioning group can advance a claim, to be tested by the requirements of the regulations, that it has evolved from the previously acknowledged tribe. Because the Chinook petitioner has demonstrated a link to a previously acknowledged Chinook tribe, but not necessarily that it has evolved as a tribe from that tribe, it meets the second aspect of the test of previous acknowledgment for the purpose of utilizing section 83.8.

The evaluation of the Chinook petition under the 1994 regulations will be made in accordance with the provisions of section 83.8, with 1855 as the date of last Federal acknowledgment, based on the conclusion that the Chinook had unambiguous previous Federal acknowledgment as a tribal political entity as late as 1855. Therefore, under the 1994 regulations the petitioner must meet criteria (a), (b), and (c) as those criteria are modified by section 83.8(d).

The 1978 regulations have no specific provisions for petitioners that had previous Federal acknowledgment. Therefore, under the 1978 regulations the petitioner must meet criteria (a), (b), and (c) as those criteria are set forth in section 83.7.

Comments on the Proposed Finding

A detailed analysis has been made of the specific comments on the Proposed Finding submitted by the petitioner and third parties. Because that analysis logically precedes the evaluation of the evidence against the regulatory criteria, some readers may prefer to review that detailed discussion of the comments before proceeding to the summary under the criteria. That analysis of the comments, as modified in view of the conclusions above on the eight issues referred by the Secretary of the Interior, can be found in the following report on the "Comments on the Proposed Finding, as Addressed on Reconsideration."

In addition to these timely comments, after the close of the comment period the Department received out-of-time comments from six individuals between September 4, 1998, and July 25, 2000 (Bierly 7/21/1998, Olden 11/12/1999, C. Johnson 3/14/2000, T. Johnson 3/27/2000, Snider 7/16/2000, Kytr 7/19/2000). These submissions were not considered for the original Final Determination, but were reviewed for this Reconsidered Final Determination. These letters offered personal opinions that the Chinook petitioner should be acknowledged, but did not include any new documentation that addressed criteria (a), (b), or (c). In April and May 2001, the Department received about 90 form letters and e-mails from members of the petitioning group and other supporters that briefly recited the history of the Chinook Indians and their role in meeting the Lewis and

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Clark expedition. These submissions did not offer any new evidence that addressed criteria (a), (b), or (c).

Summary Conclusions Under the Criteria (25 C.F.R. § 83.7)

Evidence submitted by the petitioner and obtained through third parties and independent research by the staff of the Bureau of Indian Affairs, Branch of Acknowledgment and Research, demonstrates that the petitioner does not meet all seven criteria required for Federal acknowledgment. Specifically, the petitioner does not meet criteria 83.7(a), (b), or (c) under the 1978 regulations, nor those three criteria under the 1994 regulations as modified by sections 83.8(d)(1), (d)(2), (d)(3), or (d)(5). In accordance with the regulations set forth in 25 C.F.R. § 83.7 [1978] and 25 C.F.R. § 83.10(m) [1994], failure to meet any one of the seven criteria requires a determination that the group does not exist as an Indian tribe within the meaning of Federal law.

The original Final Determination noted that the evidence presented by the petitioner was insufficient to meet criteria 83.7(a), (b), and (c), and that a positive Final Determination was made only on the basis of an interpretation of three acts of Congress. The Final Determination concluded that: "Were it not for the acts of Congress in 1911, 1912, and most importantly, 1925, it would not have been possible to make a positive determination on the evidence presented. . . . The evidence on criteria (a), (b), and (c) was spotty and ambiguous for certain periods, and in the judgment of the AS-IA [Assistant Secretary], it was sufficient only when read in light of the three acts of Congress noted above, and especially the 1925 Act" (*Chinook FD*, 79). It follows from that conclusion, then, that if the Final Determination's interpretation of those acts of Congress was found to be improper, as it has been in the analysis of the issues referred by the Secretary of the Interior, then the Final Determination likely would have to be reversed. However, in making this Reconsidered Final Determination, I am making an independent determination regarding the evidence in the record and the merits of the petition.

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Criterion (a)

1978 regulations:

- 83.7(a)** A statement of facts establishing that the petitioner has been identified from historical times until the present[,] on a substantially continuous basis, as “American Indian,” or “aboriginal.”

1994 regulations:

- 83.7(a)** The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
- 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.
- (5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7(a) through (c) from last Federal acknowledgment until the present.

Proposed Finding

The Proposed Finding found, applying the 1978 regulations, that the “evidence showed outside identification of a historical Chinook tribe or band until 1855, or perhaps 1873, and identification of several organizations of Chinook descendants since 1951” (*Chinook PF*, 8). Because the evidence did not show external identification of the petitioner from 1855 to the present on a “substantially continuous” basis, the Chinook petitioner did not meet criterion 83.7(a).

In order to meet criterion 83.7(a) for the Final Determination under the 1978 regulations, given the conclusions of the Proposed Finding, the petitioner needed minimally to provide evidence of external identifications of it as an Indian entity between 1873 and 1951.

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Requirements of the Acknowledgment Regulations

This Reconsidered Final Determination, like the original Final Determination but unlike the Proposed Finding, evaluates the available evidence under both the 1978 and the 1994 acknowledgment regulations. According to both the 1978 and 1994 regulations, acceptable evidence of external identifications of the petitioning group could consist of identification of the group by Federal authorities; or relationships with State governments based on identification of the group as Indian; or dealings with a local government based on an identification of the group's Indian identity; or identification as an Indian entity in relationships with recognized Indian tribes or Indian organizations; or identification as an Indian entity by anthropologists, historians, scholars, or newspapers and books.

Criterion 83.7(a) in the 1978 regulations requires that the "petitioner has been identified from historical times until the present[,] on a substantially continuous basis, as 'American Indian,' or 'aboriginal'." The 1994 regulations reduced the evidentiary burden, by limiting the chronological period to be documented, without changing the requirement. The revised regulations also clarified that the identifications must be of an "Indian entity." Criterion 83.7(a) in the 1994 regulations requires that the "petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900."

The 1994 regulations, in section 83.8, modify the evidentiary burden for petitioners that had been previously acknowledged by the Federal Government. When the date of last Federal acknowledgment is prior to 1900, however, the reduced evidentiary burden for criteria (b) and (c) is balanced by an increased evidentiary burden for criterion (a). The chronological period for which the petitioner must provide evidence that it meets criterion 83.7(a) is extended from 1900 back to the last date of Federal acknowledgment, as indicated in section 83.8(d)(1). With a finding of previous Federal acknowledgment in 1851 and 1855, the Chinook petitioner needs to show under the 1994 regulations that it "has been identified as an American Indian entity on a substantially continuous basis" since 1855.

An additional requirement imposed by section 83.8(d)(1) is that the identifications of the petitioner must identify it as the same Indian entity that was previously recognized. The regulations also provide, however, that if the petitioner cannot meet this requirement of section 83.8(d)(1), it may demonstrate instead that it meets the unmodified requirements of criterion (a), in section 83.7(a), from the date of last Federal acknowledgment until the present. This alternative evaluation, as provided in section 83.8(d)(5), is less burdensome on the petitioner and therefore is applied here.

Thus, the petitioner must demonstrate that it has been identified as an Indian entity from historical times (1812) to the present under the 1978 regulations, or from the last date of Federal acknowledgment (1855) to the present under the 1994 regulations. Because the Proposed Finding concluded that the historical Chinook tribe had been identified at least

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until 1855, and perhaps until 1873, the petitioner needs to demonstrate for the Final Determination that it meets the requirements of criterion 83.7(a) since 1873, and this is the case whether the petitioner is evaluated under the 1978 regulations or the 1994 regulations with previous Federal acknowledgment.

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The previous discussion of Issues # 2-4 referred by the Secretary concluded that the Final Determination improperly interpreted both the Congressional intent expressed in the Acts of 1911, 1912, and 1925, and past Departmental interpretations of those acts. Therefore, this Reconsidered Final Determination will not rely upon an analysis that the Acts of 1911, 1912, and 1925 constituted either unambiguous Federal acknowledgment of, or Congressional identification of, a contemporaneous Chinook tribal entity. Such references have been deleted from the original Final Determination for this Reconsidered Final Determination. The evidence in the record will be weighed without utilizing such conclusions.

In view of the previous discussion of Issue # 7 referred by the Secretary, this Reconsidered Final Determination does not rely upon any presumption that the Chinook petitioner was identified as an Indian entity on the basis of previous Federal acknowledgment continuing after the date of such acknowledgment. To the extent that such a presumption may have been made, it has been deleted from the original Final Determination for this Reconsidered Final Determination. The evidence in the record will be weighed without making such a presumption.

Analysis of the Evidence and the Comments on the Proposed Finding

In its response to the Proposed Finding, the petitioner submitted arguments through its attorney and researcher and copies of historical documents. The petitioner did not specifically identify or label the new exhibits that it considered relevant to criterion (a). The historical documents took the form mostly of copies of correspondence of Federal officials from the National Archives and copies of articles from local newspapers. The petitioner provided selections from local newspapers such as *The Raymond Herald*, *South Bend Journal*, *Cathlamet Columbia River Sun*, and other publications in Pacific and Wahkiakum Counties in southwestern Washington and northwestern Oregon.

In general, the new exhibits either referred to individuals, rather than to a group as required by the regulations, or referred to individual Chinook descendants who were allottees on the Quinault Indian Reservation, although such a presumed Quinault entity would be different from the petitioning group. The petitioner has provided some new evidence that some individuals were identified as Chinook descendants. However, those identifications of individuals were not identifications of a Chinook Indian entity. Some of the exhibits submitted for the Final Determination had previously been evaluated in the Proposed Finding, while many others were new documents which added little information to issues which had been described and evaluated in the Proposed Finding.

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Identification before 1873. The Proposed Finding concluded that, “[t]he United States Government recognized the Lower Band of Chinook Indians by negotiating a treaty with it, and with several other bands of Chinookans, in 1851.” It also noted that, “[i]n 1855, the Government made another attempt to negotiate a treaty with the Chinook and other tribes” (*Chinook PF*, 5). Although the Senate refused to ratify the 1851 treaty and the Chinook refused to sign the 1855 treaty, the lack of a ratified treaty does not alter the conclusion that the Government identified Chinook bands or a Chinook tribe by negotiating with them or with it.

The Proposed Finding noted that a historical Chinook tribe may have been identified, by implication, by the Executive Order that expanded the Quinault reservation in 1873 (*Chinook PF*, 6, 8). A Chinook tribe was not explicitly mentioned by the Executive Order of 1873 (Kappler 1:923), but can be considered to have been included by the reference to the other “fish-eating” tribes of the Washington coast. A Federal district court interpreted the 1873 Executive Order in such a way in 1928, as did a Federal appellate court in 1981 (*Chinook PF*, HTR 41-42, 80). Accepting this construction leads to the conclusion that in 1873 the Government, by implication, identified a historical Chinook tribe.

It was not necessary for the petitioner to respond to these conclusions and it has not explicitly done so. Since no new information has been submitted or discovered to alter the conclusions of the Proposed Finding, the conclusion stands that a historical Chinook tribe was, or historical Chinook bands were, identified by external observers until 1873.

Identification 1873-1900. The petitioner has submitted several recollections of pioneer settlers, including an account of Ralph C.A. Elliott in a 1901 newspaper article (Petitioner Ex. 1032), a 1921 newspaper article on Indian life in western Washington at the time of settlement (Petitioner Ex. 1060), a 1922 article by pioneer Arthur Skidmore (Petitioner Ex. 1061), a manuscript about the settlement of Ilwaco attributed to Catherine Herrold Troeh (Petitioner Ex. 796), and a 1952 deposition of Emma Millett Lucier (Petitioner Ex. 854). A third party submitted a 1983 letter from Julia Butler Hansen which provided a brief summary of the history and genealogy of the Scarborough family (Amelia 1998). Both the Lucier deposition and a 1917 article by Skidmore which was almost identical to his 1922 article already were in the petition documentation. Lucier’s 1953 testimony, rather than her 1952 deposition, was cited in the Historical Technical Report for the Proposed Finding (*Chinook PF*, HTR 25; see also 52).

The reminiscence of Ralph Elliott, who arrived in Cathlamet in 1855, mentioned other pioneer settlers and two chiefs, but did not describe or identify tribes (Petitioner Ex. 1032). The article did not say that a band of Chinook Indians still existed in Cathlamet or Skamokawa in 1901 when the newspaper was published. The 1921 article was a very general historical description of Indian life at the time of settlement rather than an identification of a tribe (Petitioner Ex. 1060). Skidmore’s 1922 article also was more a historical account than contemporaneous observation that offered very general statements about Indian culture rather than an identification of a specific tribe (Petitioner Ex. 1061).

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These documents do not add to the discussion of 19th century tribes in the Proposed Finding and do not extend the identification of historical tribes past 1873. Troeh's manuscript described one family's settlement at Ilwaco in 1882, but did not identify a tribe continuing to exist at or after that time (Petitioner Ex. 796). Genealogical and historical information about a single family, such as the Scarborough family, is not an identification of an Indian entity (Amelia 1998).

The petitioner submitted a brief manuscript by Professor Stephen Dow Beckham on the Chinook descendants who appeared on the 1900 Federal census. Beckham's discussion of the 1900 Federal census, in the petitioner's Exhibit K, makes no reference to the discussion of the 1900 census in the Historical Technical Report prepared for the Proposed Finding. Beckham asserts that the 1900 census "confirms" that "three primary Chinook communities existed" (Petitioner Ex. K, 6). By this he means not that contemporary census enumerators identified such "communities" in 1900, but that a modern researcher can do so. Beckham lists 97 Indian households on the 1900 census in two counties in Washington State, and says that 76 households and 272 individuals were Chinook (Petitioner Ex. K, 11-32). The Historical Technical Report noted the presence of 333 descendants of the 1851 historical Chinookan bands and 91 ancestors of the petitioner in 1900, either on the Federal census in 90 households in three counties of Washington and Oregon or on the Indian census rolls of four Indian agencies (*Chinook PF*, HTR 25-30, Tables 1 and 2).

The 1900 census evidence submitted in Exhibit K was considered and analyzed for the Proposed Finding. The issue of whether Chinook communities actually existed in 1900 is an issue considered by criterion (b). Criterion (a) asks only whether outside observers identified an Indian group which consisted of members or ancestors of the petitioner. Beckham lists Chinooks and other Indians without noting whether they were ancestral to the petitioning group. Beckham lists people considered by the petitioner to be Chinook descendants, not people identified on the census as "Chinook" or as "Indian." In 1900, the census enumerators listed some of these individuals as Indians, but did not refer to an Indian community or group. The petitioner's Exhibit K does not show otherwise. Because the census listed individuals and made no explicit reference, or implied reference, to an Indian group, this census classification of some individuals as Indians does not meet the requirements of criterion (a).

Identification, 1900-1925. The petitioner submitted four newspaper accounts of 1907 and 1908 from the *South Bend Journal* and the *Columbia River Sun* of Cathlamet that reported on proposed Congressional bills that offered to pay compensation to descendants of the "three bands of Indians living in the state of Washington along the lower Columbia River" -- the Lower band of Chinooks, the Wheelappa band of Chinooks, and the Wahkiakum band of Chinooks (Petitioner Ex. 1038, 1039, 1041, 1043; quote from Petitioner Ex. 1039).

The 1907 article in the *South Bend Journal* referred to the individual beneficiaries, rather than to the tribes, who would receive payment of compensation (Petitioner Ex. 1038).

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The 1908 article in the *South Bend Journal* reported that Secretary of the Interior Garfield had denied the contemporaneous existence of these bands and raised doubts whether anyone existed to receive awards for the Wahkiakum and Wheelappa (Petitioner Ex. 1041). These articles did not identify contemporary leaders or organizations.

The petitioner also submitted two 1910 articles from the *South Bend Journal* that mentioned the efforts of Indian Agent Johnson to take a census of Indians (Petitioner Ex. 1051, 1052). The articles referred to Indians generally rather than to a specific contemporary tribe. Statements about Indians in Bay Center or “on the bay” were not necessarily identifications of a Chinook Indian entity, and the articles and the agent may both have been referring to Indians who belonged to or were affiliated with the federally recognized Shoalwater Bay Reservation, a group different from the petitioner. The petitioner also submitted some documentation about the payment to individuals of funds due to the lineal descendants of the historical Chinookan bands (Petitioner Ex. 813, 886-892). These per capita payments were made to individual heirs and the identification made by the claims payment was of a historical band in 1851, not of a contemporary Indian entity in 1914.

The petitioner submitted a brief manuscript by Professor Beckham on the Chinook descendants who appeared on the 1920 Federal census. Beckham’s discussion of the 1920 Federal census, in the petitioner’s Exhibit J, makes no reference to the mention of the 1920 census in the Historical Technical Report prepared for the Proposed Finding. Beckham asserts that the 1920 Federal census showed that two settlement areas, Bay Center and Dahlia, “were distinctly Indian” (Petitioner Ex. J, 1). Beckham lists 68 Indian households on the 1920 census in two counties of Washington State, and says that 65 households with 270 individuals were Chinook (Petitioner Ex. J, 7-23). The Historical Technical Report did not include a comprehensive survey of Chinook descendants or ancestors of the petitioner on the 1920 census.

Some of the 1920 census information in Exhibit J is new evidence. The issue of whether Chinook communities or “distinctly Indian” settlement areas actually existed in 1920 is an issue considered by criterion (b). Criterion (a) asks only whether outside observers identified an Indian group which consisted of members or ancestors of the petitioner. Beckham lists people considered by the petitioner to be Chinook descendants, not people identified on the census as “Chinook” or as “Indian.” This evidence shows that in 1920 the census enumerators listed some of these individuals as Indians.

Beckham notes that the census enumerator in 1920 “identified part of the village [of Bay Center] as ‘Indian Town’” (Petitioner Ex. J, 2; see the discussion of this evidence in *Chinook PF*, 6, 8, and HTR 31). The six “Indian” households listed as “Indian Town” in Bay Center constituted only a small percentage (6 of 68) of all the households of Chinook and other Indian descendants identified by Beckham on the 1920 census. The six households in “Indian Town” were a minority (6 of 23) of the Chinook and other Indian households identified by Beckham in Bay Center itself. Of the five families represented in these six households, only two have descendants in the petitioner’s

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membership. Thus, although the census enumerator's reference to "Indian Town" was an identification of an Indian group, it was not an identification of the petitioner as a whole.

Identification, 1925 - present. The petitioner submitted a large number of documents from the 1920's and 1930's relating to the Quinault reservation and to individual members of the Quinault tribe or allottees on the Quinault reservation who had Chinook ancestry. However, an identification of a Quinault tribe or of Quinault members was not an identification of the petitioner as an Indian entity that was separate and distinct from Quinault. An identification of individuals as having Chinook ancestry is not necessarily an identification of a Chinook Indian entity.

The petitioner submitted several pages of vital records from the Taholah Agency for the period from 1925 to 1931 (Petitioner Ex. 828), and about 22 pages from the period from 1941 to 1947 (Petitioner Ex. 824). The only individual in the records from 1925-1931 who was "Chinook" died at Yakima and had no known connection with the petitioner. Other individuals who were of the "Quinault" tribe are known from other records to have had Chinook ancestry, but this record did not identify a Chinook entity. Some of the individuals listed in the records from 1941-1947 were noted as having Chinook tribal ancestry, or ancestry from the Chinook and other tribes (e.g., Chinook-Cowlitz).

The petitioner submitted documentation from 1930 to 1939 about the census roll of the Quinault Reservation (Petitioner Ex. 825-9, 833, 866-8, 934, 944, 993, 998). This documentation about the Quinault census identifies a federally recognized tribe rather than the petitioner. The census rolls may have identified the ethnicity of some individuals as Chinook, but this did not identify the petitioning group as an entity. Most of the individuals listed as Chinook on the Quinault census are not ancestral to the petitioner.

Some of the Indian agency correspondence submitted by the petitioner showed that in the first years after the *Halbert* case Superintendent Sams was unsure how to list the new allottees on the Quinault census or roll. This correspondence was discussed in the Historical Technical Report (*Chinook PF*, HTR 49). The evidence shows that, despite this period of confusion, Sams did report in 1933 that there had "never been . . . a census roll of the Chinook Tribe" (Petitioner Ex. 944). The Historical Technical Report noted that the superintendent's inquiry on this issue was resolved in 1934 when the Indian Office provided instructions that the census rolls were to be made by reservation and not by tribe (*Chinook PF*, HTR 49). In 1940, the superintendent at the Taholah Agency noted that there was a Quinault census but no Chinook tribal roll (*Chinook PF*, HTR 50).

Beckham's discussion of allotments on the Quinault reservation, in the petitioner's Exhibit D, makes no reference to the analysis of allotments in the Historical Technical

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Report prepared for the Proposed Finding (see *Chinook PF*, 6 and HTR 38-44).³¹ Beckham notes that individuals of Chinook descent received allotments on the Quinault reservation both prior to and after the *Halbert* decision of the Supreme Court in 1931. Beckham makes no explicit argument that the evidence in Exhibit D meets criterion (a), but implies that the BIA identified a “Chinook Indian Tribe” by allotting its “members.” The evidence shows only that Agent Roblin judged the merits of individual cases of people who claimed Chinook descent and were not enrolled at Quinault or another reservation. The evidence described in the petitioner’s Exhibit D does not identify any error in the BIA’s research.

The petitioner submitted three newspaper articles from 1925 and 1929 and fourteen letters by the local Indian superintendent between 1927 and 1930 which related to disputes over fishing rights in the Columbia River. Although most of this documentation is new, a considerable amount of evidence on this issue was contained in the record for the Proposed Finding. The identification of the participants in these disputes was discussed in the Historical Technical Report (*Chinook PF*, HTR 52). These disputes led to litigation that centered on the alleged rights to fish in the Columbia River of a fishing crew of Quinault members led by George Charley, a member at Quinault and resident of the Shoalwater Bay Reservation who sometimes was referred to as the chief of the Shoalwater Bay Indians. The Historical Technical Report had observed that when George Charley testified in these court proceedings about 1929 he said that he was a Quinault and a Chehalis. In his testimony, Charley referred to Chinooks and Chinook fishermen as “they” rather than as “we” (*Chinook PF*, HTR 52). George Charley does not have descendants in the petitioner’s membership.

The correspondence of Superintendent Sams about the fishing rights litigation between 1927 and 1930 (Petitioner Ex. 902-5, 907-9, 911-2, 977, 986, 989, 994-5) described George Charley’s fishing crew as consisting of 40 to 50 Indians from Quinault and Bay Center who were enrolled or allotted at Quinault, but he named no specific individuals except for Charley and his sons. Sams said that Charley and members of his family were all born and reared at Georgetown [Shoalwater] Reservation and allotted on Quinault Reservation, and were considered “duly enrolled members” of the Quinault Tribe (Petitioner Ex. 903). Although Sams sometimes referred to plaintiff George Charley and his crew as “Chinook Indians,” the context of these letters makes it clear that Sams asserted fishing rights on behalf of members of the Quinault and Shoalwater Bay Reservations.

The petitioner submitted some newspaper articles, from 1925 and 1927, relating to the efforts of Chinook descendants to begin a claims case against the United States. These claims efforts had been described in the Historical Technical Report from other

³¹ The Historical Technical Report relied upon the allotment ledger at the BIA Agency in Hoquiam and its complete list of 2,340 allottees (BIA 1907-1933) rather than upon Beckham’s list of the first 577 allottees (Beckham 1994b).

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documentation (*Chinook PF*, HTR 44-46). Two of these articles contain evidence of an identification of a group or entity by an outside observer required by criterion (a).

An article from the *South Bend Journal* in March 1925 (Petitioner Ex. 1096) described a multi-tribal meeting regarding potential treaty claims. The article referred to “Pacific County Indians,” thus grouping individuals of different tribal ancestry together by their geographical location. The article mentioned individuals of known Chinook or Clatsop descent, but did not describe them as representatives of a Chinook entity.

An article from the Cathlamet *Columbia River Sun* in April 1925 (Petitioner Ex. 1099), by contrast, said that “[t]he Chinook Indians expect to hold a meeting for the purpose of arranging business affairs” to present to the lawyer who would represent them in their claims case. Although this description was vague, and did not name any individuals who can be linked to the petitioner, this brief mention at least implied the existence of a group of Chinook descendants as of 1925.

An article from the *Raymond Herald* in February 1927 (Petitioner Ex. 1120) more clearly identified a Chinook claims entity. This article reported that about “100 members of the Chinook Indian Tribe” attended a meeting at South Bend concerning the claims suit against the United States. According to the newspaper, people came to the meeting from as far as Portland and the Quinault Reservation. This article explicitly referred to a group of Chinook descendants in existence in 1927, and thus meets the requirements of criterion (a) for 1927.

An article contemporaneous with the claims activity of the late 1920's provided a vague description which implied the existence of a Chinook entity at this time, but, by placing it at Bay Center, did not clearly identify it as an entity which included the majority of the petitioner's ancestors, who lived elsewhere. In a brief notice of an “Indian Queen” contest in 1926, the *Raymond Herald* stated that a local entrant had “the support of the Chinook Tribe of Bay Center” (Petitioner Ex. 1110). In a 1930 letter about an individual enrollment matter, Superintendent Sams observed that one of George Charley's grandchildren had been “born at Bay Center in the Indian village at that point” (Petitioner Ex. 991). Since the identification of the village was at the time of the child's birth, it would have been at some time prior to 1930.

Because the Proposed Finding found that the “evidence showed outside identification . . . of several organizations of Chinook descendants since 1951” (*Chinook PF*, 8), it was not necessary for the petitioner to have responded with evidence relating to this time period, except, perhaps, to show the continuity of its identification consistently from one of those organizations or to show that identifications of apparently separate organizations were essentially identifications of a single tribal entity. Given the conclusion of the Proposed Finding, it is not necessary to discuss new evidence submitted by the petitioner for the years since 1951 in any detail.

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The petitioner submitted documents to show that a BIA superintendent dealt with Chinook organizations in order to allow them to bring a claims case against the Government before the Indian Claims Commission. The petitioner's exhibit of meeting minutes of September 22, 1951 (Petitioner Ex. 1005), was already in the record for the Proposed Finding and had been discussed in the Historical Technical Report (*Chinook PF*, HTR 55). That document showed that the superintendent had identified a Chinook group in the process of helping it obtain the required approval by the Commissioner of Indian Affairs of its contract with an attorney in order to present its case to the Indian Claims Commission. Chinook organizations were also identified by newspaper accounts of their meetings in 1953 (Petitioner Ex. 1158-9, 1162-3), 1956 (Petitioner Ex. 1164, 1166-7), 1957 (Petitioner Ex. 1169), and 1958 (Petitioner Ex. 1174). This evidence of the identification by external observers after 1951 of claims organizations of Chinook descendants is consistent with the conclusions of the Proposed Finding.

The petitioner submitted a letter from Professor Clifford E. Trafzer about the use of his book, *The Chinook*, in the Proposed Finding (Petitioner Ex. T). The letter was written not to the BIA, but to the petitioner's chairman, Timothy P. Tarabochia, in reply to a letter from Tarabochia about the Proposed Finding. Trafzer expressed his dismay to learn, from Tarabochia, that the "BIA is using my book to deny The Chinook Tribe federal recognition."

The Proposed Finding said, in its evaluation of criterion (a), that, "Trafzer concluded that 'the Chinook no longer are a unified tribe.' He identified three contemporary groups of Chinook in the 1980's: the Chinook Indian Tribe organization, the Wahkiakum Chinook, and the Chinook on Shoalwater Bay" (*Chinook PF*, 7). Trafzer's reply to Tarabochia states: "On the issue of 'unified tribe,' what I meant by this statement was that there have been several Chinook groups historically based on village and area leaders. No one Chinook leader could speak for all Chinooks. . . . Neither the Chinooks at Shoalwater Bay or Quinault can speak for the Chinook people who remained on their sacred lands along the Columbia" (Petitioner Ex. T).

Trafzer's book was cited on only one page of 41 pages of the Summary Under the Criteria. The Proposed Finding against acknowledgment was not based on his book. Since the Proposed Finding emphasized the lack of identification of a Chinook entity between 1873 and 1951 (*Chinook PF*, 8), Trafzer's identification of three contemporary Chinook groups in the 1980's was not the reason the petitioner failed to meet criterion (a) for the Proposed Finding.

Summary Conclusion Under Criterion (a)

The Proposed Finding found that a historical Chinook tribe was identified until 1873, and that several Chinook organizations have been identified since 1951. Given the conclusions of the Proposed Finding, the Chinook petitioner needed to demonstrate, either under the 1978 regulations or the 1994 regulations with previous Federal acknowledgment until 1855, that it was identified as an Indian entity by external

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observers on a substantially continuous basis between 1873 and 1951. The petitioner did not provide new evidence of identifications of a Chinook Indian entity between 1873 and 1924. The petitioner has provided examples to show that some of its ancestors were identified in 1925 and 1927, and again in 1951 and the following years, as a group or groups bringing claims on behalf of a historical Chinook tribe against the United States, but that evidence does not show that a Chinook entity was identified on a substantially continuous basis between 1927 and 1951.

A few identifications during a three-year period of the three-quarters of a century between 1873 and 1951 does not constitute "substantially continuous" identification. The evidence is insufficient to show that the petitioner meets the requirements of this criterion between 1873 and 1951. Because the evidence in the record does not show that the petitioning group has been identified as an Indian entity "from historical times until the present," or from last acknowledgment in 1855 until the present, on a "substantially continuous" basis, the petitioner does not meet the requirements of criterion 83.7(a), either under the 1978 regulations or as modified by sections 83.8(d)(1) or 83.8(d)(5) under the 1994 regulations.

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Criterion (b)

1978 regulations:

- 83.7(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.**

1994 regulations:

- 83.7(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.**
- 83.8(d) (2) The group meets the requirements of the criterion in § 83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.**

Proposed Finding

Applying the 1978 regulations, the Proposed Finding found that a historical Chinook tribe met criterion 83.7(b) from 1811 to 1854, based on the existence of distinct Chinook Indian villages. It also concluded that, from 1854 to about 1920, a community of Indians, including Chinook who had married Chehalis Indians and non-Indians, existed along the shores of Willapa Bay, particularly in the town of Bay Center. This Bay Center Indian community, however, did not incorporate a predominant portion of the Chinook ancestors of the petitioner either in 1920 or after that date. Significant numbers of the petitioner's ancestors lived along the Columbia River, 25 to 45 miles to the south and southeast of Bay Center. The Proposed Finding found little evidence that the Chinook people living on the Columbia River and those in or near Bay Center formed a community under the regulations. The evidence did not show nor suggest that separate localities were separate communities that together included most ancestors. The Proposed Finding determined that 1880 was the last year for which there was sufficient evidence demonstrating that the petitioner, as a whole, met the requirements of the criterion (*Chinook PF*, 23). As a result of these facts, the petitioner did not meet criterion 83.7(b).

In order to meet criterion 83.7(b) for the Final Determination under the 1978 regulations, given the conclusions of the Proposed Finding, the petitioner needed to provide evidence

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to show that a substantial portion of its members and ancestors comprised a distinct social community that has existed continuously since 1880.

Requirements of the Acknowledgment Regulations

This Reconsidered Final Determination, like the original Final Determination but unlike the Proposed Finding, evaluates the available evidence under both the 1978 and the 1994 acknowledgment regulations. The 1994 regulations provide examples in section 83.7(b)(1) of the kinds of evidence which might be used in combination to demonstrate that the petitioner meets the criterion, but do not limit the possible evidence to these examples. The 1994 regulations also list, in section 83.7(b)(2), the type of evidence that would be sufficient by itself to demonstrate that the petitioner meets the criterion at a specific time.

Criterion 83.7(b) in the 1978 regulations requires the petitioner to demonstrate that “a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area. . . .” Criterion 83.7(b) in the 1994 regulations similarly requires that a “predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.” “Community” is defined in the 1994 regulations, section 83.1, as “any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers.”

The 1994 regulations, in section 83.8, modify the evidentiary burden for petitioners that had been previously acknowledged by the Federal Government. The reduced evidentiary burden for criterion 83.7(b), as provided in section 83.8(d)(2), requires the petitioner to demonstrate only “that it comprises a distinct community at present.”

Thus, the petitioner must demonstrate under the 1978 regulations that a substantial portion of the petitioning group comprised a distinct community historically as well as at present, while under the 1994 regulations it must demonstrate only that a predominant portion of its members comprise a distinct community at present.

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As discussed under Issues #2 through #4, the Final Determination erred in finding that the petitioner was previously acknowledged by the 1925 Act. As also noted, however, a Chinook political entity was previously acknowledged by treaty negotiations in the 1850's and the petitioner can be evaluated under section 83.8 of the 1994 regulations as a previously acknowledged tribe. Therefore, under the 1994 regulations, the petitioner still only needs to provide sufficient evidence to meet criterion (b) for community at present.

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The previous discussion of Issue #5 referred by the Secretary concluded that the original Final Determination departed from the correct standard under the acknowledgment regulations in finding that the petitioner as a whole constituted a community at present under section 83.8(d)(2) of the 1994 regulations, based in large part on a finding that a Bay Center subgroup of the petitioner's members constituted a "community" and on Chinook claims and acknowledgment activities.³² Although the Final Determination found that only the subgroup met the criteria, it suggested that if only the subgroup were recognized, it could then extend membership to the remainder of the petitioner after acknowledgment. However, as the discussion of referred Issue #5 points out, such post-acknowledgment action to extend membership to individuals or groups not covered in the original petition or of a different character and history is prohibited by the regulations at 25 C.F.R. § 83.12(b), and has not been allowed in the past. Therefore, this Reconsidered Final Determination does not rely upon a finding that the Bay Center community meets criterion (b) as a "substitute" for a demonstration that petitioner as a whole satisfies criterion (b).

As also discussed under Issue #5, the Final Determination also considered the petitioner's acknowledgment activities from the 1970's to the present, in combination with a reliance on the Bay Center membership, as evidence of community at present. Because of the conclusion that the Final Determination improperly relied on the Bay Center membership for finding that the petitioner satisfies criterion (b) at present, this Reconsidered Final Determination examines whether the petitioner's acknowledgment activities separately provide affirmative evidence of community at present and, if so, whether that evidence is sufficient for the petitioner as a whole to satisfy criterion (b).

The previous discussion of Issue #6 dealt with the weighing of some of the evidence not relating to Bay Center, particularly the use of claims organizations and their activities as evidence under criterion (b). The Final Determination's analysis of the existence of claims organizations, including the production of a membership list, did not require a showing of actual bilateral political relations and significant widespread actual interaction. This treatment of the claims organizations and their activities improperly departed from precedent. The evidence of claims activities and other evidence in the record must be weighed without the assumption that claims activities automatically provide affirmative evidence for demonstrating that the petitioner meets criterion (b). This weighing includes the analysis of claims activities to determine whether they are significant in showing actual social interaction of a predominant proportion of the petitioner's membership.

³² At present, based on the addresses on the petitioner's 1995 membership list, approximately 3 percent of the petitioner's adult members resides in Bay Center (*Chinook PF*, 22 and ATR 82). The Quinault Nation did not challenge the Final Determination's assertion that the Bay Center membership, if viewed separately, would satisfy criterion (b) to the present. Therefore, for purposes of this Reconsidered Final Determination, I do not revisit that conclusion in the original Final Determination.

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The previous discussion of Issue #7 discussed the statements found in the *Federal Register* notice and the Final Determination that might be interpreted as implying a general presumption of continued existence for petitioners who previously have been unambiguously federally acknowledged. The previous discussion corrected and clarified that there is no such presumption, that the evidentiary benefits afforded to previously acknowledged petitioners are already in the regulations, and that the burden of proof is on the petitioner. Therefore, this Reconsidered Final Determination weighs the evidence for the petitioner accordingly.

Analysis of the Evidence and the Comments on the Proposed Finding

The "Guidelines for Preparing a Petition for Federal Acknowledgment as an Indian Tribe," which were published by the Branch of Acknowledgment and Research (BAR) in December 1978, and were provided to every petitioner at that time, state regarding criterion 83.7(b) that:

In this section the petitioning group should demonstrate that a sizeable number of its members live close enough to each other to meet, associate, and conduct tribal business on a regular basis, and that they do so. One way the petitioner can establish this is to show that there are social and religious activities and meetings of organizations which are attended entirely or predominantly by members of the group. (BIA 1978, 8)

As shown in the Proposed Finding, the geographical evidence presented in the petition was sufficient to meet the criterion from 1811 to 1854, since the majority of the Lower Band Chinook Indians continued to live in Indian villages with named leaders. After 1854, however, the evidence was less clear in this regard. The Bureau requested additional information from the petitioner when it stated in its obvious deficiencies letter:

It is important to improve the description of the historical community to reflect the full criterion (see above), by supplementing the residence data and analysis presented with information indicating that a distinct community existed. It is especially important to improve the description of the post-1900 period. (BIA 11/1/1988)

The petitioner did not respond to that letter by providing additional evidence for the Proposed Finding as requested by the Bureau of Indian Affairs. The Proposed Finding provided a detailed overview of the evidence previously submitted by the petitioner for the historical period prior to 1900.

The petitioner submitted new evidence during the Proposed Finding comment period to support a revised finding of continuous, significant social interaction between the Indians living in Bay Center and the Chinook descendants concentrated in Dahlia or Ilwaco on the Columbia River to the south as late as 1950. This evidence, primarily in the form of newspaper accounts of visiting between some of the petitioner's ancestors along the

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Columbia River and the Chinook at Bay Center, provided a factual basis to revise the Proposed Finding to show that the petitioner's ancestors had continued to interact at a level to meet criterion (b) until sometime between 1930 and 1950. It has not been possible to determine from available evidence the exact date that the level of interaction fell below a predominant portion of the petitioner's membership, but the record does not contain sufficient evidence of community after 1950.

The Proposed Finding discussed in detail post-1950 claims, acknowledgment and other activities. It did not find evidence that these activities encompassed a predominant portion of the petitioner's ancestors in a cohesive social entity. In response to the Proposed Finding, however, the petitioner provided little new evidence to demonstrate that it met criterion (b) after 1950, including the period "at present." The discussion in referred Issues #5-7 removes most of the evidence or analysis relied upon in the Final Determination to make a positive finding under criterion (b). The proceedings before the Interior Board of Indian Appeals after the issuance of the Final Determination did not produce new evidence that demonstrates that the petitioner meets criterion (b). The remaining evidence, most of which was analyzed in the Proposed Finding technical reports and summary under the criteria, does not demonstrate that the petitioner meets criterion 83.7(b), as the following discussion demonstrates.

Census Data, 1900 and 1920. The petitioner's comment on the Proposed Finding includes exhibits that attempt to use 1900 and 1920 Federal census records to document the existence of Chinook "communities." The petitioner's discussion of the 1900 Federal census, in the petitioner's Exhibit K (Petitioner Ex. K, 1-7), makes no reference to the discussion of the 1900 census in the Proposed Finding or the Historical Technical Report. It lists 97 Indian households on the 1900 census in two counties in Washington State, and says that 76 households and 272 individuals were Chinook. The Historical Technical Report noted the presence of 333 descendants of the 1851 historical Chinookan bands and 91 ancestors of the petitioner in 1900, either on the Federal census in 90 households in three counties of Washington and Oregon or on the Indian census rolls of four Indian agencies (*Chinook PF*, HTR 25-30, Tables 1 and 2). In addition to an analysis of Chinook descendants on the 1900 census, the Historical Technical Report included an analysis of the census data which considered only those Chinook descendants who also were ancestors of the petitioner's members.

The Proposed Finding and Historical Technical Report identified clusters of Chinookan descendants on the 1900 census in the Bay Center, Ilwaco, and Dahlia areas (*Chinook PF*, HTR 25-30). The Proposed Finding found evidence of the existence of an Indian community at Bay Center at this time, but inadequate evidence of distinct Chinook communities elsewhere. The Historical Technical Report demonstrated that no census enumeration district was predominantly Chinook (*Chinook PF*, HTR Table 3), and found limited evidence of predominantly Chinook neighborhoods (*Chinook PF*, HTR 29).

The petitioner's discussion of the 1920 Federal census (Petitioner Ex. J, 1-6), makes no reference to the mention of the 1920 census in the Historical and Anthropological

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Technical Reports. It ignores the discussion of distinct settlement patterns in Bay Center and Dahlia in the decades of the 1910's and 1920's in the Anthropological and Historical Technical Reports. It lists 68 Indian households on the 1920 census in two counties of Washington State, and says that 65 households with 270 individuals were Chinook (Petitioner Ex. J, 7-23). It lists Chinooks and other Indians without noting whether they were ancestral to the petitioning group. The Historical Technical Report did not include a comprehensive survey of Chinook descendants or ancestors of the petitioner on the 1920 census. That report's survey of the 1900 census demonstrated, however, that Chinook descendants were living in northwestern Oregon and on several Indian reservations in Washington and Oregon, not just in Pacific and Wahkiakum Counties of Washington State.

In Exhibit J, the petitioner says that the 1920 Federal census shows that two settlement areas, Bay Center and Dahlia, "were distinctly Indian" (Petitioner Ex. J, 1), but does not define what made a settlement "distinctly Indian." The petitioner also notes that the census enumerator in 1920 "identified part of the village [of Bay Center] as 'Indian Town'" (Petitioner Ex. J, 2). The petitioner asserts that the 1920 Federal census showed that "Chinooks continued to reside in their aboriginal homeland" (Petitioner Ex. J, 1). The Anthropological Technical Report concluded that, "[t]he 1920 census provides information that supports the continuing existence of concentrations of Chinook Indians in Bay Center and Dahlia" (*Chinook PF*, ATR 86). The Historical Technical Report made the point that the 1920 census identified an "Indian Town" section of Bay Center (*Chinook PF*, HTR 31).

The evidence and argument in Exhibit J is consistent with the conclusions of the Proposed Finding that there was "some evidence that the Indians at Bay Center maintained a separate geographical community until about 1920" (*Chinook PF*, 16), and that there was "evidence that some of the Chinook descendants may have been living in an exclusive (or nearly exclusive) settlement at Dahlia" (*Chinook PF*, 14) before the 1930's. The evidence from this census strengthens the conclusion that an area of majority Indian residents (14 of 19 households) existed in Dahlia Precinct in 1920 (Petitioner Ex. J, 16-20). The Proposed Finding noted that the population of Chinook descendants living at Dahlia in about 1910 represented only a small percentage of all Chinook descendants, and that an exclusive settlement there was insufficient by itself to demonstrate that a substantial portion of the Chinook were part of a social community at that time (*Chinook PF*, 15). While this additional evidence from the 1920 census does not show that a majority of the petitioner's ancestors lived in majority Indian areas at that time, it indicates that the Chinook lived in substantial numbers in certain geographical settlements, but not that these settlements formed a cohesive and distinct community as required by the regulations.

Residential patterns on the 1900 and 1920 censuses do not show that the petitioner's ancestors were so clustered that social interaction as a distinct community can be assumed on the basis of geographical evidence alone. These data about residential patterns, absent actual evidence of social interaction, are insufficient to show that the

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petitioner's ancestors in these various areas in 1900 and 1920 interacted as a distinct social community or communities. This census evidence provides a context for understanding other evidence about the petitioner, but this geographical evidence by itself does not meet the requirements of criterion (b).

Occupational Data. The petitioner cites the 1900 and 1920 censuses as evidence to show that the petitioner's ancestors "shared work and community" as fishermen and oystermen because they "worked together in crews" (Petitioner Ex. K, 2; Petitioner Ex. J, 4). It also stresses that these occupations were "traditional occupations" (Petitioner Ex. J, 4,5). However, the evidence shows that a very high percentage of residents of any nationality or ethnicity in Bay Center and along the Columbia River during this period were engaged in fishing occupations and the Chinooks' participation in fishing did not distinguish them from others. Additionally, the census data does not indicate that the Chinook were engaged in shared, cooperative labor as opposed to individual labor for wages. The evidence only shows that their occupations were similar. The newspaper articles describing fishing crews in Bay Center between 1920 and 1940 show that fishing crews were made up of close family members. None of this evidence demonstrates that the petitioner's ancestors' fishing activities were organized along tribal lines.

Allotments on the Quinault Reservation. The petitioner submits argument under criterion (b) pertaining to the *Halbert* decision without referencing the extensive discussion of the *Halbert* case in the Proposed Finding technical reports (Petitioner Ex. D, 1-3). To the extent that the petitioner is arguing that this court case and the allotment practices of the BIA in the 1930's are previous Federal acknowledgment, the Final Determination previously rejected that argument, and the discussion under referred Issue #2 and the "Comments on the Proposed Finding" explains the reasons for rejecting that argument in this Reconsidered Final Determination. Although the petitioner also alleges that the evidence from the *Halbert* case was not analyzed by BIA researchers, the Proposed Finding technical reports contain numerous references to it and to related documents. Nevertheless, any harm alleged by the petitioner is moot at this point, as the petitioner is now found to meet criterion (b) in the 1930's.

Possible Social Interaction. The petitioner argues that the "numbers" of Chinooks in Bay Center, Dahlia, and Chinook-Ilwaco "were sizable and sufficient to sustain tribal relations" (Petitioner Ex. K, 6). It also argues that these "communities," and Cathlamet, were "connected by water transportation" and were "within one day's travel or less of each other" (Petitioner Ex. K, 6; also Ex. J, 1). Rather than providing evidence of actual social interaction and social activities by ancestors of the petitioner, whether in one settlement area or between settlement areas, the petitioner's argument is limited to suggesting the *possibility* of social interaction because of the number of Chinook descendants living in a single geographical area, and the *possibility* that Chinook descendants residing in separate geographical areas could have visited each other by steamboat or ferry. The Proposed Finding put the petitioner on notice that it would need to provide "evidence that demonstrates social interaction that involves a substantial portion of the group's members" (*Chinook PF*, 9). These arguments that social

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interaction would have been possible among the petitioner's ancestors in 1900 and 1920, standing alone, do not meet the requirements of criterion (b). However, the petitioner's new submissions made during the comment period following the Proposed Finding provided enough information on actual interactions relevant to criterion (b) to cure the deficiencies identified in the Proposed Finding to 1950, but not after that date.

Social Interaction Shown in the Newspaper Articles. A BIA analysis of the newspaper articles collected by the petitioner shows that the Bay Center Indian community between 1910 and 1950 was socially distinct from the non-Indian community. The patterns of social interaction documented among named individuals at Bay Center show that those Indians with Chinook ancestry participated in social activities that generally did not include the non-Indian population (other than spouses) before about 1940, even though barriers to social interaction between non-Indians and Indian descendants slowly eroded throughout the 20th century.

The BIA researchers considered the information submitted by the petitioner since the Proposed Finding, most notably the newspaper articles, and combined it with the data submitted for the Proposed Finding to determine whether there was interaction among the three main communities identified in the Proposed Finding.

General Comments on the Newspaper Articles. The newspaper articles fall into two categories, news and small town gossip columns. The latter category consists of short columns which report the goings-on in small communities within the papers' circulation areas. Bay Center had long-running columns in the Raymond and South Bend papers. Dahlia had a column in the *Columbia River Sun* published in Cathlamet. These columns reported on births, weddings, illnesses, visiting, parties, dances, and honor rolls. They included sporadic coverage of economic transactions and occasionally named who fished together and where they went.

The Indian background of individuals was treated differently in news stories and gossip columns. Gossip columns generally did not reveal Indian ancestry especially before 1925. In 1925, with the onset of claims, the identification of Indians appeared to occur more often. The gossip columns would indicate Indian ancestry or race if the editors found it was relevant to the story. News stories were more likely at all times to identify individuals as Indians, especially if they were in trouble.

New evidence that demonstrates community from 1900 to 1950 at Bay Center. The Proposed Finding is altered by evidence submitted by the petitioner and analyzed on a database created by BIA researchers. The Proposed Finding had put the petitioner on notice that, under the 1978 regulations, they did not meet criterion (b) after 1920 due to lack of sufficient evidence, and that even before 1920, as early as 1880, these communities associated with the petitioner's ancestors may have been separate and distinct communities. Thus, the BIA suggested to the petitioner that it search the community news or gossip columns in the small local newspapers in southwestern Washington for news of the petitioner's ancestors in hopes that reports on visiting,

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socializing, moving, funerals, weddings, and other activities and events such as notices of tribal or council meetings would list the specific names of individuals and show them acting together in a distinct Indian community. Then-chairman Timothy Tarabochia responded to this request and the petitioner submitted some 150 short newspaper articles (almost all gossip columns) from 1910 to the 1990's. More than 1,000 mentions of individual names are contained in these articles.

The BIA researchers analyzed these documents³³ and found that Bay Center clearly was home to a distinct Indian community of off-reservation Chinook descendants ancestral to the current petitioner (hereafter called "Chinook descendants") to the 1950's. This community drew people from a small region surrounding Bay Center and included individuals living in Raymond, South Bend, Nahcotta, Oysterville, the Pacific Ocean beaches, Tokeland and some rural locations nearby. The new evidence to support the existence of historical community under criterion (b) are described below:

1. Newspaper articles from the local small towns including Bay Center, Raymond, and South Bend show a network of interacting individuals, almost all Indian descendants, many of whom are ancestral to the current petitioner. Although never identified as "Indians" in the social columns, the Indian social sphere of interaction was predominately distinct from the non-Indian social sphere of interaction. The newspaper articles show that the distinction between Indian descendants and non-Indians decreased from 1920 to 1950. From 1906 to 1935, social events were typically attended only by Chinook descendants who are ancestral to the petitioner and their spouses or only by non-Indians, indicating that social separation occurred between these two groups. In addition, the articles did not name reservation Indians attending social events with the petitioner's ancestors during this time. After 1935, attendance at various functions increasingly included both Chinook descendants who are ancestral to the petitioner and non-Indians.

2. The petitioner submitted letters from the BIA agency official overseeing the trust fund accounts of some the petitioner's ancestors. These accounts were set up to contain the trust money earned from timber allotments on Quinault Reservation. The agents' responses to requests for disbursements from these funds always included a paragraph justifying the disbursement. In many of these letters, the agent referred to the high degree of acculturation of the allottee to justify the disbursement. This apparently indicated, according to the agent's reasoning and perspective, that the allottee was unlikely to squander the money and become a ward of the state in the future. The presence of a non-Indian husband or father was viewed as a positive factor. Thus, many of the letters, especially to the elderly and less acculturated allottees, were quite paternalistic from the modern perspective and blocked the *cestui que* trust from his or her trust funds. The agents treated the Bay Center allottees with comparative largess and in

³³ This involved identifying the individuals, their family relationships, ages, backgrounds, permanent residence, etc.

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many cases released entire trust funds of several thousand dollars to them to buy homes, boats and automobiles, while at the same time disbursing only small amounts under \$300 to individuals living on Quinault or elderly individuals living a partial subsistence lifestyle. These documents provided evidence that the petitioner's ancestors were treated distinctly from reservation Indians.

3. The tone of some early news articles and of two articles concerning automobile accidents, one involving drinking, implied ridicule and provides evidence that social distinctions were being made between the Chinook descendants and non-Indians. Unlike the social columns, the news stories would repeat several times in the body of the story and in the headlines that the individuals involved were Indians.³⁴ These same individuals were not identified as Indians in the social column. The disrespectful tone of articles from earlier years gave way in about 1910 to a relatively benign treatment in virtually all of the newspaper articles. Elsewhere, the use of double meanings and other verbal devices tended to blunt outright racism. This tone provided some corroboration that social distinctions were being made in the greater Bay Center community until 1930. These distinctions predicate racial discrimination that underlies the kind of separate social sphere found in Bay Center at least until 1930.

Evidence that corroborates these findings that a distinct community of Chinook descendants lived in and around Bay Center between 1906 and 1950 was considered during the Proposed Finding. That evidence includes:

1. The Cemetery records for Bay Center were analyzed in the Proposed Finding. They corroborate the above evidence which points to a distinct Indian community in Bay Center which included some people in outlying communities. The Bay Center cemetery layout shows segregation between the Indian descendants buried there and the non-Indians.³⁵ The cemetery can be viewed as laid out in a fan shape, the hinge of the fan being the entrance gate to the cemetery. The Chinook descendants were buried on the perimeters of the cemetery; the non-Indians were buried in closest proximity to the entrance. The individuals buried on the large Indian fringe are the same people named in the newspaper gossip columns and were part of the Indian descendant social network. This, therefore, corroborates the finding that a distinct social network existed in and around Bay Center.

2. Also analyzed for the Proposed Finding was a hand drawn map by a Chinook descendant which showed the Chinook descendants primarily living in clusters in two areas along with non-Indians. This same phenomenon was noted in the 1920 census, although the clustered populations had decreased. The existence of historical

³⁴ A tribal designation such as "Chinook" was not used.

³⁵ For the sake of accuracy, it should be noted that two Asian individuals appear to be buried in the Indian descendants' section. However, the newspaper coverage of social activities describes only one occasion when an Asian individual socialized with them.

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neighborhoods would have encouraged the development of relationships that lasted even after the people moved from the neighborhood or from Bay Center. This evidence also corroborates the finding that a distinct social network existed.

Evidence for community for the petitioner as a whole (Bay Center/Dahlia/Chinook).

Both the 1978 and 1994 regulations require petitioners to demonstrate that they form a community as a whole. The Proposed Finding also requested information concerning the relationship between the people living at Cathlamet/Dahlia, Ilwaco/Chinook, and Bay Center during the 20th century:

The possible existence of two separate distinct settlements of Chinookan descendants (Bay Center and Dahlia) from about 1900 to 1920 presents a problem for the petitioner with regard to the maintenance of social community. This is not because of the existence of two settlements *per se*, but because there is insufficient evidence available at this time that the Chinookan descendants in those two settlements constituted a single social community. With regard to the issue of social community, the petitioner's ancestors must be evaluated as a whole. Given that the ancestors of the petitioner's members are from both Bay Center and Dahlia, it must be demonstrated that they existed continuously as a single social community from the time of first sustained contact with non-Indians to the present. (*Chinook PF*, 17)

The petitioner submitted limited analysis of the new materials which would demonstrate that, between 1920 and 1950, there were social activities which brought together individuals from the various communities, specifically from the geographically distinct communities of Bay Center, Dahlia/Cathlamet and Ilwaco/Chinook noted in the Proposed Finding. The cross-regional interactions noted in this analysis focused on only two family lines, which would not be sufficient to demonstrate that the Chinook descendants formed a single community encompassing the Ilwaco/Chinook, the Dahlia/Cathlamet and the Bay Center areas.

Cathlamet/Bay Center Axis. There were kinship ties between the Amelia and Barichio families in Cathlamet and the Barichio/Calhoun families in Bay Center. These two socially active families were mentioned on several occasions in the newspaper articles about social life in Bay Center. Newspaper clippings detail that Mingo Amelia (Springer-Scarborough family line) from Cathlamet visited Gray's Harbor and Willapa Bay in 1920, Astoria in 1920 and 1921, and his "aunt" Lena Barichio Calhoun (Millet family line) in South Bend (near Bay Center) in 1923 and 1924. In 1941 he and his wife visited Dewey Barichio in Raymond (also near Bay Center). His sister, Mermis, was documented as visiting only Astoria four times between 1919 and 1920. After she married Paul Zollner (Ero relations), they lived in Cathlamet and documents show them visiting the Paul Petits (Aubichon family line) in Bay Center.

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The Barichio's were also a Cathlamet family of Chinook descent of the Millet family line. Frank Barichio established a grocery in Bay Center and had three daughters who would eventually marry a Brignone (family line unknown, although a Paul Brignone had married Frank Barichio's half-sister, Ellen³⁶), Paul Petit (Aubichon family line), and a Reischman. He also had a son, Dewey Barichio, who was married to a Chinook descendant from the Pickernell-Ero family line.

Mingo Amelia (also a Millet), Mermis Amelia Zollner, and Lena Barichio Calhoun have descendants in the modern CIT/CN membership. The newspaper articles disclose that these related families³⁷ in Cathlamet and near Bay Center actively visited back and forth. Approximately 125 individuals in the current petitioner belong to the family lines represented in this visiting (Millet). They are also allied through Paul Petit to the Aubichon family line. Paul Petit had close relatives in the Ilwaco area.

The Dahlia/Chinook Axis. All newspaper articles mentioning Dahlia concern the activities of the Ducheneys family line, particularly the Elliotts, Henrys, and Petersens. Although visiting between these families and relatives at Gray's River and Skamokawa and other visits to Astoria and Portland were documented, only one article in which Ducheneys were mentioned referred to Bay Center. This 1932 article in the *Raymond Herald* stated:

Mrs. Inez Webber and daughter Miss Christensen accompanied by Chester Griffin, all of Los Angeles visited Mr. and Mrs. Paul Petit and family last week. Other guests at the Petit home last week were Mrs. Kjos and daughter of Seattle, Mike McDonald of Seattle and Catrell Jones of Altoona, Washington. (*Raymond Herald* 5/6/1932)

This appears to be a group of age cohorts, including some cousins, originally from the Columbia River communities of Dahlia, Cathlamet, and Altoona. Paul Petit's wife, Mary Elizabeth Barichio (Millet family line), daughter of Frank Barichio, who was born near Cathlamet and had family there with whom there were close contacts. Mrs. Inez Webber was also raised on the Columbia River at Dahlia. She was in the Peers/Ducheneys family line. Mrs. Kjos was Paul Petit's sister Florence. Catrell Jones was from Altoona, also on the Columbia. Chester Griffin and Mike McDonald could not be identified. The Jones family was also a Ducheneys family line. Although it is unclear why this group gathered during the first week of May 1932, they share an affiliation with Wahkiakum County, and they were similar in age, all having teen-age children. Only Catrell Jones still lived in Wahkiakum County in 1932. The others lived in Seattle and Los Angeles.

³⁶ Mermis and Mingo Amelia's mother Ellen (Springer/Barichio) Brignone Amelia. She first married a man named Paul Brignone and second, Frank Amelia.

³⁷ In many previous cases, the BIA has assumed that connections exist and information is exchanged among closely related individuals.

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No documentation was found in the submitted articles that would show that the Elliotts visited socially with either Bay Center Chinook families or other Chinook families on the Columbia. Their documented visiting, although extensive, was almost always to communities located on the Columbia, such as Astoria, Cathlamet, Altoona, etc., and to Portland. Even these visits however, were among members of the Ducheney family line, and did not extend to the Barichios, the Millets, Henrys, Aldens, Jones and other families living in this area. The families they visited with were named Miles, Olmsted, Peterson, Heiner, and Henry. All are Ducheney lines.³⁸ The Ducheney line has 320 descendants in the modern petitioner. This visiting on the part of the Elliott family did not crosscut different Chinook family lines, and therefore, evidence was insufficient to connect this family line to other family lines of the petitioner's ancestors between 1880 and 1950. It may be that the Ducheneys did visit with non-Ducheney Chinook living on the Columbia River, but no documentation was submitted to demonstrate such interaction. The Ducheneys became involved in the land claims and attended meetings after 1950 in Bay Center.

1880-1900: The lingering effect of primary kinship relationships existing in 1880 after the end of Chinookville. The Proposed Finding found evidence that a Chinook village had persisted until 1880 at Chinookville on Baker's Bay on the Columbia River, but no evidence that the village existed for any length of time after 1880 (*Chinook PF*, 14, 23, 27-28). The petitioner calls this finding a serious error because it did not conclude that Chinookville "was destroyed rather than voluntarily vacated as an abandonment of tribal community" (Petitioner 1998, 35). The Proposed Finding included no statement about any voluntary abandonment. It simply stated that between 1880 and 1900 "the village of Chinookville ceased to exist" and that families there "moved to other locations" (*Chinook PF*, 14). The petitioner agrees with this statement. It attributes the destruction of Chinookville to the natural "massive erosion" of the Columbia River which "washed away" the old village in the 1880's (Petitioner Ex. K, 4; see also Ex. S).

For purposes of criterion (b) of the regulations, what matters is not how Chinookville ended, but whether its permanent residents and seasonal residents continued to interact as a community. The petitioner simply asserts that Indians at Chinook and Ilwaco on Baker's Bay were "direct successors to Chinookville" (Petitioner Ex. K, 5). However, the petitioner does not show that named ancestral families, known to have lived in Chinookville before 1880, continued to live together after 1880.

A comparison can be made to show where individuals lived when the 1880 Federal Census was taken with where they or their close relatives lived when later Federal Censuses and Indian schedules were taken. The newspaper articles submitted by the petitioner have been used above to define a network of Chinook descendants after 1906. They also help trace where individuals moved in the first half of the 20th century and with

³⁸ Olmsted could not be identified.

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whom they interacted.³⁹ Individuals who had lived in Chinookville, some closely related through kinship, moved from Chinookville to other communities, primarily Bay Center and Ilwaco.

Close family ties between parents, children and siblings would not have severed immediately. People generally maintain ties to close kin until they die,⁴⁰ and this assumption should be applied in this case. For example, the Ducheny and Petit families had lived in Chinookville. Some members of these families moved to Bay Center and others to Columbia River communities. Petit siblings lived in Bay Center and in Ilwaco. Additionally, individuals moved with their spouses after marriage, sometimes separating from their siblings or natal families. Moving from the Columbia River area to Bay Center, they left close relatives behind. For example, Alex Lucier lived at Bay Center and his sister Mary Ann lived in Dahlia. Margaret Ero married John Pickernell and they lived in Bay Center, while her relatives lived in or near Dahlia. The BIA researchers cannot determine the actual number of such ties with the time and resources available. The petitioner also only submitted anecdotal compilations drawn from the documents submitted for the Final Determination. However, it would seem likely, and the anecdotal evidence supports the contention that, close relatives would have remained in continuous contact following the diaspora from Chinookville for another generation, allowing the petitioner to meet criterion (b) to 1910.

Other fragmentary evidence was submitted. The two Elliott store ledgers provide evidence that two or three Bay Center individuals who are ancestral to the current petitioner visited the Columbia during the fishing season. These citations are sparse and do not indicate a pattern of regular visiting nor whether the Bay Center visitors were actually interacting with other Chinook who were located year-round along the Columbia.⁴¹ After 1920, the effect of lingering kinship ties between people in Bay Center, Ilwaco, and Dahlia, based on close kin ties and common residency in Chinookville before 1880 can no longer be presumed to exist.

Affidavits, Interviews, Questionnaire Responses provide corroborating evidence that the petitioner meets criterion (b) 1900 - 1950. The petitioner submitted affidavits, interviews and responses to a "Tribal Elder's Questionnaire." These documents (Exhibits 1287 through 1307) corroborate the BIA researchers's analysis of the newspaper articles for this

³⁹ Federal censuses after 1920 were not available at the time of the original Proposed Finding and Final Determination.

⁴⁰ The assumption that first degree kin (parents, grandparents, children and siblings) maintain contact has been used in a number of past acknowledgment decisions.

⁴¹ This evidence is insignificant. Because the Columbia River communities were bustling with economic activity during this time period, other records, perhaps industrial records of canneries, railways, shippers, or other industries may have documents of interest, as may certain U.S. Government agency records, such as the Bureau of Fisheries or the Post Office.

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Final Determination and the analysis under criterion (b) in the Proposed Finding. Many of these documents were difficult to utilize because the birth date and residences of the respondent were not included. However, contextual information in the documents allowed the BIA researchers to make conclusions concerning the general time and place of events and to cross-reference these materials with genealogical records also submitted by the petitioner.⁴²

While the collection of interviews and affidavits by itself cannot be used to meet criterion (b), when combined with the newspaper articles, and other interview material, it does tend to support the petitioner's meeting criterion (b) from 1906 to 1950, despite the clear evidence that social distance among the petitioner's ancestors grew after 1900.

These interviews and affidavits must be weighed in light of the way they were administered. Marion Lomsdalen's interview of April 27, 1978, is valuable not only because of its depth and length, and the competence and knowledge of the interviewers, but also because it predates the acknowledgment petition and process (Lomsdalen 1978). Mrs. Lomsdalen did not have specific knowledge about the 25 CFR criteria. In contrast, the "Elder's Questionnaires," which were sent to members after the issuance of the Proposed Finding, contain an introduction that put the respondent on notice that:

Specific information provided in this questionnaire is important in combating the Bar [*sic*] contentions:

- 1) the Chinook Indian Tribe ceased to function as a community about 1880;
and
- 2) the Chinook Indian Tribe ceased to exercise political authority over its members about 1870. (Petitioner Ex. 1296-1306)

It would be impossible to measure the effects, if there were any, this notice may have had or not had on the respondents. Nevertheless, many of these documents contain relevant information and appear to be useful in providing background for interpreting other documents submitted by the petitioner. In general, these documents demonstrate the gradually decreasing number of Chinook social ties from the earlier generations, when entire social networks were comprised of Chinook people, to the most recent generations, when the only Chinook ties are to close relatives.

For example, Mrs. Lomsdalen's description of her life as a child on a homestead "up Nemah" at the beginning of the 20th century shows an on-going Bay Center Chinook Indian community where individuals continued to speak Chinook or a Bay Center dialect (apparently Chehalis), collect medicinal herbs, make baskets, attend Shaker Churches,

⁴² Under the February 11, 2000, directive ("Changes in the Internal Processing of Federal Acknowledgment Petitions," *Federal Register* 65:7052) the BIA generally would not conduct this type of in-depth analysis when the petitioner has not provided its own analysis. The Final Determination, however, accepted and relied upon this analysis, and therefore it is retained in this Reconsidered Final Determination.

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cook and eat traditional foods and most importantly interact with a long list of other Chinooks on and off the reservations, including the Petits, Luciers, Charleys, Nelsons, Pickernells, Millets, Franks and others. Mrs. Lomsdalen says that in the early 1900's the Bay Center people did not have highway access as they do today and utilized boats to visit Indians on the Lower Columbia: "[m]ost of the Indians we mingled with was Bay Center, because our Uncle, see in them days you had to go on boats and things and our Uncle would come up here and we'd go down there, and them days we never got roads or anything, and never got, like to go to Chinook, around." As a child, Mrs. Lomsdalen sometimes attended Shaker ceremonies and after church potlucks. Clearly, Mrs. Lomsdalen, who was born in 1898, had many experiences with Chinook people as a child during the first decade of the 1900's.

Luella Messinger Christiansen from Cathlamet, who was born in 1913, said that the Indians and non-Indians were socially segregated at school:

In grade school at Cathlamet. . . . Those of us with Indian heritage pretty much stayed together . . . as we were picked on . . . and pointed out by other class mates . . . one of my good friends was Eleanor Akers, and Mingo Amelia . . . his dad smoked our salmon. . . . He was the best "smoker" in town . . . using the old methods. (Christiansen 1997)

This woman described the different "Indian communities" in Wahkiakum County:

My mother took me on the boat "Julia Bee" down to Altoona. . . . I remember how when the boat came in the whole Indian village would come to the dock to see what was going on . . . and who was visiting. (Christiansen 1997)

She continued later in the interview:

All our lives we spoke of the areas of Dahlia, Elliot Landing, Altoona as the Indian villages . . . it was always this way, when I would go on the boat . . . the people would meet the boat . . . they lived right on the water front, except at Pillar Rock, up on the hill a little, the houses were really small. I saw smoke coming out of the smoke stacks. (Christiansen 1997)

Her description of these places implies distance between herself and the residents of these Indian communities, whom she refers to as "they."⁴³ She observed these communities but did not live in one. She does not differentiate between "Indian" and "Chinook." Her

⁴³ In fact, during the fishing season, it may be that large numbers of non-Chinooks found employment in the canneries. The tone of many of these interviews, affidavits, and questionnaire responses imply that the petitioner's ancestors were distinct from not only non-Indians but also reservation residents.

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father disapproved of her mother's becoming involved in tribal affairs. Mrs. Christiansen, who was a small child in 1918, said:

When I was really little mother went just once to a tribal meeting . . . it must have been in /1918/[. M]y dad was mad at her for going . . . they had a rowe [*sic*] about it . . . mother said I just want to go onice to see what it is all about . . . that was the last time as far as I know. My dad [. . .] didn't want mother to get involved. (Christiansen 1997)

Mrs. Christiansen was born fifteen years after Mrs. Lomsdalen. Mrs. Christiansen lived in Dahlia on the Columbia River and Mrs. Lomsdalen lived near Bay Center. Their experiences are surely individual. However, in the context of the entire record, their stories illustrate the gradual decrease in the number of Chinook social ties that many of the petitioner's ancestors experienced when they moved away from the predominantly Chinook communities and began to interact daily with non-Indians in their own families, in school, at work or in their neighborhoods.

Catherine Troeh was a girl in the late teens and early twenties. She describes how the Indians in Ilwaco were crowded from their geographical and social position after non-Indians settled there between 1880 and 1900. She states:

With the entry of the Kansans and the Finnish People, the Indians were gradually "pushed" to the Back Street. At the upper end of the town on the Back St. lived my Great Grandmother, Amelia Petit, next door her son Herbert and some of his Family. Across the Street lived Kate Brown (Indian) and John Hawks (Indian). My Grandmother Catherine Petit Colbert had a staunch personality, she was called for Jury duty in South Bend many times, her house extended from the Front St. to the Back St. [S]he would not move, and held her head high. (Troeh 1997)

The next generation of respondents describe their young lives in the 1920's and 1930's. Like Mrs. Christiansen, they relate that they may have visited a Shaker Church rarely during a funeral or may have heard a parent describe the Shaker Church. They say that they visited the reservations infrequently and viewed the Shoalwater Bay people "up the Bay" from a social distance. They indicate that many sought education.

For example, Oma Woodcock Singer, Myrtle Woodcock's daughter, was born in 1916 and her description of her social life between 1925 and 1935 dovetails with the social life described by the BIA researchers's analysis of newspaper articles submitted in the petitioner's response. She states, "almost all of our social interaction was with Chinook families living around South Bend, WA and Bay Center, WA" (Singer 1997). She describes "dancing in homes and parties, [and] picnics." She visited Shoalwater and Quinalt Reservations. She sometimes stayed in individuals' homes in Bay Center for as long as a week or overnight. The people she visited include the Calhouns, Clarks, Hawks, Wains, Lusciers, Gracey, Petits and Barichios in Bay Center, and the Walkowskis,

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Johnsons, Reeds, Olsons and Olivers in South Bend.⁴⁴ Although her predominant social set was in Bay Center and nearby South Bend, she also says that she visited the Scarboroughs in Cathlamet and she remembers that the Eros visited the Johnsons⁴⁵.

Another of Myrtle Woodcock's daughters, Myrtle Jean Woodcock Little, born in 1923, also describes her Chinook social set at Bay Center including not only relatives but also friends. The word for friends in Chinook jargon is "Tillicums." She says:

We had many Chinook friends. I grew up in the lower end of Alta Vista in South Bend. We had a lot of Chinooks in our area. They were: Leda Clark Reed family, Edna Clark Olsen, Dora Clark Robinson, Elizabeth Pickernel Johnson. The Calhouns and the Baileys. They were all close neighbors but above all 'Tillicums.' (Little 1997)

Mrs. Little describes her social life in a later period. During the 1930's and into the 1940's, she visited in nearby Bay Center. "Our social circle centered around those who were Chinooks" (Little 1997). She describes that life,

We had many Chinook friends and neighbors and I have listed their names on another page. We had very strong bonds of friendship and we helped each other in any way we could. We visited in each others homes. We had picnics, parties and dances in each others homes. We made quilts during the winter months. In the deep depression Ferrill Johnson had a large truck and would take us out to logged off country to pick wild black berries. This was part of our native culture and it was very special to us. It provided many quarts of canned berries for winter. . . . (Little 1997)

Mrs. Little lists some 42 individuals as "Chinook friends and family Chinooks." She does not include the Shoalwater Reservation people in her list. None listed are Charleys or James, two of the predominant families at Shoalwater Bay. However, she states later in her interview, "We also visited Shoalwater friends. The Charley and the James family. My brother married Ruby James" (Little 1997). Mrs. Little distinguishes between "Chinook friends" and "Shoalwater friends." This statement falls in line with the analysis of the newspaper articles. That analysis found that the Shoalwater Reservation residents

⁴⁴ These are the same individuals who define the Chinook social set whose activities are described in the newspaper articles. In this context "social set" refers to a group of individuals whose common interactions produce a set of interactions. This set is separate and distinct from interaction sets of other individuals and groups of individuals from the larger population who are involved in similar social activities.

⁴⁵ Mrs. Little's mother's maiden name was Johnson.

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were not actively involved in the Chinook social set defined by the activities covered in the articles.⁴⁶

Mrs. Troeh in Ilwaco on the Columbia had a Swedish grandfather, and she had many ties into that community and into the Chinook community in Ilwaco. She implies that she escaped obvious discrimination in Ilwaco and sometimes played with wealthy non-Indian children in the mid-1920's. However, she also indicates that her older relatives did experience direct discrimination based on their physical appearance at the same time. She relates what happened when she was a nursing student in 1930 in Portland:

While we were in training at St. Vincent's Hospital in Portland 1930-1933, word came about the allotment issue. My Aunts who were teaching in Portland, moved to the residential Hotel called The St. Andrews, to be near my Sister and me. There was a great deal of argument in the family about signing up, especially from [my] Aunt. . . . because of her dark complexion. She excused herself as being French Canadian which she was. Otherwise she could not have held her position in the School. She finally signed the papers which released the rest of the Family. (Troeh 1997)

Mrs. Troeh tells how her aunts in the 1930's visited the Bertrands in Taholah or "possibly Bay Center." She does not indicate that she visited. She says that she knew of the Charleys, a Shoalwater Bay family who have no descendants in the current petitioner, who spent the summers in Ilwaco fishing. No other individuals living in the vicinity of Bay Center are named by Mrs. Troeh, and her interview does not indicate that she personally had interaction with Bay Center Chinook. Charles Mechal's interview also mentions many of the individuals (Sunds, Mechals, Petits) who were living in Ilwaco or Altoona in the 1930's, but he does not discuss people living in Bay Center or Dahlia. In addition, most of the individuals both Mr. Mechals and Mrs. Troeh mention are relatives. Their interviews do not contain new information which would show Bay Center and Ilwaco Chinooks interacting during the 1920's and 1930's. The sum total of their interviews would seem to indicate that the number of contacts with Chinooks who were not part of one's own families had typically diminished.

Visiting before 1940 was longer, perhaps because of traveling difficulties. Timothy Tarabochia states:

My mother and father used to sell their fish to Sammy Pickernell for years in Bay Center. My mother (and father) stated before that Lydia and James Goodell used to take off and visit Lydia's Indian relatives in Bay Center.

⁴⁶ This further supports the contention of the Proposed Finding that it may not be assumed that the people fishing under the Charley's leadership may be assumed to be Chinook ancestors of the petitioner.

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Sometimes they would be gone about 2 weeks. . . . They used to have to catch a boat from Dahlia to Chinook or Ilwaco and go up through Willapa Bay by another boat to Bay Center. There were no roads in Brookfield, Pillar Rock or Dahlia until about 1948. All travel was by boat. Some by Horse on trails. (Tarabochia 7/25/1998)

The decrease in Chinook contacts is described especially by those Chinook who had moved to Portland, Seattle or other Northwest locales. Many only visited relatives during the summer to fish (Snider 1997). One woman who grew up in the 1930's in Aberdeen, Washington, says that she visited in Bay Center "lots of relatives and friends of my mother," rather than saying that she visited her own friends. She says that she attended the "pioneer Picnic"⁴⁷ in Bay Center each summer. She traces her connections to the Chinook community at Bay Center through her parents. She does not describe them as connections of her own (Disney 1997). The Great Depression and gas rationing in the 1940's significantly cut into the amount of visiting her family was able to do.

For example, one man describes how the death of his Chinook mother cut him off from his Chinook family. About growing up in Portland after her death, he says:

I then sort of lost my Indian connection but I did continue to visit my uncles who moved to Skamokawa and my cousin Phyllis in Eden Valley."
(Snider 1997)

As a young adult in the 1940's, this man reconnected with his Indian heritage:

Then it was five years at Oregon State where I acquired the nickname of "Chief Floating Feather" as a split end receiver. My Indian identity was reestablished. . . . I spent 31 years coaching and teaching at three different high schools two of them had Indian names (Molalla and Clackamas). Upon my retirement the community renamed the Clackamas Football Stadium "Chief Snider Field." (Snider 1997)

In the 1960's, he says that he visited relatives on the Quinault Reservation. By the 1970's, this man had become involved in the Chinook Indian Council.

Generally, the interviews describe interactions with other Chinooks who are not immediate relatives as rare and remarkable after 1950. Their entrée to other Chinook, for many of those interviewed, is through their parents and grandparents, rather than their own personal experiences.

1953 - Present. The Proposed Finding did not find that evidence had been presented to show that the petitioner met criterion (b) after 1880. This finding extends that date to

⁴⁷ This picnic was for the descendants of early non-Indian settlers.

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1950 based on a totality of the affirmative evidence demonstrating interaction among a predominant portion of the petitioner's ancestors in a cohesive social network. The petitioner argued that the petitioner met criterion (b) in 1953, based on residential patterns alone (*Chinook PF*, 20). They claimed that a very large percentage of the 1952 membership lived in Chinook "aboriginal territory." The percentages claimed by the petitioner appear to be inaccurate. However, even if one accepts that roughly one-third of the petitioner's members continue to live in Pacific and Wahkiakum Counties, this is not a pattern that in itself demonstrates that the petitioner meets criterion (b).

The Proposed Finding suggested a number of research avenues the petitioner could follow including demonstrating that "the petitioner's members associate with each other on a regular basis; that the social interaction is across family lines; that the members interact with each other more commonly than they do with outsiders; that the social interaction is significant and involves most of the membership," and so forth (*Chinook PF*, 21).

The petitioner's comments on the Proposed Finding included a packet of information compiled by then chairman Timothy Tarabochia entitled "Update and Evidence of continuing Modern Community Activities and Decision Making since the BAR Chinook Site Visit in 1994" (Tarabochia 1998). This packet of information included documentation concerning the activities of the petitioner since 1994, but did not include significant documentation concerning 1950 to 1994. The documentation included a few thumbnail sketches published in the petitioner's newsletter, "Tillicums." Many of the activities appear to be a result of Chairman Tarabochia's push to better organize the petitioning group and enhance governance. Newsletter articles ran on their new enrollment and election rules, news of births, deaths and marriages, reports of meetings and profiles of their council members. If the petitioner had submitted evidence that decision-making of some sort involving a predominant portion of the petitioner was going on, that there were conflicts among factions within the petitioner and that there were modes of dealing with conflict or decision-making, this evidence would be valuable in showing modern community. The petitioner submitted no such evidence. They only submitted evidence contained in the above referenced package which focused on a tiny portion of the petitioner's membership, often the relatives of the people in elected office. Therefore, this evidence, even when combined with evidence already in the record for the Proposed Finding, did not demonstrate that a predominant portion of the petitioner as a whole interacts in significant ways and meets criterion (b) at present.

Evidence not acceptable to demonstrate criterion (b) for the petitioner as a whole (Bay Center/Dahlia/Chinook). Other evidence indicates that the Charley family, which has no descendants in the current petitioner, was probably not a part of the Chinook descendants' social sphere as observed in the coverage in the gossip columns, the cemetery layout, oral histories and other documents. Although the activities of George and Roland Charley and other members of that family received significant press coverage during the 1920's when the Charleys led a fishing dispute and litigation over fishing rights at the Columbia's mouth, there was no evidence that the forty or so individuals referred to in news articles and court testimony in the 1920's overlap to a significant degree with the Bay Center

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people and other involved families living elsewhere, who formed a Chinook social network defined above, which is ancestral to this petitioner.

The list of individuals testifying in the fishing litigation included two men from Ilwaco who have descendants in the current petitioner. These men were elderly and testified about witnessing fishing at Peacock Spit in the early days at Chinookville, rather than actually fishing themselves in the 1920's. Several Charleys and others living on the Shoalwater Bay Reservation also testified. The Charley family lived at Georgetown, across Willapa Bay and the Willapa River mouth from Bay Center. This was a reservation at the time, and it still exists as the Shoalwater Bay Indian Tribe, a federally recognized tribe. The Charley family's political activities were sometimes referred to in documents the petitioner submitted for demonstrating criterion (c) and was relied on in part by the Final Determination. However, the lack of evidence showing the Charleys were part of the petitioner's ancestors' social group or that they were interacting with the petitioner's ancestors limits how that evidence is weighed under criteria (b) and (c). Basically, the activities of leaders and members of a recognized Indian tribe, or others without linkage to the petitioner, cannot be used as evidence for demonstrating that the petitioner meets criterion (b). Therefore, the activities of Shoalwater Bay families, such as the Charleys, do not provide evidence for the petitioner to meet criterion (b) at any time in the 20th century.

Summary Conclusion Under Criterion (b)

Under the 1978 regulations, evidence submitted by the petitioner in response to the Proposed Finding was sufficient to show continuous significant social interaction between the Indians living in Bay Center and the Chinook descendants concentrated in Dahlia or Ilwaco between 1880 and 1950. This is not a conclusion that separate communities existed and later combined, but that most ancestors of the petitioner constituted a distinct community. The social interaction in the 1930's and 1940's appears to be based on relations that were established during earlier periods and to rest primarily in the older generation. As people who had been closely connected as children and young adults in Chinookville or Bay Center died, the succeeding generations interacted less often and intensely until the community of Chinook descendants became indistinguishable from the rest of the population. The evidence which is available from 1880 to 1950 is sufficient to show that the petitioner, as a whole, meets criterion 83.7(b) for that time period.

The petitioner did not submit evidence, either during the comment period on the Proposed Finding or during the subsequent IBIA appeal, to address effectively the concerns in the Proposed Finding regarding the post-1950 period. For this time period there is insufficient evidence regarding actual social interaction among a predominant portion of the petitioner's membership. As discussed under Issue #5, acknowledgment activities by themselves are not evidence of community, and the Final Determination's reliance on the Bay Center membership to meet the criterion was in error. Viewing the evidence as a whole, the petitioner did not present evidence of social interaction at a level sufficient to

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meet criterion 83.7(b) at any time after 1950, including the present, and does not meet criterion 83.7(b) for that time period.

Under the 1978 regulations, the petitioner has not demonstrated that “a substantial portion of the petitioning group” has formed a community “distinct from other populations in the area” since 1950. Therefore, the petitioner does not meet the requirements of criterion 83.7(b).

Under the 1994 regulations, criterion 83.7(b) has been evaluated as modified by section 83.8(d)(2), which requires previously acknowledged petitioners to demonstrate only that its members form a distinct community “at present.” As explained in the previous discussion under the 1978 regulations, the petitioner does not meet the requirements of community “at present,” and therefore does not meet the requirements of criterion 83.7(b) as modified by section 83.8(d)(2).

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Criterion (c)

1978 regulations:

- 83.7(c)** **A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present.**

1994 regulations:

- 83.7(c)** **The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.**
- 83.8(d)** **(3) The group meets the requirements of the criterion in § 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in § 83.7(c).**
- (5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7(a) through (c) from last Federal acknowledgment until the present.**

Proposed Finding

The Proposed Finding found, applying the 1978 regulations, that a historical Chinook tribe or bands maintained tribal political influence over its members as an autonomous entity through the treaty negotiations of 1855. It also found that the evidence did not show that the petitioner was an entity that had maintained such political influence since that time. While there was some evidence of local leadership at various times, the evidence did not show nor suggest that separate localities were separate political entities that together included most ancestors. The evidence did not show that any leaders had

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exercised political influence over the petitioner's ancestors as a whole. Therefore, the petitioner did not meet criterion 83.7(c) from 1856 to the present (*Chinook PF*, 36).

In order to meet criterion 83.7(c) for the Final Determination under the 1978 regulations, given the conclusions of the Proposed Finding, the petitioner needed to provide evidence to show that it has been a continuously existing entity that has evolved from the historical Chinook tribe, and that it has maintained political influence or authority over its members since the treaty negotiations of 1855.

Requirements of the Acknowledgment Regulations

This Reconsidered Final Determination, like the original Final Determination but unlike the Proposed Finding, evaluates the available evidence under both the 1978 and the 1994 acknowledgment regulations. The 1994 regulations provide examples, in section 83.7(c)(1), of the kinds of evidence which might be used in "combination" to demonstrate that the petitioner meets the criterion, but do not limit the possible evidence to these examples. They also list, in section 83.7(c)(2), the types of evidence that would be sufficient by itself to demonstrate that the petitioner meets the criterion at a specific time.

Criterion 83.7(c) in the 1978 regulations requires that the petitioner "has maintained tribal political influence or other authority over its members as an autonomous entity throughout history. . . ." This requirement is unchanged in the 1994 regulations. The definition of "political influence or authority" in section 83.1 of the 1994 regulations is "a tribal council, leadership, internal process or other mechanism" which the group has used to influence or control the behavior of its members in significant respects, or make decisions for the group which substantially affect its members, or represent the group in dealing with outsiders in matters of consequence.

The 1994 regulations, in section 83.8, modify the evidentiary burden for petitioners that had been previously acknowledged by the Federal Government. The regulations provide that the petitioner still must demonstrate that it meets the requirements of criterion 83.7(c) "at present." The reduced evidentiary burden for criterion 83.7(c), set forth in section 83.8(d)(3), is that the petitioner may provide sufficient evidence to meet the criterion between last Federal acknowledgment and the present by demonstrating that "authoritative, knowledgeable external sources" identified leaders or a governing body who exercised political influence or authority over the petitioning group. In addition to demonstrating that such identifications were made by knowledgeable sources on a "substantially continuous" basis, the petitioner also must demonstrate one form of evidence listed in section 83.7(c).

Although the petitioner listed what it considered to be several historical leaders of various Chinook bands and some recent council members (Petitioner 1987, 242-248; Beckham 1990), rather than a sequence of band or tribal leaders who succeeded each other over time, it did not provide evidence or explicitly argue that these individuals were identified by "authoritative, knowledgeable external sources" as leaders who exercised political

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influence or authority over the members of a Chinook entity, or that such identifications had been substantially continuous, as required by section 83.8(d)(3).

The petitioner's lists of Chinook leaders largely consist of treaty signers and earlier historical leaders (Petitioner 1987, 242-248; Beckham 1990). This is also true of the mention of historical chiefs in a published pioneer reminiscence submitted by the petitioner (Petitioner Ex. 1032). Scholars who have written about the Chinook also have discussed Chinook leadership only up to the time of treaty negotiations (see *Chinook PF*, HTR 6-7, 24, 52-54; e.g., Ruby and Brown 1976). Since the inquiry under section 83.8(d)(3) concerns the years since the treaty negotiations of 1855, the identification of treaty signers and leaders prior to the treaty negotiations, even if by knowledgeable sources, does not meet the requirements of this section for the relevant time period.

The petitioner's table of "chiefs and headmen" in its original petition did not identify any leaders after 1906 except George Charley, who is discussed below (Petitioner 1987, 242-248). Its sources of identification of "leaders" between 1855 and 1906 were McChesney's 1906 roll of Chinook, an anonymous 1899 article, and three works published after 1950. McChesney's 1906 report sought to identify the members of the 1851 treaty tribes and their lineal descendants and did not describe leadership or governance in 1906 or during the period since the treaties (McChesney 1906). An anonymous author cannot be judged to be authoritative and knowledgeable. An article published in 1979 referred to a pre-treaty leader. A county history published in 1958 referred to a Clatsop leader who died in the late 1870's. Only a non-Indian reminiscence published in 1978 referred to George Charley as a leader of Chinooks on Shoalwater Bay (Plumb 1978). Since the author only described meeting Charley in 1920, it does not appear that his knowledge was extensive and authoritative. The petitioner's researcher provided "family profiles" of leaders since 1925, but his lists were not based on identifications by authoritative, knowledgeable external sources (Beckham 1990).

The petitioner's submissions, both its original petition exhibits and the exhibits accompanying its comment on the Proposed Finding, contain some newspaper accounts (e.g., articles 1907-1929 in Petitioner Ex. 1038-9, 1041, 1043, 1051-2, 1096, 1099, 1110, 1120). Newspaper articles have not been accepted in previous findings as constituting identification by "knowledgeable" sources. There is no evidence suggesting or reason to assume that newspaper reporters, who generally were anonymous, had any extensive contact with or knowledge of contemporary Chinook leaders or entities. None of these articles specifically identified group leaders or a governing body. Pioneer reminiscences in newspaper articles and manuscripts also did not contain identifications of contemporary leaders (e.g., Petitioner Ex. 796, 854, 1032, 1060-1).

To the extent that Indian Superintendent Sams, a knowledgeable source, identified George Charley as a leader, Sams identified him as the leader of the Shoalwater Bay Reservation or of a group of Quinault fishermen, not of the off-reservation Chinook ancestors of the petitioner's members (e.g., letters 1927-1930 in Petitioner Ex. 902-5, 907-9, 911-2, 977, 986, 989, 994-5). The identifications of Myrtle Woodcock as a leader in the late 1920's

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and the 1930's were made by herself, her daughter, a few of her followers, her attorney, and a few non-Indians in affidavits made decades after the period they described (*Chinook PF*, HTR 45-48). The non-Indian affidavits did not reveal that these individuals were knowledgeable and authoritative, as their accounts were not specific and revealed no extensive involvement with the Chinook. For the purposes of this evaluation under section 83.8(d)(3), an attorney retained by a Chinook claims organization cannot be considered to be an external source of identification. Woodcock, her relatives, and her followers cannot be considered as external to the petitioning group.

The available evidence does not contain substantially continuous identification of Chinook leaders or a Chinook governing body by knowledgeable sources, outside the petitioning group, between 1855 and 1951. Given the lack of such evidence for such a lengthy period, there is no need to continue the inquiry for the period since 1951. Since there is no available evidence of identifications of leaders or a governing body by "authoritative, knowledgeable external sources" on a "substantially continuous" basis for almost a full century, the petitioner does not meet one of the requirements of section 83.8(d)(3). Thus, there is no need to ask whether or not the petitioner has additionally demonstrated one form of evidence listed in section 83.7(c). Based on this conclusion, the petitioner does not meet the requirements of criterion 83.7(c) as modified by section 83.8(d)(3).

If the petitioner cannot meet criterion 83.7(c) through this streamlined procedure, by a demonstration of the identification of leaders by knowledgeable external sources and one other form of evidence, the regulations provide, in section 83.8(d)(5), that the petitioner alternatively may demonstrate that it meets the unmodified requirements of criterion 83.7(c) from "last Federal acknowledgment until the present." Thus, for the period since last Federal acknowledgment in 1855, an evaluation of the petitioner would be the same under section 83.8(d)(5) of the 1994 regulations as under criterion 83.7(c) of the 1978 regulations.

Reconsidered Final Determination

The previous discussion of Issues # 2-4 referred by the Secretary concluded that the original Final Determination improperly interpreted the Acts of 1911, 1912, and 1925 as affirmative evidence of previous Federal acknowledgment or identification of a contemporaneous Chinook political entity. For the same reasons, an assumption cannot be made that passage of those acts reflected political organization and activity on the part of the petitioning group. Therefore, the evidence in the record will be weighed without relying upon such a conclusion or assumption.

The previous discussion of Issue # 6 referred by the Secretary concluded that the original Final Determination improperly departed from the regulatory standard by assuming, rather than demonstrating with evidence, that Chinook claims activities were based upon the existence of a bilateral political relationship between the claims organization and its members, and that they reveal the political influence of the petitioning group over its

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members. Therefore, the evidence in the record will be weighed for this Reconsidered Final Determination without making any such assumptions.

Analysis of the Evidence and the Comments on the Proposed Finding

In its response to the Proposed Finding, the petitioner submitted arguments through its attorney and researcher, and copies of historical documents. However, the petitioner did not make a specific argument of how the evidence showed that it met criterion (c). Nor did the petitioner specifically identify or label the new exhibits that it considered relevant to criterion (c). The historical documents submitted by the petitioner took the form mostly of copies of the correspondence of Federal officials from the National Archives and copies of articles from local newspapers.

In general, new evidence or new information about political processes and political influence among the petitioner's ancestors is sparse in the new exhibits. The new documentation is not directed at the time periods for which the Proposed Finding noted a lack of evidence, or at the issues raised by the Proposed Finding about the lack of evidence of political influence within the petitioning group over time. Most of the new exhibits describe the activities of the Federal Government rather than the petitioning group. The petitioner's new exhibits focus on correspondence by the superintendent of the Taholah Agency during the late 1920's and early 1930's about fishing and allotment litigation relating to the Quinault reservation, and meeting minutes from the 1950's relating to the claims case on behalf of the historical Chinook tribe against the United States before the Indian Claims Commission.

Political Influence before 1856. The Proposed Finding concluded that, "[t]he evidence that the petitioner's Lower Band of Chinook ancestors continued to live in exclusive Indian villages until at least 1854" was sufficient to demonstrate that the petitioner met criterion (c) (*Chinook PF*, 27). That finding assumed that "exclusive Indian villages" maintained traditional patterns of political authority. The Proposed Finding also concluded that the evidence that Chinook headmen had "negotiated treaties with the Government in 1851 and 1855" was sufficient to demonstrate that the petitioner met criterion (c) for that time period (*Chinook PF*, 27). That finding concluded that the Government ascribed political authority and sovereignty to Chinook bands by negotiating treaties with them. That finding also assumed that the authority of leaders to conduct treaty negotiations was evidence of the existence of political influence and authority over a historical village, band, or tribe.

Political Influence, 1856-1925. The Proposed Finding concluded that, "[t]he four decades following these unsuccessful treaty negotiations are almost barren of evidence of Chinook tribal political activity or leadership." It added that the available evidence "does not demonstrate that there were leaders who exercised political authority over the group as a whole in the late-19th century. . . ." The Proposed Finding specifically noted the lack of "any examples of political activity or leadership by Chinook descendants living along the Columbia River. . . ." (*Chinook PF*, 27).

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The petitioner's new evidence for the period between the 1850's and 1920's consisted of a few reminiscences of pioneer settlers. These accounts provide little first-hand observation and mostly contain historical generalities about the Indians and Indian culture that existed at the time the non-Indian settlers arrived in the area. One account did name two historical chiefs. These articles did not provide any specific accounts of Chinook tribal political activities, or even specific references to Chinook tribal leaders during the late-19th century.

Political Influence, 1925 - present. The Proposed Finding and the Anthropological Technical Report credited George Charley, chief of the Shoalwater Bay Reservation, with leadership of some Indians living in Bay Center as well as on the reservation during the 1920's. George Charley died in a fishing accident in 1935. The new exhibits submitted for the Final Determination add little of substance to what was known of Charley's activities from the documentary record for the Proposed Finding. His activities were described in some detail in the Anthropological Technical Report (*Chinook PF*, ATR 30, 93-96).

The petitioner has provided documentation of political leadership and influence almost exclusively about George Charley. This evidence consists mostly of the correspondence of the superintendent of the Taholah Agency who was advocating and helping to prepare litigation on behalf of George Charley and his fishing crew, plus some clippings of local newspaper articles about that litigation. The correspondence of Superintendent Sams made it clear that he was working to protect the alleged fishing rights in the Columbia River of the federally recognized Quinault and Shoalwater Bay Indians, many of whom lived in Bay Center, not the fishing rights of off-reservation individuals of Chinook ancestry.

The Proposed Finding noted that it could not substantiate the petitioner's contention that the Chinook had formed a formal organization in June 1925 (*Chinook PF*, 29). No contemporaneous evidence supports that claim. Chinook descendants did meet, however, in April 1925 to choose representatives to sign a contract with an attorney to bring a suit in the Court of Claims, as recently authorized by Congress. A new exhibit shows that a Cathlamet newspaper was aware that such a meeting would be held. No other new exhibit refers to any political activity or organization until 1931, when president Myrtle Woodcock presented a resolution about the claims case to the Commissioner of Indian Affairs.

The Proposed Finding reported that the record contained no contemporaneous evidence that meetings of Chinook descendants were held between 1931 and 1951, though the petitioner maintains that such meetings were conducted. Nor was there contemporaneous evidence to support the claim that Myrtle Woodcock had been president of an organization during those years. There is some evidence of the existence of a Chinook claims organization in the years between 1925 and 1931, though there is no evidence describing how a political process within a group of Chinook descendants actually functioned prior to 1951.

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The Proposed Finding concluded that a formal Chinook organization was created in 1951 soon after a petition had been submitted to the Indian Claims Commission (*Chinook PF*, 30). It also found that the Chinook council split into two organizations by 1953. This split lasted until 1958. The petitioner has submitted a number of documents relating to these two groups during the 1950's. For the most part, this evidence was considered for the Proposed Finding and was described in some detail in the Historical and Anthropological Technical Reports. This documentation confirms that organizations existed and held meetings during the 1950's.

The petitioner submitted a report entitled "Chinook Indian Tribe: Continuing Exercise of Tribal Political Authority, 1987-94" (Beckham 1994a). This document lists and describes activities of the Chinook petitioner and some of its named leaders during recent years. Examples include the group's involvement with a variety of projects, almost all of which were run by governmental and non-governmental organizations such as the State of Washington, Wahkiakum County Port District, National Congress of American Indians, National Park Service, Fort Clatsop Memorial, and other groups of similar composition and purposes. The submitted document provided virtually no discussion of how the Chinook petitioner was organized to make decisions concerning these projects, who was involved beyond the petitioner's leadership, and other information about political processes within the petitioning group to demonstrate that these projects were significant to a representative proportion of the membership and that members were knowledgeable about their leaders' activities. In other words, information to show that a bilateral political relationship existed between leaders and members was notably lacking.

As part of its comment on the Proposed Finding, the petitioner included a letter it had received from Clifford Trafzer, the author of *The Chinook*, in which he expressed his shock and "outrage" to hear the petitioner recount that it had received "a negative finding based on a misinterpreted statement found in my short survey of Chinook people" (Petitioner Ex. T). The Summary Under the Criteria for the Proposed Finding did not specifically cite Trafzer in its evaluation of criterion (c), so reliance on Trafzer's book was not the reason the petitioner failed to meet criterion (c) in the Proposed Finding.

The Proposed Finding said, in its evaluation of criterion (a), that, "Trafzer concluded that 'the Chinook no longer are a unified tribe.' He identified three contemporary groups of Chinook in the 1980's: the Chinook Indian Tribe organization, the Wahkiakum Chinook, and the Chinook on Shoalwater Bay" (*Chinook PF*, 7). Trafzer's reply states: "On the issue of 'unified tribe,' what I meant by this statement was that there have been several Chinook groups historically based on village and area leaders. No one Chinook leader could speak for all Chinooks. . . . Neither the Chinooks at Shoalwater Bay or Quinault can speak for the Chinook people who remained on their sacred lands along the Columbia" (Petitioner Ex. T).

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Summary Conclusion under Criterion (c)

The Chinook petitioner needed to demonstrate, either under the 1978 regulations or the 1994 regulations with previous Federal acknowledgment until 1855, that it maintained political influence or authority over its members since 1855. The record for this case lacks examples, however, of an internal political process, either formal or informal, among the petitioner's ancestors, or of formal or informal political leadership or influence over the petitioner's ancestors as a group between 1855 and 1925. The available evidence neither shows the existence of a political process for the entire petitioning group, nor for smaller bands or localities that might later have combined to form the petitioner.

There is evidence of some leadership by George Charley during the late 1920's on behalf of a federally recognized tribe and a portion of the petitioner's ancestors at Bay Center, but not on behalf of the petitioner's ancestors along the Columbia River. There is also very limited evidence that a claims organization existed in the late 1920's and early 1930's, but no evidence that it had any internal political process which resulted in group decisions. There is almost no evidence of political activities or leadership between the early 1930's and 1951. Thus, there is insufficient evidence that the petitioning group exercised political influence over its members between 1855 and 1951.

There is evidence for the years between 1951 and 1970 that two organizations were active to pursue a claims case, but insufficient evidence that either organization had an internal decision-making process that embodied a bilateral political relationship between leaders and members which existed broadly among the membership of the petitioner as whole. The Cowlitz Final Determination has reaffirmed that to meet criterion 83.7(c) a petitioner must have been more than simply a claims organization (see also the Federal district court decision in *Indiana Miami* (District Court 2000)). During recent decades the petitioner has had a formal political organization. The Proposed Finding concluded that there was "very little information available about the internal political processes of the petitioner from 1970 to the present," and a lack of evidence that the organization was broadly based (*Chinook PF*, 32). The petitioner's new evidence does not change this conclusion.

Therefore, the available evidence does not demonstrate that the petitioning group has exercised political influence over its members from historical times until the present. For this reason, the evidence is insufficient to show that the petitioner meets the requirements of criterion 83.7(c) under the 1978 regulations.

A petitioner with previous Federal acknowledgment may demonstrate under the 1994 regulations that it meets the criterion from the date of last Federal acknowledgment to the present, in part, with evidence that authoritative, knowledgeable external sources have identified leaders or a governing body of the petitioning group on a substantially continuous basis. The available evidence does not include such identifications. It is not then necessary to consider whether the petitioner has demonstrated one other form of

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evidence. Thus, the evidence is insufficient to show that the petitioner meets criterion 83.7(c) under the modified provisions of section 83.8(d)(3) under the 1994 regulations.

As an alternative under the 1994 regulations, the petitioner may demonstrate that it meets the requirements of criterion 83.7(c) from last Federal acknowledgment until the present. For this petitioner, with last Federal acknowledgment in 1855, this test is essentially the same as that posed for the criterion under the 1978 regulations. The summary discussion above under the 1978 regulations explains why the evidence is insufficient to meet the criterion since 1855. Thus, the evidence is insufficient to show that the petitioner meets criterion 83.7(c) as modified by section 83.8(d)(5) under the 1994 regulations.

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SUPPLEMENTAL MATERIAL

The evaluation of criteria (d), (e), (f), and (g) was not affected by the issues referred by the Secretary for reconsideration. The conclusions on these criteria in the original Final Determination are not modified for this Reconsidered Final Determination.

For the convenience of the reader and in order to provide a complete determination in a single location, the text of the unmodified evaluation of these criteria is reprinted here.

Criterion (d)

- 83.7(d) A copy of the group's present governing document, or in the absence of a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members.**

Proposed Finding

The Proposed Finding concluded that the petitioner met criterion (d). The petitioner submitted a certified copy of its constitution which was dated June 16, 1984. The constitution described the membership criteria, the election of officers, the duties of the officers and general membership meetings. The petitioner also submitted a membership ordinance dated June 20, 1987, which replaced Section 2 of the 1984 constitution.

Summary Conclusion under Criterion (d)

The AS-IA concludes that the petitioner meets criterion 83.7(d).

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Criterion (e)

- 83.7(e) A list of all known current members of the group and a copy of each available former list of members based on the tribe's own defined criteria. The membership must consist of individuals who have established using evidence acceptable to the Secretary, descendency from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity.**

Proposed Finding

The Proposed Finding (PF) found that the petitioner had submitted a membership list dated July 8, 1995, which was certified by the CIT/CN council as being accurate and complete. There were 1,566 names of living members on the list. The petitioner also sent membership lists dated 1953, 1981, 1983, 1987, and 1994.

The PF concluded that approximately 85 percent of the 1995 membership list descended from either the Wahkiakum, Willapa, Kathlamet, or Lower Band of Chinook or the Clatsop tribe of Indians who were treated by the Federal Government in 1851. It also found that 15 percent of the petitioner's membership descended from Rose LaFramboise, a métis woman for whom there was conflicting information regarding her parentage and Chinook descent. The PF also concluded that although she may not have been Chinook by descent, that she was connected through her in-laws to the Chinook families, and lived near other Chinook descendants. She appeared to have been accepted as a part of the Chinook community in which she lived. However, the PF also stated that the descendants of Rose LaFramboise did not meet the group's own membership criteria, and suggested that the petitioner submit evidence to establish her Chinook descent or evidence that the council had resolved the conflict between the enrollment ordinance and the group's actual practices.

The PF concluded that as a whole, the petitioner met criterion (e).

Summary Conclusion under Criterion (e)

The petitioner did not provide an up-date of its 1995 membership list; however, it still meets this criterion. Should the petitioner become acknowledged, it will need to make current its membership list by removing the names of any deceased members, adding the names of the children born since 1995, and making any other minor corrections that may be necessary.

The petitioner submitted notes from Charles Roblin's interviews in 1917 with members of the LaFramboise, Ero, and Durival families. However, none of these notes identified the

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parents of Rose LaFramboise, or provided evidence not already reviewed in the PF. The petitioner did not submit evidence of council action regarding adopting these Rose LaFramboise descendants or otherwise clarifying its actual membership practices.

Although there is still a question about the actual Chinook descent of Rose LaFramboise, the Chinook Indian Tribe/Chinook Nation has provided sufficient evidence that its membership as a whole descends from the historical lower Band of Chinook, the Wahkaikum, Willapa or Kathlamet bands of Chinook. The AS-IA concludes that the petitioner as a whole meets criterion 83.7(e).

Criterion (f)

83.7(f) The membership of the petitioning group is composed principally of persons who are not members of any other North American Indian tribe.

Proposed Finding

The Proposed Finding concluded that 5 percent of the petitioner's members were enrolled in the Quinault tribe. However, the petitioner was principally composed of persons who were not members of any federally acknowledged North American Indian tribe. Therefore, the petitioner met criterion 83.7(f).

Summary Conclusion under Criterion (f)

The Quinault Indian Nation submitted a copy of a 1998 enrollment report listing the members of that tribe. The BIA compared the names on the enrollment report with the petitioner's membership and found that slightly more than 8 percent of the CIT/CN membership were also members of the Quinault Nation. There is no evidence that the petitioner is principally composed of members of a federally recognized tribe. The petitioner's constitution did not address the issue of dual enrollment in federally acknowledged tribes.

The AS-IA concludes that the petitioner meets the requirements of criterion 83.7(f). This conclusion does not suggest in any way that the fact that some of the petitioner's members are allottees on the Quinault Reservation vests in the petitioner any governmental authority whatsoever over the Quinault Reservation. Tribal authority on the Quinault Reservation is vested exclusively in the Quinault Indian Nation.

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Criterion (g)

83.7(g) The petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

Proposed Finding

In 1954 Congress passed the western Oregon termination act that applied to all historical tribes and their individual members prohibiting the establishment of a Federal relationship. Because the Clatsop Tribe was identified as being south of the Columbia River, in western Oregon, a Federal relationship with members of the petitioning group that descend solely from their Clatsop ancestors are prohibited from receiving Federal services because of their status as Indians. This prohibition did not apply to the members of the petitioning group who have mixed Chinook and Clatsop ancestry. It affects only about 3 percent of the petitioner's membership.

The Proposed Finding (PF) concluded that because the petitioner claimed to be the successor to the Lower Band of Chinook of Washington State, and because a large majority of its members traced their Indian ancestry to that historical tribe or band, the petitioner, as an entity, was not the subject of congressional legislation which has expressly terminated or forbade the Federal relationship. Thus, with the reservation that, if acknowledged, a few of the petitioner's current members who trace their ancestry only to the historical Clatsop Tribe would be forbidden Federal services as Indians, the PF concluded that the petitioner met criterion (g).

Summary Conclusion under Criterion (g)

The Chinook Indian Tribe/Chinook Nation provided evidence in that it has not been terminated by congressional legislation and with the exception of the 3 percent of the membership who are exclusively Clatsop descendants, the petitioner's membership has not been forbidden a Federal relationship. The AS-IA concludes that the petitioner meets criterion 83.7(g).

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COMMENTS ON THE PROPOSED FINDING AS ADDRESSED ON RECONSIDERATION

The January 3, 2001, Final Determination included a response to the comments submitted by the petitioner and third parties. This Reconsidered Final Determination now corrects those responses to the general issues raised by the petitioner and third parties in accordance with the preceding discussion of the "Issues Referred by the Secretary of the Interior."

This Reconsidered Final Determination takes into consideration all materials in the administrative file at the time of the Proposed Finding (PF) and all the materials submitted by the petitioner and third parties, and located by BIA researchers, since the issuance of the PF. These materials consist of the comments of the Chinook Indian Tribe/Chinook Nation (CIT/CN) petitioner and comments received during the public comment period from the Quinault Indian Nation (Quinault) and individual CIT/CN members, which the BIA did not consider to be part of the official CIT/CN submissions. All of these materials were evaluated and are now part of the administrative record. These comments on the PF are described in more detail below.

Petitioner's Response to Proposed Finding. By cover letter dated July 30, 1998, CIT/CN submitted their response to the Proposed Finding. This response included a summary argument "Chinook Indian Tribe's Final Submission in Support of Petition for Federal Acknowledgment - Discussion on Prior Federal Recognition and Application of Principle to Chinook Tribe and Errors in Bar's Preliminary Determination" (Petitioner 1998), by the petitioner's attorney Dennis J. Whittlesey, and attached exhibits (Exhibits A to T), some of which included brief reports and analysis by the petitioner's researcher, Stephen Dow Beckham. The response also included hundreds of pages of documents (Exhibits 796 to 1307) which were cited in Beckham's reports. Timothy Tarabochia, who was the chairman of the Chinook petitioner in 1998, submitted a report entitled "Update and Evidence of Continuing Modern Community Activities and Decision Making since the BAR Chinook Site Visit in 1994" (Tarabochia 1998). The petitioner also submitted a declaration by Professor Beckham and copies of five of his previously submitted reports (Beckham 7/30/1998, 1987, 1990, 1991, 1994a, 1994b).⁴⁸

⁴⁸ While none of these five reports by Beckham had been specifically cited in the Proposed Finding, the issues raised by the reports had been discussed, some in great detail, in the technical reports supporting the Proposed Finding. The technical reports chose to cite primary documents rather than Beckham's secondary accounts. In response to a technical assistance conference with the petitioner, the BIA provided a detailed analysis of two of Beckham's reports

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The petitioner did not respond to the comments from third parties during the petitioner's regulatory response period that follows the public comment period.

Third Party Comments. Quinault submitted a three-page letter from Richard Reich, Attorney for Quinault Indian Nation to the AS-IA, and a copy of the Quinault Enrollment Report, which listed the 1998 membership of the Quinault Indian Nation (Reich 7/28/1998). The BIA also received comments from two members of the CIT/CN: Linda C. Amelia and Edna Miller. Each of the arguments and evidence submitted by these third parties are discussed in detail in the following analysis. The BIA also received a few letters of support or other comments from third parties that were not substantive in nature and did not provide evidence that addressed the criteria. They are briefly outlined in this finding. See the "Summary of Proceedings" in the section on the "Issues Referred" for reconsideration for additional comments.

GENERAL ISSUES RAISED BY CIT/CN IN RESPONSE TO THE PF

1. Introduction. The petitioner's final submission for acknowledgment repeatedly raised issues that did not address the historical facts of the case so much as the perceived unfairness of the administrative procedures, the purported personal bias of individual researchers (not the arguments they made in the technical reports), and the veracity of assumptions made about 25 C.F.R. Part 83.8 in the 1994 regulations, which reduces the scope of evidence required of petitioners to demonstrate continuous tribal existence if they show previous Federal acknowledgment.

The CIT/CN summarized its objections to the AS-IA's PF against Federal acknowledgment by stating that:

(1) . . . there has been unambiguous prior Federal acknowledgment of the Tribe which must be taken into account by BAR in making a final assessment of the Chinook Petition for Federal Acknowledgment and (2) that the Chinook Tribe qualifies for Federal recognition under the facts and existing Federal law, contrary to BAR's erroneous determination to the contrary. (Petitioner 1998, 1)

in a letter to the petitioner (BIA 12/17/1997, discussing Beckham 1990, 1991). Beckham's report on fishing rights covered treaty negotiations and the *McGowan*, *Halbert*, and *Wahkiakum Band* court cases (Beckham 1987); all of these events were discussed and cited in the Historical Technical Report (*Chinook PF*, HTR 15-20, 41-43, 49, 52, 80-81; citing United States 1851, 1855; District Court 1930; Supreme Court 1931; Court of Appeals 1981). Beckham's report on allotments listed the first 577 allottees on the Quinault Reservation (Beckham 1994b); the Historical Technical Report both discussed the allotment program and analyzed the allottees, while using the complete ledger of 2,340 allottees (*Chinook PF*, HTR 38-44; citing BIA 1907-1933). Beckham's report on the period from 1987 to 1994 is discussed in this Reconsidered Final Determination (Beckham 1994a).

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As part of its argument, the CIT/CN response focused on the issuance of individual allotments at Quinault Reservation to Chinook descendants, principally as a result of *Halbert v. United States (Halbert)*. The CIT/CN response to this issue again focuses on “unambiguous prior Federal acknowledgment.”

Response. The *Halbert* litigation was discussed in the Proposed Finding (*Chinook PF*, HTR 41-49), including in the context that the petitioner asserted that “[t]he Chinook Indian tribe played an active role in this litigation” (*Chinook PF*, HTR 41, n.6; *Chinook PF*, 6). The submissions by CIT/CN do not change the analysis of *Halbert* as discussed in the PF.

For a discussion of previous Federal acknowledgment, including individual allotments and the *Halbert* case, see the discussion of Issues #2, 3, and 4 in the “Issues Referred by the Secretary of the Interior” above.

2. BAR Failed to Apply the 1994 Regulations Regarding Prior Federal Acknowledgment. The petitioner states that the BIA’s denial of its request to be evaluated under the “more liberal 1994 revised regulations” constituted a “denial of equal protection under the law” (Petitioner 1998, 4).

Response. The fact that this Reconsidered Final Determination evaluates the petitioner under both regulations resolves this issue. See the above sections on “Issues Referred by the Secretary of the Interior” and “Waiver of the Regulations” for a more complete explanation.

3. The Statutory Recognition of a Chinook Tribe. See the above section on the “Issues Referred by the Secretary of the Interior” for a full discussion of the 1911, 1912, and 1925 statutes.

4. Allotments on the Quinault Reservation. The CIT/CN petitioner declares that, “[t]he Issuance of Allotments at Quinault to Chinook Members in the 1930’s Constitutes Unambiguous Prior Federal Acknowledgment” (Petitioner 1998, 8). CIT/CN presents a summary of the “process by which members of Indian tribes may acquire individual trust lands for their personal use” established by the General Allotment Act, enacted February 8, 1887 (Petitioner 1998, 7-8). In the PF, the petitioner discussed obtaining allotments on Quinault as demonstrating activities of a tribal entity. Their second argument in the response to the PF asserts that “the allotment process for reservation allotments is that an applicant be a member of a tribe or band for which the applicable reservation was created” (Petitioner 1998, 8 (emphasis in original)).

Response. The AS-IA disagrees with the petitioner’s assessment of the distribution of Chinook allotments on the Quinault Reservation. The history of Chinook participation in allotments on the Quinault Reservation was thoroughly discussed in both the Historical and Anthropological Technical Reports of the PF (*Chinook PF*, HTR 32-44, and ATR

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38-44). Although the Chinook ultimately were given allotments under the Executive Order, the absence of an express reference to the Tribe falls short of an unambiguous prior Federal acknowledgment.

See the additional discussion in the section on “Issues Referred by the Secretary of the Interior” above.

5. Executive Order of 1873. The CIT/CN presents this Executive Order of 1873 as part of the history of allotments on the Quinault Reservation, and also arguing its interpretation in *Halbert* (Petitioner 1998, 12, 14). It says:

When the [Quinault Indian] Reservation ultimately was created by the Executive Order of November 4, 1873, President Ulysses S. Grant stated that he intended “to provide for other Indians in that locality” by withdrawing lands from the public domain “for the use of the Quinaielt, Quillehute, Quit, and other tribes of fish-eating Indians on the Pacific Coast.” . . . A total of 220,000 acres was set aside for the Reservation.

The **Chinook Tribe** was among the tribes specifically identified in that dialogue as requiring special accommodation through an enlarged reservation during consideration of reservation expansion between 1863 and 1873. (Petitioner 1998, 12; citing to *Halbert v. United States, supra*, 283 U.S. at 757 (emphasis in original))

Response. The 1873 Executive Order was discussed in the Proposed Finding (*Chinook PF*, HTR 22, 41-42). The PF concluded under criterion (a) that the Chinook had been identified as an American Indian tribe until 1855 and perhaps through 1873. The 1873 Executive Order expanded the size of the Quinault Reservation. It did not explicitly mention the Chinook, but can be considered to have referred to them as one of the tribes of “fish-eating Indians” of the Pacific Coast. While the AS-IA also finds the Executive Order to be persuasive evidence going to criterion (a) it is not sufficient to constitute *unambiguous* prior Federal acknowledgment.

6. 1911 Allotment Act. CIT/CN presented a legal retrospective on the topic of pre-*Halbert* allotments on the Quinault Reservation.

Response. See the section on “Issues Referred by the Secretary of the Interior” above.

7. *Halbert* Litigation. The petitioner asserts that “[i]t is beyond question that in 1931 the Chinook Tribe was unambiguously recognized as an Indian Tribe with Federally-protected rights at the Quinault Reservation, and this recognition was confirmed by the Supreme Court in the Halbert Litigation” (Petitioner 1998, 17).

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Response. This argument is discussed above. The AS-IA disagrees that a Chinook tribe was unambiguously recognized and that this recognition was confirmed by the Supreme Court.

The following quotation from the Cowlitz Final Determination responds to Dennis J. Whittlesey's arguments about the *Halbert* decision in the Cowlitz petition. Though lengthy, it best summarizes the Supreme Court's decision, lays out the petitioner's arguments, and corrects some misstatements concerning BIA policies. It is not meant to be a legal brief or a discussion of how *Halbert* was implemented:

The Supreme Court defined the questions to be resolved as follows:

The plaintiffs are all of Indian blood and descent, but none is a full- blood Indian. Some are members of the Chehalis, Chinook and Cowlitz tribes, and the question is presented whether these tribes are among those whose members are entitled to allotments from lands within the Quinaielt Reservation. Many do not personally reside on the reservation, and we are asked to decide whether this defeats their claims. Some are the issue, either children or grandchildren, of a marriage between an Indian woman and a white man, and whether this is an obstacle to allowing their claims is a further question. (*Halbert et al. v. United States*, 2; Quinault Ex. 7:1931-8)

The Supreme Court then affirmed that the district court applied the correct rules for determining eligibility for allotments. . . .

The district court analysis of all plaintiffs in the case focused on whether they lived in Indian settlements and were associated and affiliated with other Indians, even though their tribe was scattered. In contrast, the Ninth Circuit required residence on a reservation to obtain an allotment and specifically declined to discuss "the rights of the appellees based upon their Indian blood or tribal relations." *Halbert*, 38 F2d 795, 798 (9th Cir. 1930).

The Supreme Court ruled that the "Chehalis, Chinook and Cowlitz tribes are among those whose members are entitled to take allotments within the Quinault Reservation" (*Halbert*, 283 U.S. at 760). The Court concluded that the district court applied the appropriate law in requiring membership for allotments on Quinault. The Supreme Court did not rule that there was a government-to-government relationship between the Cowlitz and the United States, nor did the Court rule that the Cowlitz were a tribe in 1911 or in 1931. The Court did not rule that any of the plaintiffs were members of the Cowlitz Tribe. Thus, the Supreme Court ruling does not establish a date of last unambiguous federal recognition.

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The Supreme Court concluded:

... that the Chehalis, Chinook and Cowlitz tribes are among those whose members are entitled to take allotments within the Quinault Reservation, if without allotments elsewhere. The Circuit Court of Appeals held otherwise in some of the suits and in this we think it erred. (*Halbert et al. v. United States*, 5; Quinault Ex. 7:1931-8)

(*Cowlitz FD*, 63-65)

The statement regarding the Cowlitz also applied to the Chinook. The Supreme Court did not rule that the Chinook was a tribe at that time or that any of the plaintiffs in *Halbert* were members of a Chinook tribe.

See also the discussion of *Halbert* in the section “Issues Referred by the Secretary of the Interior” above.

8. Post-Halbert Land Allotment Activity on Quinault Reservation. The petitioner’s response discussed post-*Halbert* land allotments under two separate headings: “Post-Halbert Allotment Process” and “Post-Halbert Case Law” (Petitioner 1998, 17-20).

Most of the discussion under the first heading dealt with the results of the *Halbert* decision, and the issuing of allotments to hundreds of Chinook following that decision. They argue these allotments showed unambiguous recognition by the Department of the Interior during 1931-1934 by virtue of their membership in the Chinook tribe.

The second heading dealt with post-*Halbert* case law, and reviewed other Federal court decisions regarding the question of affiliation under the Treaty of Olympia and the legal rights of affiliated tribes on Quinault. The CIT/CN uses this discussion by the court as another example of previous unambiguous Federal recognition of the CIT/CN. As stated above, *Halbert* does not hold that there was a federally recognized Chinook tribe between 1855 and 1931.

Response. The *Halbert* decision and its consequences in relationship to the petitioner were discussed at length in the PF (see *Chinook PF*, HTR 38-44, and ATR 90, 128). The evidence does not support the petitioner’s assertions that the allotments were evidence that a Chinook tribe was federally recognized.

9. The *Wahkiakum* Fishing Rights Litigation. CIT/CN cited *Wahkiakum Band of Chinook Indians v. Bateman, et al. (Wahkiakum)* as evidence that the Chinook tribe was a tribe with “federally-protected rights at the Quinault Reservation, and that this recognition was confirmed by the United States Court of Appeals for the Ninth Circuit in the Wahkiakum Litigation” (Petitioner 1998, 20 (emphasis in original)).

Response. The *Wahkiakum* litigation was discussed in the PF:

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Another organization of Chinook descendants was formed in the 1970's under the name of the Wahkiakum Tribe of Chinook Indians. In 1978, some of these Chinook descendants initiated a fishing rights suit in Federal district court in Oregon which became known as *Wahkiakum Band of Chinook Indians v. Bateman* (Petition 1987, 291). The following year, the Chinook Indian Tribe contracted with the plaintiff's attorney to share one-third of the cost of this litigation (CIT 7/14/1979). . . . A Cowlitz organization and the Wahkiakum plaintiffs also each paid one-third of the costs. The district court ruled against the Wahkiakum Band's fishing rights claims. The Ninth Circuit Court of Appeals affirmed the district court's decision in 1981, ruling that the Band had neither a treaty right nor an aboriginal right to fish in the Columbia River. Although it found that the Chinook had been affiliated with the Quinault by the Executive Order of 1873, the Court held that the fishing rights of Chinooks were limited to rights which accompanied an allotment on the Quinault Reservation (Court of Appeals 1981, 178-181). [See footnote 32: "The petitioner attempts to claim the suit of the Wahkiakum Band as an action of the Chinook Indian Tribe" (Petition 1987, 291, 293).] (*Chinook PF*, HTR 80)

Neither the district court nor the Ninth Court of Appeals ruled that the Chinook or Wahkiakum bands were tribes. The court ruled that the rights of the Chinooks were a result of the Executive Order of 1873, which entitled them to allotments on Quinault. (If the individual had an allotment on Quinault, that relationship with Quinault gave the individual fishing rights.)

10. *Williams v. Clark*. CIT/CN cites "742 F.2d 549 (9th Cir. 1984)," or *Williams v. Clark*, as an example of litigation in which the courts ruled that the Quileute tribe "has jurisdiction over the [Quinault] Reservation," and that the court "implicitly found that all of the affiliated tribes retain jurisdictional rights at the Reservation" (Petitioner 1998, 21-22). The petitioner therefore concluded that the Chinook, as one of the "affiliated tribes," was unambiguously recognized as an Indian tribe.

Response. This case involves only the right of a Quileute tribal member under Section 4 of the Indian Reorganization Act (IRA) to devise his allotment on the Quinault Reservation. It provides no support for CIT/CN's argument that the Chinook was unambiguously recognized as an Indian Tribe. The Court specifically did not consider if other tribes also have jurisdiction over the Quinault Reservation for IRA §4 purposes (742 F2d at 555).

11. **BIA Identification of Chinooks in the 1950's, 1960's, and 1970's.** The petitioner argues that "BIA identification of Chinooks in listings in the 1950's, 1960's and 1970's of tribes with which it maintained formal relations constitutes unambiguous prior Federal acknowledgment." The petitioner then cited to examples in the original petition which they claim showed that the BIA included the Chinook in lists of tribes with which the

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BIA dealt on an official level. The petitioner refers to two other letters in 1953 in which the Chinook Tribe was listed as one of the addresses (Petitioner Ex. 360, 337, and 362). The petitioner then asserts that the BAR either ignored or discounted this evidence in the PF (Petitioner 1998, 22).

The petitioner cites as new evidence, Exhibit G: "A List of Tribes and Tribal Officers, Portland Area Office" dated March 13, 1963, and Exhibit H: a "Directory of Tribal Officials Portland Area" dated September 1975. The petitioner argues that these two documents show that the BIA recognized the Chinook tribe in 1963 and 1975 respectively (Petitioner 1998, 23). The petitioner cites *Margaret Greene, et al. v. Babbitt, et al.* (Samish) as evidence that "[o]ne component of the Samish case was the fact that the tribe had been identified as a tribe in various lists published by the BIA" (Petitioner 1998, 23). The petitioner then concludes that the 1963 list (Petitioner Ex. G) may fall within the category of a group that the BIA dealt with in some manner, but that the 1975 BIA publication is "evidence that Chinook was among the Indian groups which had formal organization approved by the Department," and that "[i]t is difficult to imagine that the BIA today can deny that Chinook fell within that category as of 1975, in which case there is a prima facie case that the Chinook Tribe had some formal relationship with the BIA as of 1975" (Petitioner 1998, 20).

Response. The BIA analyzed these exhibits as possible evidence that the Chinook had a government-to-government relationship with the Federal Government in the 1960's or 1970's. However, neither of these records can reasonably be construed to mean acknowledgment of a tribe by the Federal Government. The 1963 list is not on BIA letterhead paper, has no author or compiler listed, and does not include a purpose. It cannot be determined whether the Portland Area Office created or simply received the list. The only identifying mark on the three pages is, "Received Mar 15 1963 Washington State Library." Six groups identified on the list were not federally recognized tribes in 1963. Since then two of the groups, Jamestown Clallam and Snoqualmie, were acknowledged as tribes through 25 C.F.R. Part 83, but in neither case was this document considered to have been unambiguous previous Federal acknowledgment of the tribe. This document appears to be a list of groups with which the Portland Area Office had contact and has bearing on criteria (a) and (c), but it is not an official acknowledgment of tribal status.

The 1975 "Directory of Tribal Officials Portland Area" which was prepared by the Office of Tribal Operations, BIA, Portland Area Office, is a telephone and address book. It includes contact information for BIA employees, federally recognized tribes, groups identified as "claims organizations," and groups that are not federally acknowledged tribes (Petitioner Ex. H, ii, 19, and *passim*).

The "Chinook Nation Non-reservation" is listed on page 19 as the "official" title of the Chinook Indians. Four officers of the group are listed with a statement in the remarks section that there are 900 members. Under "organization," is the statement: "General Council - Organization not recognized." Under "meetings," is the statement: "Annual

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and other meetings as called” (Petitioner Ex. H, 19). The plain language of the document indicates that inclusion of the Chinook does not denote an official recognition or acknowledgment that its group was a tribe under Federal law.

Neither alone nor together do these two documents submitted in response to the PF demonstrate that the Chinook tribe had a formal relationship with the BIA in either 1963 or 1975. Neither of these documents nor similar ones submitted with the original petition provide adequate evidence of unambiguous prior Federal recognition.

12. Enumeration of Chinooks on BIA Census Schedules. The CIT/CN petitioner argues that enumeration of individuals on BIA census schedules shows the identification of individuals with Chinook ancestry as a tribal group [within Quinault Reservation] and constitutes unambiguous prior Federal acknowledgment (Petitioner 1998, 25). Attached is Exhibit I, a report by Stephen Dow Beckham titled: “BIA Identification of Members of the Chinook Indian Tribe in BIA Census Records in the 1930’s.”

In his Exhibit I report, Beckham states that “[t]he BIA in the decade of the 1930s enumerated members of the Chinook Indian Tribe--by the tribal designation ‘Chinook,’ ‘Quinaielt-Chinook,’ ‘Quin.-Chinook,’ and ‘Chinook-Cowlitz’ in the annual Indian Census Rolls” (Petitioner Ex. I, 1). According to Beckham, it was in response to the Commissioner of Indian Affairs’ instructions to “continue to carry Chehalis allottees on the Chehalis census rolls; the Chinook allottees on the Chinook census rolls, and the Cowlitz on the census rolls of that tribe,” that the subsequent 1933 census provided specific information on ‘members of the Chinook Indian Tribe.’” The petitioner’s exhibits 829 and 830 are copies of the 1933 census and the list of names added to the census by authority of the Indian Office, respectively. To substantiate his claim that the Government singled out the Chinook as a federally recognized tribe, Beckham then asserted:

The BIA thus developed sixteen categories of data on members of the Chinook Indian Tribe and entered it onto the Indian Census Roll forms. . . . It was clear that in 1933 the BIA was dealing with the Chinook Indian Tribe and had made considerable effort under “INDIAN OFFICE AUTHORITY” to compile this data. The 1933 Indian Census Roll is unequivocal evidence of a federal relationship carried out by the BIA. Further, the BIA affirmed the “ward” status of every person enumerated on the 1933 census roll. (Petitioner Ex. I, 2 (emphasis in original))

Exhibit I includes a list of 313 names extracted from a 57-page report of the allottees “[a]dded By Indian Office Authority and Decision of the United States Supreme Court” (Petitioner Ex. 830). [The BIA researchers found 317 names, a figure that will be used in the rest of the analysis.] Beckham says the census records show that the BIA identified these individuals as members of the Chinook tribe through 1939 (Petitioner Ex. I, 1, 2). Beckham also claims that in addition to these [317] individuals the 1933 Indian Census Roll included “other individuals identified as Quinaielt” [now spelled Quinault], but who

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were actually Chinook, as shown by the "enrollments" prepared by McChesney and Roblin (Petitioner Ex. I, 2). However, his list of "[317] members of the Chinook Indian Tribe" included the name of only one man, Antone Brignone, who was identified as "Quinaielt." Beckham's list in Exhibit I did not include family relationships or residences or other information that would be helpful in identifying a Chinook entity in 1933.

This exhibit also includes summaries of letters from Superintendent Nicholson of the Taholah Agency, written between 1932 to 1934 to the Commissioner of Indian Affairs (CIA), asking for guidance in recording the Agency's censuses. Beckham quotes the CIA's instructions to "continue to carry Chehalis allottees on the Chehalis census rolls; the Chinook allottees on the Chinook census rolls, and the Cowlitz on the census rolls for that tribe" (Petitioner Ex. I, 1, citing Ex. 867 [see Ex. 936, BIA letter 11/28/1934, which quotes BIA 1/23/1933]). It appears that Beckham uses this and subsequent instructions to "keep a census of the tribes occupying the reservation. . . . The rolls should be maintained separate and distinct from those of the Quinaielt Indians" (Petitioner Ex. I, 10, citing Petitioner Ex. 936 [which quotes BIA 3/16/1934, approved 4/4/1934]) as an argument that the Chinook were a separate tribe. Beckham also quotes a letter to the CIA, in which Nicholson asked if the agencies were supposed to "compile a separate census for each combination of mixed- blood [*sic*] Indians, as the Quinaielt-Chehalis, Quinaielt-Chehalis-Chinook Tribes, etc." (Petitioner Ex. I, 1; Petitioner Ex. 867).

Response. Beckham repeats the same arguments throughout the response to the Proposed Finding: that identification of individuals as Chinook descendants is equivalent to unambiguous previous Federal acknowledgment of a Chinook Indian Tribe, and that the allotting of Chinook descendants at Quinault Reservation denotes Federal acknowledgment of a Chinook Indian Tribe. Beckham seems to subscribe to a theory that both criteria (a) and (b) are met with any reference to individuals as being of Chinook descent. The AS-IA does not agree with Beckham's interpretation of the evidence or of the regulations.

The petitioner did not provide any useful analysis of the residences of the Chinook descendants identified in the 1933 census. The petitioner did not provide any useful analysis of interactions between the Chinook allottees at Bay Center and Dahlia who were named on the 1933 census, and other Chinook descendants who were not among the Quinault allottees. The BIA researchers analyzed the 1933 Quinault Indian census to determine whether the individuals identified as Chinook (or identified as Quinault but of Chinook descent) could have been part of a Chinook Indian community at Bay Center into the 1930's and/or part of a Chinook community or communities existing at Dahlia-Altoona-Brookfield, or elsewhere along the Columbia River.

The analysis in this section is based on the 1933 census of the Quinault Reservation, as submitted by the petitioner in Exhibit 829, and the list of names added to the Quinault Reservation by the authority of the Indian Office and the Supreme Court decision in Exhibit 830. This section is also intended to correct Beckham's misstatements about the

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1933 census. The BIA's analysis found the Chinook on the Quinault Reservation do not represent the petitioner's membership as a whole. Of the 371 individuals on the petitioner's membership list who were born before 1934, only 73 were listed on the 1933 census. This represents 5 percent (73 of 1,566) of the petitioner's total membership.

Beckham's assertions in Exhibit I presume that (1) the individuals identified as "Chinook," "Quinaielt- Chinook," "Quin.-Chinook," and "Chinook-Cowlitz" on the 1933 census were members of a Chinook Indian Tribe, a separate and distinct political entity, and (2) that the petitioner's membership descends from the individuals identified on the Quinault census. The AS-IA concludes otherwise. First, the identifications as Chinook-Cowlitz, etc. are categories of ancestry, not tribal membership. Second, following Beckham's analysis would lead to the conclusion that the "Chinook," "Quinaielt- Chinook," "Quin.-Chinook," and "Chinook-Cowlitz" were all separate tribes. Finally, many of the individuals on the Quinault census characterized as having Chinook descent are not ancestral to the petitioner. Of the 370 Chinook descendants on the 1933 census, only 151 are themselves members or have descendants who are members of the Chinook petitioner. This represents about 10 percent (151 of 1,566) of the petitioner's total membership. Thus, the BIA's analysis found that the Chinook descendants on the 1933 census do not represent the petitioner as a whole.

13. BIA Administrative Supervision over Chinook Members Through the 1940's.

The CIT/CN petitioner argued that the BIA's monitoring school attendance, recording births and deaths, and issuing allotments to Chinook individuals at Quinault constituted unambiguous prior Federal acknowledgment (Petitioner 1998, 28, and Petitioner Ex's. L, M). Beckham argues that the school records show previous unambiguous acknowledgment in the 1930's and 1940's because "[t]he enumerations of Chinook children in BIA schools are confirmation of the recognition of the tribe" (Petitioner Ex. L, 2). Beckham also argues that "[n]on-Indian children did not attend Bureau of Indian Affairs schools nor did children of non-federally recognized tribes" (Petitioner Ex. L, 1); therefore, because children identified as "Chinook," "Chin.-Quinaielt," "Q-Chin." and "Quin.-Chin." attended Indian schools, they must have been members of a federally recognized tribe.

Under the same argument Beckham also cited Roblin's notes on unenrolled Indians as evidence that some of the children of Chinook descendants attended Puyallup, Chemawa or Carlisle Indian schools in the first two decades of the 20th century (Petitioner Ex. L, 1).

Much of Exhibit L is a report created by Beckham in which he abstracted information from some of the specific census cards in the petitioner's exhibits (Petitioner Ex. 817, 818, and 820), which named the school and included an allotment number on the Quinault Reservation (Petitioner Ex. L, 2). Some of Beckham's abstracts were annotated with allotment numbers that were not on the actual census card for the child (which must have been obtained from other records).

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Analysis of Exhibit L. To evaluate Exhibit L, BIA researchers reviewed and analyzed all 113 “Permanent School Census Cards” for children under the jurisdiction of the Taholah Agency between 1931 and 1948, as found in Exhibits 817, 818, and 820. Thirteen cards represent duplicate or triplicate references to the same students, leaving a total of 100 students represented. The records cited in the response to the PF do not support the petitioner’s argument for prior Federal recognition.

To better understand the purpose of the school census, it is necessary to describe the information to be completed on each form. The BIA’s analysis is based on the actual photocopies of the 113 school census cards, not on Beckham’s abstracts. Each school census card lists the child’s name, degree of Indian blood, gender, and account or allotment number, and date of birth. In most cases, the source for the date of birth is shown as the “Tribal census” (Petitioner Ex. 817, 1). The card does not name the child’s tribe or state that the child belongs to a tribe. However, the card does have a blank space for the tribe of both the father and the mother. Most cards also have an address for at least one of the parents. The year(s) attending school, the school name, and grade level for the child, “miles to public school,” and attendance reports were also recorded on the card. Almost half of the children have a number such as “Q123” or “A123” in the field for “account or allotment number.” This indicates that the school census cards are records of students who are under the jurisdiction of the Taholah Agency based either on their degree of Indian blood or on their membership or allotments on the Quinault reservation.

Most of the cards have “Quinaielt Census” typed on the upper right of the card, but others have “Taholah,” “Bay Center,” “Quinaielt-Chinook,” “South Bend,” or the name of a school typed on the same area. Since these terms are a mixture of geographic locations, census references, and Indian ancestry, it is not clear if this is part of a filing system, part of an enumeration scheme, or had some other purpose. These terms do not indicate the school census records were segregated by tribe.

Although the school census records do not show that there was a Chinook tribal entity with a government-to-government relationship with the Federal Government, they do provide some useful information about some of the petitioner’s members or other Chinook descendants. For example, the school censuses show the residential distribution in the 1930’s and 1940’s of some of the families who have Chinook ancestry. The BIA researchers found at least 100 residences identified in the school censuses. Where no residence was specified, this report used the name of the school attended as a substitute in order to determine the residence of the individual. Five student census cards did not show either residence or school attended. Some students attended more than one school, but only the residence or the first school attended was included in this report. Fifteen students were residing in Bay Center, 10 were in South Bend, 4 were in Ilwaco, and 1 at Chinook, for a total of 30 in all of Pacific County (Petitioner Ex. 817, 818, 820). There were 19 students in schools in Wahkiakum County: 2 at Pillar Rock, 8 at Dahlia, 7 at Altoona, and one each at Cathlamet and Brookfield (Petitioner Ex. 817, 818, 820). Twenty-one students of Chinook descent were living in a number of locations in Grays

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Harbor County, including Taholah (11), Quinault Lake (3), Aberdeen (5), Oakville (1), and Westport (1). Taholah School was operated by the Quinault Tribe and was on the Quinault Reservation. Ten other children of Chinook descent lived in other areas of Washington State, 14 lived in various towns in Oregon, and 1 lived in California. Fifteen of the total of 49 students from Pacific and Wahkiakum counties were living in the small towns of Ilwaco, Chinook, Dahlia, Altoona, Cathlamet, and Brookfield along the Columbia River.

The parents of the school children were variously identified as Chinook, Quinault-Chinook, Chinook-Cowlitz, Quinault-Chinook-Chehalis, Chinook-Chehalis, Quinault, "S.I." [Squaxin Island], "Soquamish," and Quinault-Clatsop. Others of the parents did not have a tribe identified, but there was a fraction (ranging from 1/32 to 7/8), or "full" in the blank for tribe indicating that the individual's blood degree. Others did not have any tribal affiliation cited or any blood degree listed and the remaining parents were identified as non-Indian. About 21 children in the school records appear to be on the membership list of the CIT/CN. About 50 of the children on the school records are not on the CIT/CN's 1995 membership list or in petitioner's genealogical records which were compiled in the early 1950's. Therefore, these school census records include children of Chinook descent who do not appear to have been associated with the petitioner.

The PF did not question that the petitioner descended from Indians or from the historical Chinook tribe. This reconsidered FD agrees with the petitioner that the records show that some children of Chinook descent attended Indian schools. The school census records submitted in the response to the PF, standing alone, do not provide evidence that Chinook descendants attended Indian schools because they were members of a Chinook tribal entity. This reconsidered FD concludes that the petitioner's contention that Indian children of non-federally recognized tribes historically did not attend BIA schools is incorrect.

Only 27 of the 100 students enumerated on school census cards found in the petitioner's Exhibits 817, 818, and 820 show the attendance of children in 1931-1933; the vast majority begin recording attendance in 1934, the year the Johnson-O'Malley Act passed into law. It appears that the majority of the school census cards recorded the number of students who participated in the benefits of the Johnson-O'Malley Act, and the schools that they attended. Thus the school censuses provided the basis for the annual report that would trigger the Federal monies to the participating schools. In other words, the permanent school census cards recorded the attendance of Indian children in order to reimburse the public schools for educating Indian children.

Analysis of Exhibit M. In Exhibit M, entitled "BIA Monitored Attendance of Children of the Chinook Indian Tribe in Public Schools in the Years 1931-48," the petitioner's researcher argues that children were identified as members of a Chinook tribe because the school census records show that they had Chinook descent and that they had land in trust. The first argument is that by repeatedly using the terms "Chinook," "Chin-Quinaielt," in the school census records, the BIA "recognized these individuals as

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Chinooks and monitored the attendance of Chinook children in schools” (Petitioner Ex. M, 1), although he also noted that the BIA “sometimes erroneously” identified some members of the Chinook Indian Tribe as Quinault. Beckham seems to be equating the BIA’s paying school tuition for Indian children [presumably Chinook children] in public schools, in particular three school districts (Dahlia, Tokeland, and Bay Center) in “the homeland of the Chinook Indian Tribe,” with recognition of a Chinook tribal entity (Petitioner Ex. M, 1).

The second argument in Exhibit M is that the “Permanent School Census Card records and the unequivocal identification of Chinook children as holders of trust land under the General Allotment Act are prima facie evidence of federal acknowledgment of the Chinook Indian Tribe in the years 1931-48 ” (Petitioner Ex. M, 2). To support this argument, Beckham asserts that the “allotments under the General Allotment Act of 1887 were made to members of federally-recognized tribes,” and that the Chinook Indians obtained allotments on Quinault Reservation under the “Dawes Act Section One” between 1907 and 1934.

Much of Exhibit M is a series of brief summaries of the information on 69 school census cards, including the student’s name, years attending school, an allotment number for 57 of the students, and sometimes a parent’s name. Beckham also included some annotations to the abstracts, such as a mother’s maiden name, current residence or an allotment number, without citing a reference for the annotations.

First, the regulations do not call for *prima facie* evidence, which is a legal term for evidence that is accepted as true until other evidence contradicts it. To show prior Federal acknowledgment, the petitioner must show *unambiguous* Federal acknowledgment. The school census card records are not unambiguous.

The AS-IA finds that the school census cards show Chinook descent for some of the students who were under the jurisdiction of the Taholah Agency. With the possible exception of some of the LaFramboise descendants, the PF did not question the petitioner’s descent from the historical Chinook tribe (PF GTR, 14-17).

14. BIA Recorded the Vital Statistics of “Chinook Tribal Members” 1930's to 1948.

The CIT/CN argued that during the 1930's to 1948, “the BIA was recording the names and tribal affiliation of various Chinook members as part of its trust responsibilities to those Indians” (Petitioner 1998, 30). This argument cited for support the petitioner’s report entitled “BIA Recorded Vital Statistics Data on Members of the Chinook Indian Tribe 1930s-48” (Petitioner Ex. N). The petitioner’s researcher asserts that the BIA’s register of vital statistics at Taholah Agency confirms “BIA recognition of the Chinook Indian Tribe in that decade” (Petitioner Ex. N, 1). The remainder of the report consisted of abstracts from 28 entries in the birth and death registers of the Taholah Agency, and two abstracts from the 1937 census schedule of unreported births of individuals who were identified as Chinook or Quinault or Quinault-Clatsop, etc., and cited in letters to the Commissioner of Indian Affairs (Petitioner Ex. 931, 935). The petitioner included

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photocopies of several pages from the registers in Exhibit 824 (exhibit number was transposed in several instances as 842) and 4 pages of the 1937 Indian census which recorded the previously unreported births for the years 1934 and 1935 (Petitioner Ex. 831, 832).

Some of the information in Exhibit N and the supporting exhibits is new evidence to be considered for the final determination. The abstracts included the name and birthdate of the child (or death date of the deceased), the parents's names and the child's "tribe" which was recorded in the register (Petitioner Ex. N). The actual register of vital statistics for the Taholah Indian Agency included much more information on each of the individuals, including the full name, occupation, birth place, and "Census No." of both the mother and father of the infant as well as their residence. The "Census No." field for the father or mother had either a number such as "Q654," which is the Quinault allotment number, or the name of a tribe, such as Puyallup, Hoopa, Quinault, Chinook, etc., or non-Indian. The field for the tribe of the child was then a combination of the tribes of the parents if the parents were from different tribes, or the tribe of the parent that was Indian if one parent was non-Indian. Statistics for the child also included blood degree, residence, and the date the birth was reported to the agency (Petitioner Ex. 824).

Beckham also states that the BIA in the 1930's misidentified some individuals as "Quinault" when other records clearly documented the individual as members of the Chinook tribe (Petitioner Ex. N, 1). The register lists Chinook as the tribe for four children and for seven of the decedents between the years 1930 and 1948.

Response. The PF did not directly address the issue whether the vital records maintained by the BIA constituted evidence of previous Federal acknowledgment. However, it did discuss the fact that Chinook descendants were among the beneficiaries of court decisions by which descendants of historical tribes were entitled to compensation:

From the 1910's to the 1950's, the Congress and courts ruled that individual descendants of the historical Chinook band or bands had rights to compensation for aboriginal lands and to allotments of land on the Quinault Reservation, but these decisions and the identification of individual beneficiaries of these decisions were not based on the identification of an existing tribe or collective entity. (*Chinook PF*, 8)

The BIA recorded the births and deaths of the Indians under the jurisdiction of the Taholah Agency. The vital statistics included persons of Chinook descent or their parents who were allottees on Quinault or members of federally recognized tribes, or both. This is shown by the fact that vital records registry listed the Quinault allotment number of the individual or his parents. The birth and death registers list the individuals by surname (all of the "A" surnames in the same section, all of the "B" surnames in the next section, etc.) and then in chronological order by the date of the event. The register is not arranged by tribe, but by the name of the individual and the date of the event.

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15. Continuing BIA Actions on Behalf of a Chinook Tribe. In this section of the petitioner's response to the PF, they argue that BIA provided services to members of the Chinook tribe that "extended to virtually every aspect of life for the Chinooks" (Petitioner 1998, 30-31). In support of the claim that these services and actions were taken on behalf of a Chinook tribe, the petitioner submitted a Stephen Dow Beckham report "in supplement to the extensive recitation of such activity in the original Chinook Petition" (Petitioner 1998, 30, and Ex. O).

Beckham summarizes "twenty-four types of action," enumerated on pages 35 to 70 of the 1987 petition, which he asserts illustrated that the BIA exercised a trust responsibility for "members of the Chinook Indian Tribe." In his new report, he listed actions which the BIA took regarding "members of the Chinook Indian Tribe" such as paying taxes "for non-trust lands in such communities at Dahlia, WA," paying medical bills and attorney fees, enrolling individuals on the Indian censuses and the Roblin roll, making loans against revenues in accounts, providing advice on wills and estate settlements, and providing other services. The remaining 28 pages of the report present a series of abstracts of letters and other documents, which were included in the petitioner's exhibits, arranged in chronological order under the topics, presumably to demonstrate their claim that the BIA had a trust responsibility with the "Chinook Indian Tribe": "BIA Agents Met with Chinook Indian Tribe Members in SW Washington" [7 exhibits dating between 1906 and 1934], "BIA Agents Assumed Trust Responsibilities for Members of the Chinook Indian Tribe" [170 "sample" exhibits dating between 1914 and 1963], and "BIA Participated in Issuance of Blue Cards for Fishing Rights of Members of the Chinook Indian Tribe" [3 exhibits dating 1952 and 1954].

The Proposed Finding. The PF HTR, pages 32 to 51, discussed the kinds of records which the petitioner now says were evidence of prior Federal recognition. These documents, which are either the same as those submitted in the petitioner's response, or are the same type as those now submitted, did not provide evidence that the Chinook Indians were federally acknowledged. The PF HTR thoroughly discussed the compilation of the Roblin and McChesney rolls, the enumerations of Indians on Federal censuses, individual school records, fishing rights and "blue cards," and other services provided by the BIA. The conclusion that these records did not constitute Federal acknowledgment of a Chinook tribe were summarized in the PF Summary:

Although the Federal Government did not recognize a Chinook tribe during the 20th century, it produced lists of descendants and provided some descendants with allotments or services. The lists produced by Charles McChesney in 1906 and 1914 were lists of descendants entitled to compensation, while the lists produced by Charles Roblin in 1919 included separate lists of unenrolled Chinook and Shoalwater Bay Indians. These were not rolls of an existing tribe. A Federal district court in 1928 held that Chinook descendants were entitled to allotments of land on the Quinault Reservation. Before this decision, the allotting agents of the Office of Indian Affairs had allotted Chinook descendants residing on

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Shoalwater Bay, but not those on the Columbia River. The court referred to the Chinook and Shoalwater Bay as separate bands in its interpretation of the 1873 expansion of the reservation. After Chinook descendants were allotted at Quinault, the Indian Office often referred to them as Quinault Indians. Some Chinook descendants attended the Government's Indian schools, but they did so because of their degree of Indian ancestry, not because the Indian Office recognized a Chinook tribe. Some descendants received "blue cards" from the BIA, but they did so because, as allottees, they were listed on the Quinault roll. Thus, these actions did not constitute Federal recognition of a Chinook tribe. (*Chinook PF*, 6)

Response. The documents submitted by the petitioner and summarized in Exhibit O, do not demonstrate prior unambiguous Federal recognition.

16. The Acknowledgment Regulations Contradict Statutory Guidelines for Determining Tribal Existence. The petitioner here states that the acknowledgment regulations contradict provisions of the Indian Reorganization Act (IRA), apparently because it sees the Chinook allottees as one of the tribes of the Quinault Reservation as Federal acknowledgment of the petitioner as a tribe (Petitioner 1998, 31-33). The petitioner cites to *Halbert*, and other litigation, and to Exhibits P (a Department of Commerce publication: *Federal and State Indian Reservation and Indian Trust Areas*), and Q (a 1945 letter from the superintendent at Taholah Indian Agency stating that the Nisqually Tribe had submitted a constitution for review as evidence). The petitioner also compares the petitioner's evidence to the practices and histories of some of the federally recognized tribes "such as (a) Quinault and Nisqually which had no formal organization into the 1920s and 1940s and Tulalip and Muckelshoot which are nothing more than 'tribes' which were manufactured under the IRA" (Petitioner 1998, 33).

Response. The petitioner reacts to arguments that are discussed elsewhere in this report. Neither of the documents in Exhibits P and Q offer new evidence that the petitioner was seen by outside observers, by scholars, or by the BIA as a Chinook tribe. They do not offer evidence that the Chinook allottees at Quinault were a tribe.

17. Community and Social Interaction Demonstrates Continuing Tribal Existence. The petitioner claims that social interaction between the different communities where the Chinook lived is demonstrated by a report in Exhibit R by Beckham. The petitioner says that the report shows where the Chinook lived between 1900 and 1940, and that other documents such as newspaper accounts and letters show "the Chinooks maintained close social interaction within their tribal group" (Petitioner 1998, 34). Exhibit R is primarily composed of abstracts of newspaper articles and letters from BIA superintendents dating from as early as 1907 to the 1950's. The majority of the newspaper articles date to the 1920's, with a few dated as late as 1958. They are arranged in chronological order by residential areas described as: South Bend-Bay Center-Naselle; Cathlamet; Dahlia-Brookfield-Altoona; and Chinookville-Chinook-Ilwaco.

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Response. The analysis of this issue is discussed at length under criterion (b) in this Reconsidered Final Determination. The newspaper accounts are listed in the charts for criteria (a) and (b) prepared for the original Final Determination.

18. The Destruction of Chinookville. The petitioner asserts that BAR staff members “erroneously came to the wrong conclusion regarding the reasons for the abandonment of Chinookville between 1880-1900” (Petitioner 1998, 35, and Ex. S). The petitioner’s submission for the final determination stated that the abandonment of Chinookville was due to erosion and “force of nature along the shores of the Columbia River and not collapse of an Indian community due to some loss of tribal identification. The BAR conclusions in this regard simply are wrong” (Petitioner 1998, 36). In support of this statement, Beckham submitted a report entitled “Destruction of the Townsite of Chinookville” (Petitioner Ex. S). This report briefly summarizes the history of Chinookville, from its days as the Chinook village “Quat-samts” to its brief stint as the county seat of Pacific County to its demise with the encroachment of McGowan and erosion by the Columbia River. Beckham quoted a history of place names in Pacific County [copy not included], which stated: “By the 1880’s nearby McGowan overshadowed the older settlement and erosion was rapidly removing buildings from the shrinking river bank. Erosion vanquished the old town site during this century . . .” (Petitioner Ex. S, 2). The report concluded with a statement that the Chinooks who had lived at Chinookville moved to “other Chinook communities,” and advised the BIA to refer to the census enumerations of 1870 and 1880 and “the special reports for the 1900 and 1920 decennial census in the appeal documents of the Chinook Indian Tribe” (Petitioner Ex. S, 3).

The Proposed Finding. The PF briefly mentioned the demise of Chinookville in two places in a technical report, commenting that it ceased to exist between 1880 and 1900 and that the BIA had no information on when or why it ceased to exist (*Chinook PF*, ATR 8, 58). Chinookville was also mentioned in the PF Summary:

There were some pioneer-Chinook families living permanently in Chinookville at the time of the 1880 Federal census. Before the 1900 census, and probably soon after the 1880 census was recorded, the village of Chinookville ceased to exist. Some of the descendants of the pioneer-Indian families that had lived in Chinookville in 1880 moved to other locations in Pacific and Wahkiakum Counties by 1900, as well as to other parts of Washington state. In Pacific County, for example, Ilwaco became a place where several descendants of the Petit and Pickernell families resided. One important destination for these families between 1880 and 1900 was the coast where Dahlia, Altoona, and Brookfield (in this summary, the three locations are collectively labeled “Dahlia”) are located, along the north bank of the Columbia River in Wahkiakum County. (*Chinook PF*, 14)

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Response. The PF made no conclusions regarding the abandonment of Chinookville. The PF did not state that the residents of Chinookville abandoned tribal relations when Chinookville was abandoned. The PF concluded that a social community continued at Bay Center until about 1920, but that 1880 was the last year that the petitioner, as a whole, met the requirements of criterion (b). The new documents clarify the sequence of events that lead to the loss of the town site.

19. *The Chinook* by Clifford Trafzer. The petitioner argues that BAR's reference to a publication *The Chinook* by Clifford Trafzer was given too much weight in evaluating their petition. They have submitted a letter from Mr. Trafzer to Timothy Tarabochia, then chairman of the CIT/CN, stating that he was not an expert on Chinook history and that his book was not to be taken as anything more than a historical reference for high school level readers (Petitioner Ex. T). Trafzer stated: "Your people should be recognized by the federal government, and it is negligent on the part of the government to deny you recognition, particularly based on my book which has many limitations . . ." (Petitioner Ex. T; Trafzer 2/6/1998).

Response. As one of the few sources about the Chinook in modern times, it would have been improper not to have read and evaluated this book under criterion (a) as evidence that an outside observer wrote about the Chinook in 1990. Reliance upon Trafzer was not critical in coming to a conclusion that the CIT/CN did not meet the mandatory criteria. In fact, Trafzer's book was quoted in the PF Historical Technical Report as evidence that a Chinook Indian group (or groups) existed in the 1950's, 1970's, and as late as 1990 when his book was published (*Chinook PF*, HTR 5, 7, 54). Trafzer concluded, "the Chinook no longer are a unified tribe" (Trafzer 1990, 99-100, cited in *Chinook PF*, HTR 81), a point which was only cited once in a lengthy technical report. His letter reiterated his conclusions about a lack of political unity. However, the PF also concluded that, "[h]e identified three contemporary groups of Chinook in the 1980's: The Chinook Indian Tribe Organization; the Wahkiakum Chinook; and the Chinook on Shoalwater Bay" (*Chinook PF*, HTR 81). Trafzer's book was only one of many sources used to evaluate the CIT/CN petition. Additional discussion on this issue can be found under the comments for criteria (a) and (c).

A perceived negative comment by Trafzer about Chinook's lack of political unity was not the basis for the PF conclusions regarding criteria (a) and (c). Rather, the PF found that the petitioner did not carry its burden of proof and provide sufficient evidence to show identification of a group, and to show political authority within that group.

THIRD PARTY COMMENTS ON THE PROPOSED FINDING

Quinault Indian Nation Comments

Quinault Indian Nation (Quinault) submitted a response to the CIT/CN PF on July 28, 1998. The Quinault comment focused on three issues: (1) Quinault's contention that the

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Chinook petitioner was composed of members of other federally recognized tribes, i.e. Quinault Indian Nation, and that it was in fact a splinter group of the Quinault,⁴⁹ (2) CIT/CN's request to be reviewed under the 1994 regulations, and (3) a request under the Freedom of Information Act for all materials, affidavits, and surveys submitted by the petitioner in response to the PF, quoting the petitioner's claim that it was "previously unknown and of real significance to the tribe's final submission," as well as BAR's correspondence, notes, and other communications relating to the CIT/CN comment period between August 11, 1997, and July 30, 1998. This last issue included comments on the length of time that the CIT/CN had in preparing its petition, and the Quinault's need for adequate time to review the petitioner's and third parties' comments. The BIA complied with the FOIA request in a letter dated December 23, 1998, and copies of the requested materials were mailed on January 1, 1999. The FOIA request itself does not address the mandatory criteria; therefore, this FOIA issue will not be addressed further in this final determination.

Quinault Issue # 1. On the first issue raised, that the petitioner was composed of members of the Quinault Nation and was a splinter group of the Quinault Nation, Quinault referred to its 1996 submission in which it "noted that over 60% of the Quinault Nation's membership possesses Chinook ancestry," and based on this description of the Quinault membership, suggested that a BAR review of the Quinault and Shoalwater Bay membership lists would show that most individuals with "significant Chinook ancestry" were already enrolled in either the Quinault Indian Nation or the Shoalwater Bay Indian Tribe. Quinault contended such a review would show that "in addition to other deficiencies in the Chinook petition identified by the BAR, the petitioner was in effect a "splinter group" (Quinault 1998, 1).

⁴⁹ In this section, the Quinault also stated that the Department denied the Quinault access to the petitioner's membership rolls. This claim refers to the Quinault's April 2, 1996, request under the Freedom of Information Act (FOIA) for "all records and correspondence compiled, received or responded to regarding the petitions for acknowledgment by the Chinook and Cowlitz petitioners. . . ." The BIA responded to this request on June 11, 1996, stating that there were 14,782 pages of Chinook materials, but that "We must, however, withhold under law the genealogical portions of the petition, the membership lists and parts of membership applications with privacy materials in them. These protections of privacy materials are provided under FOIA exemption (6)" (BIA 6/11/1996). The Quinault's appeal of this decision was denied by the Department's FOIA office on November 11, 1996. Subsequently, Quinault sued the AS-IA, *et al.*, concerning the withholding of privacy materials in both the Cowlitz and Chinook petitions. In October 1998, the U.S. District Court upheld the Department's decision under FOIA to withhold membership lists and genealogies submitted by the Cowlitz and Chinook petitioners. The history of the allegations, appeals, and court decisions are described in detail in the technical report of the Final Determination to acknowledge the Cowlitz Indian Tribe (*Cowlitz FD*, Technical Report, 2-4). Since publication of the Cowlitz FD, the Quinault lost their appeal before the Ninth Circuit Court of Appeals on July 27, 2000 (*Quinault Indian Nation v. Deer*, Unpublished Slip Opinion, 7/27/2000, No. 98-36231 (D.C. No. CV-97-5625-RJB)).

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To help the BIA determine the extent to which the Chinook petitioner's membership was composed of individuals who were members of federally recognized tribes, as called for in 25 C.F.R. § 83.7(f), Quinault enclosed a copy of an "Enrollment Report" dated July 15, 1998. The Quinault stated that this report is "a copy of its current membership roll that includes the full name of all Quinault tribal members, their maiden names where applicable, their year of birth, and sex." There are 2,323 names on this report. The Quinault sent a copy of its 1998 "Enrollment Report" to the CIT/CN petitioner, citing to a requirement in § 83.10 (i) of the 1994 revised regulations.

Response. There are two separate points to be addressed in this first issue: the degree and effects of dual membership, and the question of whether the petitioner is a "splinter group" of the Quinault Nation. Under the topic of "Scope," the 1978 regulations state: "Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separate from the main body of a tribe currently acknowledged as being an Indian tribe by the Department" (§ 83.3(d)).

The question of members of the CIT/CN also being enrolled members of the Quinault was addressed in the PF, which stated that although neither the petitioner's constitution nor its membership ordinance addressed the issue of dual enrollment, the petitioner was aware that some of its members were also members of the Quinault Nation (PF GTR, 46). The PF noted that the BIA did not have a 1995 or current Quinault tribe membership list, but had used a 1992 printout of "all people on agency file" from the Olympic Peninsula Agency of the BIA. The analysis of the petitioner's membership records and the Quinault's records at various periods since the 1950's showed that at various times between 1953 and 1995, between 5 and 7 percent of the petitioner's members were enrolled in the Quinault tribe (PF GTR, 46-48). Based on this evidence, the PF concluded that the petitioner was principally composed of persons who were not members of any federally acknowledged North American Indian tribe; therefore, it met criterion 83.7(f).

For the final determination, BIA researchers compared the names and ages on the 1998 Quinault "Enrollment Report," with the names and birthdates on the 1995 CIT/CN membership list which included 1,566 people (PF GTR, 34). Although there were some slight discrepancies between the ages given in the "Enrollment Report" and the birthdates in the CIT/CN membership list, the BIA found 126 names on the CIT/CN membership list that were likely to be the same names on the "Enrollment Report." Therefore, only about 5 percent (126 of 2,323) of the Quinault membership appears to be on the CIT/CN's membership list. On the other hand, slightly more than 8 percent (126 of 1,566) of the CIT/CN membership appear to be on the Quinault's "Enrollment Report." These figures do not represent a significant portion of the petitioner's membership or of the Quinault Indian Nation's membership.

The BIA researchers also compared this list of names to the Chinook ancestral lines which were submitted by the petitioner in the "Blue files" and discussed in the PF (PF GTR, 9, 37-39). This comparison found that the 126 individuals represented descent

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from 13 different Chinook ancestral lines cited in the 22 "Blue files." There is no indication that the 126 names represent a single family or family line. In some instances, some of the siblings in a family are on the petitioner's membership list, but one or more siblings in the same family are on both the CIT/CN membership list and the Quinault "Enrollment Report." An analysis of dual enrollment of these family lines by band/tribe was made in the PF (PF GTR, 48). The following table shows which families and which bands had descendants in both the 1995 CIT/CN membership and the 1998 Quinault "Enrollment Report." Because of marriages between families lines, the individuals may descend from more than one ancestral line; therefore, the number enrolled will not total 126, which is the number of names that appear on both the CIT/CN membership list and the Quinault "Enrollment Report."

1998 DUAL ENROLLMENT

BAND	ANCESTRAL LINE	NUMBER ENROLLED
Lower Band	Duchenev [Peers]	5
Lower Band	Duchenev	5
Lower Band	Duchenev [Lucier]	1
Lower Band	Ero/Durival/LaFramboise	17
Lower Band	Ero/Durival [Margaret Ero]	8
Lower Band	Aubuchon [including Petit]	3
Lower Band	Ahmoosemoose	1
Lower Band/Wahkiakum	Mallet/John	40
Lower Band/Willapa	Hawks/Anna Hawks/Nellie Secena	32
Lower Band/Kathlamet	Bailey	1
Lower Band/Clatsop	Pickernell	9
Lower Band/Chehalis	Charlie/Matel	3
Kathlamet	George Skamock	11
Willapa	Telzan/McBride	12

This table shows that the individuals who appear to be enrolled in both the CIT/CN and the Quinault Nation primarily descend from four ancestral lines (Duchenev, Ero/Durival, Aubuchon, and Ahmoosemoose) from the Lower Band of Chinook or from five ancestral lines (Mallet/John, Hawks, Bailey, Pickernell, and Charlie/Matel) that include both the Lower Band of Chinook and other Chinookan Bands of Wahkiakum, Willapa, and Kathlamet Indians or of the Clatsop and Chehalis tribes. Perhaps as many as 23 of the 126 individuals descend from ancestral lines with exclusive descent from either the Kathlamet or Willapa bands. Each of the bands and ancestral lines represented in the charts of the 1981 and 1987 dual enrollment are also represented in the above chart showing dual enrollment in 1998. This distribution by band or ancestral line is fairly even between the bands. If the petitioner did represent a splinter group of the Quinault, it does not appear to be based on band or family lines.

The BIA researchers also evaluated the list of 126 names who appear to be dually enrolled, by place of residence for possible patterns which might indicate a splinter group of the Quinault Nation. The residences were taken from the information on the CIT/CN membership list.

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RESIDENCES OF PERSONS DUALY ENROLLED IN CIT/CN AND QUINAULT NATION

TOWN	COUNTY	STATE	TOTAL NUMBER
Bay Center	Pacific	WA	21
South Bend	Pacific	WA	15
Long Beach	Pacific	WA	2
Naselle	Pacific	WA	3
Raymond	Pacific	WA	11
Chinook	Pacific	WA	1
Ocean Park	Pacific	WA	2
Cathlamet	Wahkiakum	WA	4
Rosburg	Wahkiakum	WA	4
Taholah	Grays Harbor	WA	17
Hoquiam	Grays Harbor	WA	6
Aberdeen	Grays Harbor	WA	9
Elma	Grays Harbor	WA	1
Ocean Shores	Grays Harbor	WA	1
Montesano	Grays Harbor	WA	2
Tumwater	Grays Harbor	WA	1
Humtulsips [River?]	[Grays Harbor ?]	WA	1
Tacoma	Pierce	WA	2
Vancouver	Clark	WA	3
Gig Harbor	Mason	WA	1
Marysville	Snohomish	WA	1
Olympia	Thurston	WA	1
Quilcene	Jefferson	WA	2
Sequim	Clallam	WA	1
Seattle	King	WA	1

About half of the individuals who appear to be dually enrolled are in Pacific County (55) Wahkiakum County (8). This two-county area is considered to be the traditional Chinook territory and the same area where about 22 percent of the CIT/CN membership lives today (*Chinook PF*, ATR 137). This table shows that 38 individuals live in Grays Harbor County, which is just north of Pacific County, and which includes the Quinault Reservation.

This table also shows that 12 people live in other counties throughout Washington State. Thus, a total of 119 of the persons who appear to be dually enrolled are living in Washington State. In addition, three others reside in Oregon, two in Alaska, one in Texas, and one in California. Four individuals with CIT/CN membership numbers did not have addresses, and two names on the CIT/CN membership list were identified as “deceased.” There does not seem to be any pattern suggesting a splinter group based on residence. There was no information presented which indicates that the 126 individuals was a political faction or voting bloc of the Quinault Indian Nation.

It is the function of the Federal acknowledgment process to determine whether a petitioner for acknowledgment descends from a historical tribe and has continued to exist as a separate political entity from historical contact to the present. The acknowledgment regulations do not require a petitioner to consist of all of the descendants of a historical tribe. That some Chinookan descendants are members at Quinault is not a bar to

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recognition of a separate group of Chinookan descendants which established that it has maintained a separate political entity from historical contact to the present, or that it separated from other Chinook or part Chinook entities in the past and has continuously existed to the present.

The Quinault Nation did not dispute the ample evidence in the petition which identified the petitioner's ancestors as members of the Lower Band of Chinook, the Willapa Band, the Wahkiakum Band, and the Kathlamet Band of Chinook, or the Clatsop Tribe. The PF technical reports evaluated considerable, reliable evidence which described how the petitioner's membership descended from each of the bands (*Chinook PF*, GTR 47-49 and ATR 35- 50, 135-139). The Quinault did not show that the CIT/CN petitioner's membership was principally composed of members of the Quinault Nation, the Shoalwater Bay Indian Tribe, or any other federally recognized tribe.

The second point claimed by the Quinault Nation under this issue, that the petitioner is a splinter group of the Quinault Nation, is not supported. The Quinault Nation cited no specific evidence of a splinter group, merely that some of the members of the Quinault Nation also have descent from the Chinook Indians and that some of these are members of the petitioner.

Quinault Issue #2. The second issue raised by the Quinault concerns the CIT/CN petitioner's request to be considered under the 1994 revised regulations rather than the 1978 regulations. The Quinault Nation supported the Department's decision to proceed under the 1978 regulations.

Response. See the above discussion on Issue #1 under "Issues Referred by the Secretary of the Interior" and see the "Waiver of the Regulations" in the introduction to this Reconsidered Final Determination.

Quinault Issue #3. The Quinault comments also included a request under the FOIA for a complete copy of the Chinook petitioner's response to the PF and other records which the BAR had accumulated during the response to the PF period.

Response. The July 28, 1998, FOIA request was answered in a separate letter from the BIA Office of Management and Administration on December 23, 1998, which released a large body of records, but denied release of the petitioner's membership lists and genealogical records as records of an extremely personal nature. That is, documents under FOIA exemption 6, which exempts information such as "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" from release (5 U.S.C. § 552(B)(6)). Prior to this final FOIA response, the Quinault sued for access to the protected records, arguing that it needed the records to respond to the PF. On October 9, 1998, the U.S. District Court at Tacoma upheld the Federal Government's decision to withhold the material under FOIA exemption 6 (*Quinault Indian Nation v. Gover*, Docket No. C97-5625RJB). This ruling was affirmed in the United States Court of Appeals for the Ninth Circuit on July 27, 2000

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(*Quinault Indian Nation v. Deer*, Unpublished Slip Opinion, 7/27/2000, No. 98-36231 (D.C. No. CV-97-5625-RJB)). In an opinion filed July 27, 2000, the Ninth Circuit affirmed the district court's favorable decision as recorded in the transcript of the October 19, 1998, hearing.

The Linda C. Amelia Comments

Ms. Linda C. Amelia, a member of the CIT/CN, submitted her "testimony in support of Chinook recognition" dated June 10, 1998, which was received by the BAR on July 22, 1998. The Amelia comments, which she said were based on "oral history and a summary of documentation about my family that is attached" (Amelia 6/10/1998, 1) focused on four issues. They are (1) the "political climate" between the CIT/CN Council, and the petitioner's attorney, and herself, (2) the contributions of her Chinook and Cathlamet ancestors and their "social ties with among one another from Bay Center to Cathlamet to Chinook Point," (3) questions concerning the validity of a statement in the PF that Paley Temaikemae, Chief Comcomly's daughter, was also Cowlitz, and (4) a recommendation that AS-IA appoint an "outside unbiased reviewer" because the Quinault "attack" on the Chinook "recognition" had harmed the Chinook petition. Ms. Amelia's comments also included an appeal to the Assistant Secretary to reverse the negative PF for one in favor of the Chinook.

The Amelia comments included about 70 pages of affidavits and exhibits, including a 2-page affidavit dated May 9, 1998, relating her personal knowledge of her family's Chinook ancestry, a 7-page affidavit affirming her lineal descent from Chief Comcomly and other Chinook ancestors, and exhibits A to F. Ms. Amelia stated that she had submitted these comments directly to the Chinook Council, but that no action had been taken on them (Amelia 6/10/1998, 1).

Amelia Issue #1. Ms. Amelia asserts an unspecified "political climate" between the petitioner's council, the CIT/CN attorney, and herself which caused the attorney to try to discredit her statements or contributions to the petitioner's efforts (Amelia 6/10/1998, 1).

Response. The PF Anthropological Technical Report referred briefly to a controversy over the 1994 election of Timothy Tarabochia and Jean Schaffer, resulting in a recall vote initiated by Linda Amelia in 1996 (*Chinook PF*, ATR 169). This may be the source of the "political climate" Ms. Amelia referred to in her comments on the PF. Comments from individual members of the petitioner are accepted, whatever the attitude of the petitioner's council or attorney, and those comments will be considered on their merits relevant to the mandatory criteria.

Amelia Issue #2. The Amelia comments included a statement about the evidence the petitioner and Ms. Amelia had presented regarding her father's family [the Mallet-Springer and Scarborough lines] and their "involvement in Chinook governance, cultural and social activities" (Amelia 6/10/1998). Much of Ms. Amelia's affidavit, dated May 9, 1998, refers to her descent from Chinook ancestors and their participation

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in Chinook tribal governance through Chief Comcomly, who died in 1830 (*Chinook PF*, ATR 1), and through family leaders and elders. "I have learned from oral history about my family that some believed they need not ask anyone else when our heads of family made decisions" (Amelia 5/9/1998). Stating that her Chinook ancestors lived at Chinook Point and Cathlamet, and that they frequently visited the Bay Center area to visit collateral relatives or attend meetings and gatherings, Ms. Amelia added that she had seen evidence of this in family documents "indicating that visits were made in the 30's, 40's & 50's to Bay Center to meet with certain members of our Tribal Council at that time. For BAR to say we had no contact or lost contact with one another is ludicrous" (Amelia 5/9/1998). The commenter also states: "I have direct personal knowledge that Chinook governance acknowledged heads of families in terms of discussions of land claims, fishing, social functions and other matters when decisions were made in those times" (Amelia 5/9/1998).

The commenter supported these claims with an affidavit dated December 16, 1997, and its attached exhibits, including an undated [ca. 1985] and unsigned draft affidavit by Stephen Dow Beckham "used in litigation in an effort to get our ancestral lands returned at Chinook Point also known as the Scarborough Donation Land Claim No. 37"; a 1937 newspaper article, "Sarah Scarborough Recalls Cathlamet in Pioneer Days"; a 1957 letter to Washington State Representative Mrs. Julia Butler Hansen regarding the land claims of the Scarborough heirs; undated [ca. 1957] and unsigned "Statements in Support of Bill For the Relief of the Heirs at Law of James Allan Scarborough and Ann Elizabeth Scarborough" reciting Scarborough land claims; two newspaper articles from the 1970's about Charles D. and Edwin Scarborough; and correspondence from Mrs. Julia Butler Hansen.

Much of Linda C. Amelia's December 15, 1997, affidavit stated family relationships and traditions of aristocratic heritage because of its descent from Chinook "royalty." Ms. Amelia's interpretation of the Scarborough heirs' pursuit of compensation for the Donation Land Claim, which included Chinook Point (Scarborough Hill), as "unrefutable [*sic*] evidence that the direct Chinook ancestors of Chief Comcomly have never wavered in their personal belief that they are the 'Chinook' guardians of their spiritual homelands" (Amelia 12/16/1997).

The 1997 affidavit also makes assertions that her father and grandfather made numerous trips to Bay Center to visit their Petit relatives, and that her father kept strong ties to his Cathlamet "roots." She also stated:

When I accompanied him and my mother on trips to Bay Center, we would get oysters, crab and attend family meetings where Chinook business was discussed. These discussions related to general Chinook tribal "politics," allotments, timber matters, fishing and family events such as reunions and funerals. (Amelia 12/16/1997)

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Response. The Amelia comments seem to be addressing two of the mandatory criteria: (b) community, and (c) political influence or other authority over its members. The PF found that the petitioner clearly met criterion 83.7(b) from 1811 to 1854, and that there was some evidence that the petitioner, as a whole, met the criterion for community through 1880. The PF also concluded that there was some evidence of a social community continuing at Bay Center among the Lower Band of Chinook until about 1920 (*Chinook PF*, 23). Therefore, the petitioner or commenters needed to provide evidence of social community from 1880 to the present.

The PF also found that the petitioner met 83.7(c) from 1811 to 1855, but did not meet it from 1856 to the present (*Chinook PF*, 36). It said: “The four decades following these unsuccessful treaty negotiations are almost barren of evidence of Chinook tribal political activity or leadership. As early as 1870, the local superintendent of Indian Affairs claimed that the Chinook had no chief” (*Chinook PF*, 27). Although there was some evidence of an Indian community at Chinookville into the 1880's and of Chinook descendants living in Ilwaco, Dahlia, and Bay Center, there was no available evidence to show that there were leaders who exercised political authority over the group as a whole or in the several settlements, or that the Chinook descendants influenced these purported leaders (*Chinook PF*, 27).

The petitioner made vague claims that leadership among the Chinook Indians was provided by heads of families. However, it provided “few, if any, specific examples of this kind of leadership” (*Chinook PF*, 28). Family heads were not named and their activities were not described. The petitioner provided very little evidence of informal leadership on the part of non-family heads in the first half of the 1900's (*Chinook PF*, 30). Therefore, documentary, contemporary evidence submitted in response to the PF that named other family heads for the other leaders, and detailed their activities and the extent of their influence would have been very beneficial to the petitioner as a whole. Each of the affidavits and exhibits in the Amelia comments were reviewed by BIA researchers to determine how the activities of the Mallet-Springer and Scarborough families could possibly show the continuance of political authority or influence.

Amelia Exhibit A. The 1985 draft affidavit (not signed or notarized) of Stephen Dow Beckham described his educational background, his publications, his role as an expert witness in claims litigation, and his role as a consultant to the Chinook. He then listed the sources he used to prepare a genealogical chart of the Scarborough family, and a description of the Scarborough land obtained through the Oregon Donation Act of September 27, 1850. Beckham stated “Ann Scarborough was a full-blooded Chinook Indian and the daughter of the Chinook Indian chieftain, Comcomly,” but did not cite a specific source for this information (Amelia 6/10/1998, Ex. 1: Beckham 1985, 5). The rest of the affidavit described what happened to this property after the deaths of Captain and Mrs. Scarborough.

Response. Beckham's 1985 affidavit did not name or describe any leaders of a Chinook tribe or how or whether the Scarborough heirs in the 20th century interacted with any such

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leadership that may have existed. The Scarborough heirs' pursuit of "Relief for the Heirs at Law of James Allan Scarborough and Ann Elizabeth Scarborough" in the 1950's is not evidence of tribal leadership because it appears to concern a single family rather than a number of family lines.

Beckham's 1985 affidavit referred to Chinook ancestors who lived in the decades before 1854, a time when there was clear evidence that there was a Chinook tribal entity. Beckham's summations of the probate proceedings and land transfers during the 1850's and 1860's do not provide evidence of a Chinook social community or of Chinook tribal political influence or authority in either the 19th or 20th centuries.

Amelia Exhibit B. A 1937 newspaper article recalling Cathlamet in pioneer days stated that Mrs. Sarah Scarborough remembered James Birnie and other pioneer settlers; however, she made no mention of a Chinook tribal entity in Cathlamet or of Chinook leaders.

Response. Only two passing phrases in the article "Indians trading salmon for blankets" and "strange doings in the Indian lodges" indicated that there were Indians at Cathlamet in the mid-to-late 1800's. Those two phrases do not constitute evidence of a tribal entity continuing at Cathlamet in the late 1800's, or of tribal authority or influence during that same time period.

Amelia Exhibit C. A 1956 newspaper article entitled, "When Is an Indian Not an Indian?" refers to the status of the Chinook Indians in regards to fishing and hunting rights. The article was in the record for the PF and was cited in the PF HTR, 60, as McDonald 1956. The article referred to a day-long picnic at Fort Columbia State Park for members of the Chinook tribe at which their attorney, Malcolm S. McLeod, explained a brief he had recently received regarding their claims case. McLeod said that there had been a continuous line of chiefs since 1795, but did not name them. Comcomly was mentioned as one of the leaders in early years. Jack Petit of Ilwaco was cited as presiding over the 1956 meeting, and the caption with the picture of Roland Charlie, of Tokeland said he was "president of the Council of the Chinook Tribe." No other leaders, past or present were named in the article, nor were others involved in the "Chinook Tribe" named.

Response. This article has some value in that it implies there was a Chinook group in the mid-1950's, but does little to demonstrate the continuous existence of a tribal entity after 1880 (or 1854) until the 1950's, or of political authority or influence from 1854 to the 1950's. This article did not provide new evidence of a tribal entity.

Amelia Exhibits D-1 to D-12. According to Ms. Amelia, these documents came from the personal files of Mrs. Julia Butler Hansen, former Washington State Representative, whose mother had been Mingo Amelia's school teacher, and who was familiar with the Scarborough heirs' claims relating to Donation Land. The exhibit includes copies of letters from 1955 and 1957 from Marie J. Scarborough, "Acting Secretary" or "Secretary

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& Representative” of the Scarborough heirs, which recited the history of the Scarborough family, James Allen Scarborough’s Oregon Donation Land, and unsigned statements describing the land transactions by Charles D. Scarborough, Edwin J. Scarborough, and the family attorney Richard L. Merrick. Exhibits D-1 to 12 also includes letters to Senator Warren Magnuson and Senator James E. Murray regarding Senate Bill S.2002, “For the relief of the of the heirs of James Allan Scarborough,” and two newspaper articles (one undated article, presumably from the early 1970’s about Charles D. Scarborough, and a 1974 obituary for Edwin J. Scarborough).

Response. While these records clarify some Scarborough family relationships and introduce the statement that “Paley Temaikami” was the daughter of Comcomly, they primarily repeat the Scarborough heir’s claims to land at Scarborough Head in Pacific County, Washington. None of the records describe an Indian settlement at Cathlamet or elsewhere along the Columbia River after 1855. The newspaper accounts about Scarborough descendants in the 1970’s recount tales of the pioneer settlers, lost gold ingots, and the death of Edwin J. Scarborough in 1974. Neither article provided contemporary evidence of a tribal entity in the 1950’s or 1970’s or of Scarborough family leadership in issues beyond obtaining a settlement for the purchase of family owned property, which had been obtained as Oregon Donation Land.

Mrs. Hansen’s June 10, 1983, statement declared that her family and the Amelia-Scarborough-LeClair families lived in Cathlamet, and listed from her personal knowledge the parents and grandparents of Roy Amelia. The statement did not describe a tribal entity that may have existed in her lifetime, or provide evidence of political influence or authority by the Scarborough family or any other Chinook families or individuals in the 1900’s.

Amelia Exhibit F. A February 2, 1954, letter to Charles E. Larsen from the Commissioner of Indian Affairs, Glenn L. Emmons, regarding a “proposed western Washington terminal *[sic]* bill to the Chinook Indians” and Chinook Indians who were allotted on the Quinault Reservation and “now enrolled on the Chinook tribal roll prepared for the purpose of sharing claims.” This letter was in the record for the PF and is cited in the PF HTR, 67, as BIA 2/2/1954. Mr. Larsen is not named as the leader of a Chinook group in this letter, nor are other members of the Chinook group named. However, other documents cited in the PF referred to Charles Larsen as the secretary of the Chinook Tribe, Inc., in 1954. The letter references rolls prepared for claims purposes and the interests of allottees on Quinault in relation to the claims. This letter provides some evidence of a Chinook community and of Chinook tribal authority or influence.

Amelia Exhibit F-1. January 19, 1994, letter from Donald E. Mechals, chairman of the Chinook Tribe of Indians to Ada Deer, AS-IA, briefly explaining the history of the Chinook and citing scholars who have studied their culture. This letter also summarizes the *Halbert* case, the proposed Western Washington Termination Bill, and Indian Claims.

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Response. All of these topics in Exhibits F and F-1 were discussed in detail in the PF (*Chinook PF*, HTR 12, 32-34, 44, 67-68, and ATR 13, 97, 125, 151). Neither of these letters sheds new light on a Chinook tribal entity that may have existed in the 20th century. None of these documents showed significant social ties between the Chinook descendants at Bay Center and Dahlia-Brookfield-Altoona. These documents do not show the Scarborough family members in close or frequent contact with relatives or other Chinook descendants at Bay Center. Other than occasional references to Chief Comcomly, these records did not show Scarborough descendants in tribal leadership positions, either formal or informal. None of these documents show social ties between the Indians at Cathlamet and the Indians at Bay Center as asserted by the commenter.

Amelia Issue #3. The Amelia comments also questioned a statement in the PF Anthropological Technical Report which attributed some Cowlitz ancestry to the wife of James Scarborough. Ms. Amelia asked what documentation was used to support the claim of Cowlitz ancestry to her ancestress, "Paley Temaikamae, Chief Comcomly's daughter," and stated, "I have never heard this from any of my elders who are now deceased. Also, I have never personally reviewed any documentation to support that statement" (Amelia 6/10/1998, 1-2). In an affidavit dated December 16, 1997, Ms. Amelia identified herself as a lineal descendant of Chief Comcomly and other Chinook Indians and referred to attached exhibits which supported her claims. These exhibits are discussed above in connection to Issue # 2. Although most of these articles related to some of the Scarborough family history, they did little to document the parentage of Paley Temaikamae. The first of these documents to name Paley Temaikamae as the daughter of Comcomly was one of the ca. 1957 statements of the heirs regarding land claims. The two *Tacoma News Tribune* articles (one dated April 8, 1974) about Charles D. Scarborough and Edwin J. Scarborough, grandsons of Captain James Allan Scarborough, name the captain's wife as Paley Temaikamae, a daughter of Comcomly.

Response. The Anthropology report included this one paragraph on the Scarborough family:

One of the Chinook Indian women listed by Gibbs whose family continuously lived in Chinook country was Am-e-a-wauk (a.k.a. Ann Elizabeth), the wife of James Scarborough. James and Ann Elizabeth lived together on the Columbia River at Scarborough Hill, near the Indian village of Chinookville. They both died at relatively young ages, but their children continued to live in the area and their descendants tended to marry Indians from other tribes. Some of the Scarboroughs were closely tied to the Cowlitz Tribe, since Ann Elizabeth also had some Cowlitz ancestry. There were also some Scarboroughs who affiliated with the Lummi Tribe. (*Chinook PF*, ATR 26)

The ATR referenced as its source a census made by George Gibbs in 1851. The petitioner sent both a photocopy of the 1851 census and an annotated transcript of it (Petitioner Ex. 439). The actual census reads: "Census of the Chinook tribe of Indians residing on lands owned by them and lying on the Columbia River below the mouth of

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the Cowelitse taken January 1851.” Gibbs then listed the name of the head of the family, the usual place of residence and the number of males and females in each household by age group. After listing the Chinook heads of house, he added “Chinook women, married to whites,” and their usual places of residence, but did not include the number of residents in each household. One of the Chinook women married to a non-Indian man was “Scarboro” residing at Cape Disappointment. Neither her Indian name nor her baptismal name was shown on this report. However, the annotated transcript submitted with Petitioner Ex. 439 included the editorial comment: “[Mrs. Scarborough = Am-e-a-wauk (Ann Elizabeth, Keta-lut-sin) (died 8 July 1852), who married James Allen Scarborough (who died in July, 1854). They were married Oct. 30, 1843, Fort Vancouver. Scarborough was ship captain for the Hudson’s Bay Company]”

The unidentified annotator did not cite a source for this additional information about “Scarboro.” However, it appears to be gleaned from several entries in *Catholic Church Records of the Pacific Northwest* by Warner and Munnick, and the statements in the McChesney and Roblin rolls. The Church records identified the wife of Captain Scarborough as either “Paley Temaikamae” or “Ann Elisabeth,” a “Tchinouck” or “Chinook,” Indian woman (Munnick and Warner 1972). In some instances, the compilers quoted the original Church records, which identified Scarborough’s wife as Ann Elisabeth, but then added in brackets “[Paley Temaikamae],” indicating this information was added by the compilers. None of the references in the Catholic Church records stated that she was the daughter of Comcomly.

On the other hand, there is conflicting information in the 1906, 1913, and 1914 McChesney rolls and accompanying statements which identify the mother of Edwin (Edward) Scarborough as Keta-Lut-Sin, a Lower Chinook woman who was from Chief Chenamus’ tribe (McChesney 1906, Statement #50). Edwin was orphaned at a young age and did not remember his mother’s name, but another Lower Chinook woman, Catherine Dawson who was over 80 years old, provided McChesney with the name Keta-Lut-Sin (McChesney 1906, Statement #50). Neither Edwin Scarborough nor Catherine Dawson identified Keta-Lut-Sin as a daughter of Comcomly, or as being of Cowlitz descent. Edward Scarborough’s 1919 application for enrollment in Quinault states that his mother’s Indian name was “Um Na Wak” (Roblin 1919, M1343, Roll 2, Frame 338). A 1913 statement to McChesney by Robert Scarborough, a son of Edward Scarborough “a half blood Indian of the Lower Chinook tribe,” says that Edward’s mother was Ameawak, “a full-blood Lower Chinook Indian and that she lived during her whole life on or near Chinook Beach on the lower Columbia river” (McChesney 1913 [Petitioner Ex. 197]). Robert Scarborough did not attribute descent from Comcomly or from the Cowlitz to his grandmother, Ameawak.

The James Scarborough family was found in Lewis County, Oregon Territory (now Washington State) on the 1850 census. Unfortunately, the census enumerator simply listed his wife as “Mrs. Scarborough, age 40, Indian.” Children named James, age 11, Indian; John, age 7, Indian; Edwin, age 3, Indian; and Mary St. Clair, age 7, [white or Indian?] were in the household (U.S. Census 1850, p. 58, #140).

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As can be seen from the records that were contemporary to the lives of Mrs. Scarborough and her children, she was identified variously as Paley Temaikamae, Ann Elisabeth, Um Na Wak, and Keta-Lut-Sin. In 1913, a grandson attributed the name "Ameawak" to his grandmother Scarborough. However, although none of these sources identified her parents, they all identified her as a full-blood Chinook woman. Attributions of descent from Comcomly began in the 1950's.

The Proposed Finding Genealogical Technical Report, mentions the Scarborough family in several places, but does not attribute Cowlitz ancestry to the wife of Captain James Scarborough, nor does it attribute descent from the Chinook chief, Comcomly. All of the statistics in the Proposed Finding GTR, include Mrs. Scarborough as a member of the Chinook tribe and some of her descendants are members of the petitioner's group. It appears that the one sentence in the Proposed Finding ATR, which says Ann Elizabeth was part Cowlitz is in error. The report should have said that the Cowlitz lineage came through Ann Elizabeth's daughter-in-law, Sarah Ferron. However, the error is not significant to the analysis and does not affect the finding that the petitioner descends from the Chinook tribe of Indians.

Amelia Issue #4. Another issue in Ms. Amelia's comments centered on her "personal opinion" that the Quinault Nation, whose blood quantum and allotment policies showed that "[the Chinook] are clearly considered by them as their tribal 'enemies'," had "attempted to exercise a great deal of influence to BAR and attempted to personally encourage Ada Deer to render a negative decision from BIA" (Amelia 12/16/1997, 3). Ms. Amelia recommended that the AS-IA appoint an "outside unbiased reviewer" because she perceived Quinault's attack had somehow harmed the Chinook petition.

Response. The commenter provided no evidence to support her personal opinions about the political differences between the Quinault Nation and the Chinook. The Quinault Nation's stance on the Chinook petitioner is discussed in the PF (*Chinook PF*, ATR 38-39, 56, 129), and its comments on the PF are evaluated elsewhere in this report. There is no evidence that the Quinault "influenced" AS-IA Deer, or any of the BAR staff. Both the petitioner and the Quinault met with the BAR on separate occasions to discuss the acknowledgment process.

The Miller Comments

Vince Miller and his wife Edna M. Miller, who is a member of the CIT/CN petitioner, submitted several comments between March 25, 1998, and April 10, 1998. These submissions will be identified as "Miller [and date of letter]" in this response. Some of the submissions included requests for information under FOIA, which were answered separately (BIA 5/29/1998).

Miller March 25, 1998, Comments. On March 25, 1998, the Millers submitted several pages of a book called *Black Robes and Indians on the Last Frontier*, by Sister Maria Ilma Raufer, O.P., about St. Mary's Mission at Omak, near the Colville Reservation in

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north-central Washington. The text appears to be a letter to the President of the United States from "We, the older Indians and Chiefs of the Colville and Okanogan tribes. . ." that recites the mistreatment of the Indians by the non-Indians. Also included in this submission were two pages from an unidentified source, quoting an 18th century Delaware Indian in the northeastern United States who was also decrying the untrustworthiness of non-Indians (Miller 3/25/1998).

Response. Neither of these sources mention a Chinook tribe. Neither of these sources respond to the questions raised in the PF regarding criteria (a), (b), and (c) for the decades after 1855 until the present.

Miller April 4, 1998, Comments. The April 4, 1998, Miller comments included 30 pages of a report by Stephan Dow Beckham called: "Without Statutory Authority: The Termination of the Chinook and Cowlitz Tribes" which the commenter said was submitted with the Chinook petition in 1987. However, this source did not appear in the BIA's bibliography or in the list of documents in the Chinook petition. This report does not appear in the list of documents cited in the petitioner's letter to the BIA in 1988 asking for a review (obvious deficiency letter) of the petition (CIT 9/5/1988). The date on the Beckham report is August 16-19 1987; therefore, it was written or completed after the petitioner's two submissions in March and June 1987. However, the report itself appears to be new evidence to be considered for the final determination.

Response. Termination of western Washington tribes was discussed in both the anthropological and historical reports of the PF (*Chinook PF*, ATR 119-123, and HTR 53, 59, 60-68, 71). There are several citations to original documents in the 1987 Beckham report, but if there was a bibliography, the commenter did not submit it with the report. The BIA researchers compared the citations in the 1987 Beckham report to the list of documents in the PF bibliography and found that most of the documents cited in the Beckham report had been evaluated in the PF.

The report "Without Statutory Authority" did not provide new evidence that was not covered in the PF.

Miller April 9-10, 1998, Comments. This submission consists of eight pages of materials from a variety of sources that were faxed to the BAR on April 9 and 10, 1998. The first page was a hand-written note from Vince Miller which repudiated the BIA's actions in 1861, and decried the veracity of a book by Trafzer which had been used as one of the sources for the PF.

Also included in these comments was a FOIA request for "an administrative hearing concerning my family's Indian *rights* being taken by omission of my tribe, the CHINOOK, from the *Federal Register* List of Recognized Tribes" [emphasis in the original]. This appears to be related to a statement made in *Greene v. Babbitt*, which Miller quotes as saying that "removal of the Samish tribe of Washington was simply a "low level clerk's mistake in 1969." The Miller comments also included a typescript of a

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1861 petition from the citizens of Oregon and Washington for appropriations to compensate the “tribes and remnants of tribes” for their lands, one page of the 1880 Washington State constitution, a copy of the Article III of the Ordinance of 1787 regarding the rights of Indians, and one page from an unidentified source regarding Indian claims litigation.

Response. Miller’s comments criticize *The Chinook* by Clifford E. Trafzer for a statement on page 13: “Northwestern Oregon and southeastern Washington grow very cold in the winter. During those months, the Chinook, who inhabited the region for hundreds of years, . . .” which the commenter interpreted as meaning that *northwest* Oregon and *southeast* Washington were adjacent to one another. It appears that there was a typographical error that was not caught by the editors of the book. “Southwest Washington” describes the Chinook territory. The other Miller comments centered on Trafzer’s failure to properly identify the people in photographs on page 26 and 102 of *The Chinook*. However, as explained above in the section on Trafzer’s book, the PF did not rely on this book to define the traditional Chinook territory and the incomplete or incorrect identifications in the photographs have no bearing on the identification of a Chinook tribal entity that may have continued to exist from historical contact to the present. The alleged errors by Trafzer which were cited by Miller were neither relied upon by the Department in the PF nor cited in the BIA’s technical reports.

The Miller request for an “administrative hearing” under FOIA is confusing. There is no provision for an “administrative hearing” under FOIA. Nor were benefits taken away from the Millers. The Miller FOIA request “for any documents in the BAR having to do with the decision not to place the Chinook Indian Tribe on the *Federal Register* list of recognized tribes” was answered in a letter to Mr. and Mrs. Miller dated May 29, 1998, from the Office of Management and Administration. That letter stated:

We regret to inform you that there are no such documents in this office. The first list of federally recognized tribes was published in the *Federal Register* in 1979. There is no evidence that the Bureau of Indian Affairs (BIA) considered putting the Chinook Indian Tribe on that list. There is no evidence that the BIA made a conscious decision to exclude the Chinook Tribe at that time. (BIA 5/29/1998)

The commenters did not submit any evidence to support their assertions that the Chinook tribe had been omitted by error from the list of federally recognized tribes. There is no need to respond further to the FOIA request in this Final Determination.

The Miller comments identified one of its submissions as a “Citizens Petition to the Commissioner of Indian Affairs” reporting the conditions after a negotiated treaty on Clatsop Plains with the Indians “residing on the Lower Columbia and on the coast at the mouth of the Columbia River, consisting mainly of Chinook, Clatsop and Tillamooks.” This copy of the citizens petition is not signed, nor is there a list of the citizens who were petitioning for appropriations “to compensate the tribes and remnants of tribes.”

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However, it appears to refer to the tribes affected by the 1851 Tansey Point treaties. The treaties and the relationship between the Clatsop Indians and the Chinook Indians are discussed in the PF ATR, pages 23 to 32. The copy of the 1861 petition in the Miller comments does not add to the understanding of who was involved in the treaty negotiations or who may have been considered to be part of a Clatsop or Chinook tribal entity that may have continued after the treaty.

The submissions labeled "enclosure 2" and "enclosure 3" are copies of sections of the Ordinance of 1787 and the Washington State constitution that pertain to Indian rights. "Enclosure 4" is one page from an unidentified source with a brief outline of the history of the Chinook land claims in the early 1900's (Miller 4/9-10/1998). None of these enclosures provided evidence that the petitioner was identified as a tribe or was a tribe.

The Millers also periodically submitted miscellaneous pages from unidentified sources and letters describing the general mistreatment of the Indians by the Government. Those documents do not address the criteria or show that the petitioner has continued to exist as a tribal entity.

Miscellaneous Other Comments

Other parties' comments on the PF did not contribute substantive arguments or evidence. One such letter was from Jonetta Leitka, Chairperson of the Hoh Tribal Council, which expressed the Hoh tribe's support of the Chinook petition and the lack of resources for small tribes, but did not submit any documents or substantive evidence to show that the CIT/CN petitioner maintained tribal relations from historical times to the present (Leitka 1997). It may be considered as evidence in meeting (a) in that a federally recognized tribe recognizes the petitioner as a Chinook tribe.

Mr. James E. Carty sent a letter outlining the history of his family who were among the early settlers of Ridgefield, Clark County, Washington, and a reported Chinook village site near the mouth of Lake River. Although Mr. Carty referred to several letters and documents, none were included in his comments and none of his comments addressed the seven mandatory criteria (Carty 9/12/1997).

The BIA also received two letters from Bent Thygesen, an anthropologist from Oregon who did field work among non-Indian salmon gillnet fishermen on the Columbia River between 1976 and 1979 (Thygesen 11/3/1997, 2/9/1998). After reviewing the finding and treaty documents, Mr. Thygesen concluded that he had no new information to contribute to the finding: "The petition and the supporting evidence already include what I know about their community and political leadership" (Thygesen 2/9/1998).

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