



THE SECRETARY OF THE INTERIOR

WASHINGTON

NOV 6 2001

Memorandum

To: Assistant Secretary - Indian Affairs

From: Secretary *Julie A. Norton*

Subject: Federal Acknowledgment of the Chinook Indian Tribe/Chinook Nation Petitioner
- Interior Board of Indian Appeals Referral

By a decision dated August 1, 2001, the Interior Board of Indian Appeals (IBIA) affirmed your predecessor's January 9, 2001, Final Determination, 66 Fed. Reg. 1690, to federally acknowledge the Chinook Indian Tribe/Chinook Nation (formerly: Chinook Indian Tribe, Inc.) (Chinook) petitioner. In re Federal Acknowledgment of the Chinook Indian Tribe/Chinook Nation, 36 IBIA 245, 250-252 (2001). Although it affirmed your predecessor's decision, the IBIA also referred to me, in accordance with 25 C.F.R. § 83.11(f)(2), nine issues that the Quinault Tribe (Quinault) allege support reconsideration. These issues include:

1. a.) [Whether the previous AS-IA] Was Without Authority to Review the Petition under the 1994 Regulations.

b.) If [the previous AS-IA] Had Discretion to Consider a Request from the --- Chinook to Review the Petition under the 1994 Regulations, He Abused that Discretion in Granting the Chinook Request.
2. [Whether the previous AS-IA's] Interpretation of the 1911 Quinault Allotment Act, and 1912 and 1925 Claims Legislation as Evidence of Prior Congressional Acknowledgment of the Existence of A Chinook Tribal Entity Is Contrary to Longstanding Departmental Interpretations of those Acts.
3. [Whether] As a Matter of Law and Basic Logic[,] Prior Contrary Departmental Interpretations of the 1925 Western Washington Claims Act[] Preclude [the previous AS-IA] Conclusion that the 1925 Act Constitutes 'Unambiguous' Previous Federal Acknowledgment that the Chinook Existed as [a] Tribal Entity at the Time of the Act.
4. [Whether the previous AS-IA] Improperly Departed from the Regulations and Prior Departmental Interpretations of the Acknowledgment Regulations, When He Found that an Act Authorizing Claims Against the Government Constituted Unambiguous Federal Acknowledgment that the Chinook Existed as [a] Tribal Entity at the Time of the Act.

5. [Whether the previous AS-IA] Improperly Departed From the Regulation and Prior Departmental Interpretations of the Acknowledgment Regulations, When He Concluded 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) [25 C.F.R. § 83.7 (b)].
6. [Whether the previous AS-IA] Improperly Departed From the Regulation and Prior Departmental Interpretations of the Acknowledgment Regulations, In Relying on Claims Activities As Evidence of Community and Political Authority under Criteria (b) and (c) [25 C.F.R. § 83.7 (b) and (c)].
7. [Whether the previous AS-IA] Improperly Accorded the Chinook Petitioner a Presumption of Continued Existence.
8. [Whether the previous AS-IA's] Decision Was 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.
9. [Whether the previous AS-IA's] Decision Reflects Bias, a Personal Political Agenda Calculated to Implement a Recognition Policy at Odds with the Intent of the Existing Regulations, and Is Tainted by the Appearance of a Conflict of Interest.

The acknowledgment regulations do not contemplate that I assume the ultimate decision-making power. Rather, they provide that I have the "discretion to request that the Assistant Secretary reconsider the final determination on [the] grounds" identified by the IBIA. 25 C.F.R. § 83.11(f)(2).

Pursuant to 25 C.F.R. § 83.11(f)(4), the petitioner and interested parties have thirty (30) days from receiving notice of an IBIA referral to submit comments to me. Comments addressing the IBIA's August 1, 2001, referral of the nine issues were received on September 5, 2001, from the Quinault and on September 7, 2001, from the Chinook. The comments received from Chinook argued that I should rule that there is no reason for requesting a reconsideration of your predecessor's Final Determination. The Quinault's comments, however, urged me to reconsider the Final Determination on all nine of the grounds that the IBIA identified and referred back. No other persons, organizations, or entities identified as interested parties in the matter submitted comments.

The regulations at 25 C.F.R. § 83.11(f)(5) provide that I must determine whether to request a reconsideration of your predecessor's acknowledgment determination and notify all parties of this decision within sixty (60) days of receiving all comments. The 60-day deadline for my final

determination in this matter is Tuesday, November 6, 2001.

In examining your predecessor's decision, the acknowledgment regulations allow me to "review any information available, whether formally part of the record or not." 25 C.F.R.

§ 83.11(f)(3). Accordingly, in a letter dated September 12, 2001, the Office of the Solicitor, on my behalf, asked the Branch of Acknowledgment and Research (BAR) to provide comments and analysis for the purpose of assisting my review of your predecessor's Final Determination in Chinook. The Office of the Solicitor established September 26, 2001, as the deadline for the BAR's provision of comments and analysis, and set October 9, 2001, as the deadline for the petitioner and interested parties to respond to the BAR's submission.

The BAR's September 26, 2001, submission recommended that I should exercise my discretion under the regulations and refer the first, second, third, fourth, fifth, sixth, and seventh issues to you for reconsideration. The BAR recommended that I not refer the eighth and ninth issues to you. Responses addressing the BAR's September 26, 2001, recommendation to me were received on October 9, 2001, from the Chinook and Quinault. No other persons, organizations, or entities identified as interested parties in this matter submitted responses to the BAR's recommendation.

The Chinook disagreed with the BAR's recommendation and argued that I should rule that there is no basis for requesting a reconsideration of your predecessor's Final Determination in Chinook. The Quinault, however, agreed with the BAR's recommendation to refer the first through seventh issues to you, but also renewed their previous request to me that I exercise my discretion under the regulations and ask you to reconsider the eighth and ninth issues as well.

After reviewing the documentation pertaining to this matter, I have decided to exercise my discretion and request that you reconsider the Chinook Final Determination based on the IBIA's first, second, third, fourth, fifth, sixth, seventh, and eighth issues. With respect to the first issue, including parts (a) and (b), further review is necessary for the purpose of clarifying whether the reconsideration of this final determination should be made under the 1978 regulations or the revised 1994 regulations, as well as an evaluation of whether a waiver of these regulations under 25 C.F.R. Part 1.2 was considered and/or appropriate. In order to resolve the first issue, including the related issues, I am referring it to you for further review. In addition, the referral of this issue is necessary for determining whether the application of the 1978 and 1994 regulations was appropriate and what effect it had on the Chinook Final Determination.

I am also referring the interrelated second, third, and fourth issues to you for further review because they raise questions about the Department's evaluation and application of precedent in acknowledgment proceedings, as well as the interpretation of what constitutes "unambiguous previous federal acknowledgment" under the 1994 regulations. Additional review of the second, third, and fourth issues is necessary in order to provide a more complete explanation of the Department's final decision in this matter.

I am also referring the fifth issue to you for further review for the purpose of resolving the question of whether the Chinook petitioner as a whole satisfied the requirements of the acknowledgment regulations' criterion (b). Further analysis of the fifth issue is required for the purpose of providing a fuller explanation of the Department's final decision in this case.

With respect to the sixth issue, additional review is required by you because it raises questions about the Department's evaluation and application of precedent with regard to the actions of claims organizations in the context of criteria (b) and (c) of the acknowledgment regulations. Further analysis of the sixth issue is necessary in order to provide a more complete explanation of the Department's final decision in this matter.

I am referring the seventh issue to you for further review because it pertains to the interpretation and application of the acknowledgment regulations in determining whether a petitioner demonstrates the requirements for unambiguous previous federal acknowledgment. Additionally, the application of precedent and standards under the regulations with respect to continued tribal existence and the recent ruling by the Seventh Circuit in Miami Nation of Indians of Indiana v. Department of the Interior, 255 F.3d 342 (7th Cir. 2001), which rejected a presumption of continuous existence, as well as other applicable court cases, support additional review of the seventh issue. Therefore, further analysis of the seventh issue is required for the purpose of developing a fuller explanation of the Department's final decision in this matter.

With regard to the eighth issue, further review by you is necessary because this issue 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. A review of the eighth issue would operate to clarify the ability of the AS-IA to use consultants in the evaluation of acknowledgment petitions and would provide an explanation of the utilization of the retained consultant in the processing of the Chinook Final Determination.

Finally, I am not referring the ninth issue to you because it does not raise any procedural or substantive questions under the acknowledgment regulations. Any further review of the ninth issue would be non-productive for the purpose of providing a more complete description of the Department's final decision in this matter.

Without in any way passing on the merits of these issues identified by the IBIA, I hereby request that you address the first, second, third, fourth, fifth, sixth, seventh, and eighth issues and, in accordance with the regulations, issue a reconsidered determination within 120 days of receipt of this request. 25 C.F.R. § 83.11(g)(1).

Thank you for your attention to this matter.

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