

(7) Federal Register Notice of Final Determination

- February 18, 2000

Dated: February 10, 2000.

Anne Badgley,

Regional Director, Region 1, Portland, Oregon
[FR Doc. 00-3783 Filed 2-17-00; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination To Acknowledge the Cowlitz Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8. Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary acknowledges that the Cowlitz Indian Tribe, c/o Mr. John Barnett, 1417 15th Avenue, P.O. Box 2547, Longview, Washington 98632-8594 exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group satisfies all seven criteria for acknowledgment in 25 CFR 83.7.

DATES: This determination is final and will become effective on May 18, 2000, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

A notice of the Proposed Finding to acknowledge the Cowlitz Indian Tribe (CIT) was published in the *Federal Register* on February 27, 1997 (62 FR 8983). The original 180-day comment period provided under the regulations closed August 26, 1997, but was extended to November 19, 1997, at the request of the Quinault Indian Nation (Quinault). Then, as a result of a Stipulated Order entered on the docket in *Quinault Indian Nation v. Gover* (Civ. No. C97-5625RJB, D. W.D. Wash.), a case involving Quinault's FOIA request for CIT materials, the public comment period was reopened for 75 days. A formal meeting was held under 25 CFR 83.10(j)(2). Quinault submitted additional comments December 12, 1998, and the CIT submitted its reply February 9, 1999.

This determination is made following a review of the Cowlitz Indian Tribe's response to the Proposed Finding, the public comments on the Proposed Finding, and the Cowlitz response to the public comments. This notice is based on a determination that the group satisfies the seven criteria for

acknowledgment in 25 CFR 83.7, as modified by 25 CFR 83.8.

This final determination incorporates the evidence considered for the proposed finding, new documentation and argument received from third parties and the petitioner, including that in the formal meeting, and interview and documentary evidence collected by the BIA during the final evaluation. The final determination reaches factual conclusions based on a review and reanalysis of the existing record in light of this new evidence.

The proposed finding evaluated this case under § 83.8 of the regulations and concluded that the CIT was Federally acknowledged in 1855 when its leaders represented the tribe at the Chehalis River Treaty negotiations. This final determination now extends the date of previous Federal acknowledgment to 1878-1880 to when Federal Indian agents appointed Atwin Stockum chief in 1878 and included both the Lower Cowlitz and Upper Cowlitz bands in Office of Indian Affairs censuses taken in 1878 and 1880. The proposed finding found that the government administratively joined the Lower Cowlitz, which included the Lower Cowlitz metis, and the Upper Cowlitz. Although Government documents of the 1860's and 1870's noted separate groups, they handled them together. The Quinault Nation submitted substantial comment, disagreeing both with the finding that different Cowlitz populations amalgamated and with the application of 83.8 to the amalgamated entity. First, the Cowlitz metis were always part of the Lower Cowlitz. Second, the regulations allow for amalgamations of historical tribes at § 83.6(f). Because both the Upper and Lower Cowlitz bands had prior recognition in 1880, and because the regulations do not require that the amalgamated entity have separate Federal recognition when made up of two recognized entities, Quinault's arguments against the applicability of 83.8 is rejected.

The CIT meets criterion 83.7(a), as modified by the application of § 83.8(d)(1), which requires external sources to identify the petitioner from the date of last Federal acknowledgment until the present not only as an Indian entity, but also as the same entity, which was previously acknowledged. The proposed finding found that certain Federal records, ethnographers, local historians and newspapers have identified the CIT as an Indian entity on a substantially continuous basis since 1855. The Quinault Nation's comments disputed the analysis but did so by confusing the concepts of "recognition"

which refers to an actual government-to-government relationship between an Indian tribe and the Federal Government, and "identification" as required under 83.7(a) which refers to naming or identifying the petitioner as an Indian entity, without regard to the actual political character, social organization or origins of the entity or the political relationships that entity may or may not maintain with other governments. Quinault's comments did not require a change in the proposed finding for 83.7(a) as modified by 83.8(d)(1).

Under 83.8(d)(2), the regulations require petitioners to demonstrate that they meet the criterion for community at 83.7(b). They do not need to demonstrate that they meet the criterion for community from 1878-80, the last point of unambiguous Federal acknowledgment, to the present. The proposed finding and final determination define the period for the modern community as 1981 to the present, starting some ten years before the documented petition and the response to the technical assistance letters were submitted. Quinault argues that the Government used this earlier data as evidence for community at a later date. The Department disagrees. The pre-1981 activities only provide background for evaluating community at present and do not constitute actual evidence for meeting 83.7(b) at present; other evidence demonstrates community at present.

Quinault comments extensively on the period between 1878 and 1981 and attempts to demonstrate that CIT did not meet the requirements of § 83.7(b). They often compared the evidence in other cases to evidence in this case in an attempt to show that the criteria were applied arbitrarily. However, under 83.8(d)(2), the petitioner need not demonstrate existence as a community historically. Further, as the preamble to the regulations explains, evidence submitted by previously acknowledged petitioners concerning their continued existence is entitled to greater weight. The reduced burden is in part accomplished by the requirement to show continued existence under criterion 83.7(c), not 83.7(b). To evaluate the evidence submitted under 83.7(b) for all time periods as Quinault suggests the Government should have been done, is contrary to the regulations. Therefore, this final determination finds Quinault's comments on historic community are irrelevant because they discuss evidence for community during time periods when the petitioner is not required to demonstrate that they meet criterion

83.7(b). Therefore, such arguments and evidence do not change the proposed finding that CIT meets § 83.7(b) as modified by § 83.8(d)(2).

For the final determination, additional evidence and analysis shows that interaction by members in the present-day community was extensive and involved people in all subgroups in proportion to the group's size in the overall CIT membership. This additional evidence and analysis supports and strengthens the evaluation of actual social interaction among the petitioner's members made in the proposed finding. BIA researchers performed a quantitative analysis on the data available for the final determination, and it demonstrated that a predominant proportion of members of CIT are documented as either actually participating in CIT affairs or closely related as a parent, child or sibling to an individual who actually participated in CIT affairs, including taking part in the council or executive committee, social events, committees, information and food sharing, welfare activities, and so forth. Because a predominant proportion of the membership actually participates in formal and informal tribal activities, the proposed finding that actual interaction occurs at a significant level is confirmed. Subgroup activities discussed in the proposed finding reinforce the interactions occurring at the tribal level.

The CIT meets the requirements of 83.7(c) as modified by 83.8(d) to demonstrate that political influence or authority is exercised at present. The proposed finding listed a sequence of leaders of CIT and one form of other evidence under 83.7(c) from the point of last Federal acknowledgment (1855) to find that they met this criteria as modified by 83.8(d)(3). Because this determination now finds that CIT was acknowledged until 1878–1880, the sequence of leaders must now be shown only from that point, when Atwin Stockum was appointed chief of the Cowlitz tribe by an Indian agent, through an uneventful shift from traditional chiefs to an elected executive council in 1910–1912, until the current CIT chairman John Barnett. From 1912 to 1938, the Cowlitz leaders came from both the Upper and Lower Cowlitz Bands, including several of the Lower Cowlitz metis families.

Quinault's response to these findings fall under two main categories: (1) The named leaders were only leaders of separate tribes or subgroups and not of a unified tribal entity, and (2) the named leaders were only officials of a claims organization not a tribe. In respect to issue (1), evidence of political activity

and named leaders within the separate bands prior to their amalgamation is sufficient under 83.8(d)(3). Significant data indicates that the Upper and Lower Cowlitz and their leaders cooperated in filing claims in 1910–12 and in litigating fishing rights in 1927–34. The subsequent leaders in the unified Cowlitz alternated between the Upper and Lower Cowlitz Bands. Concerning issue (2), non-claims issues, such as fishing rights discussed above, were of immediate and significant interest to Cowlitz members during the claims period. Further, the CIT's predecessor group did not form in response to claims activities and operated independently of claims groups. Quinault's response is factually incorrect and does not require a change in the proposed finding.

As a consequence of the nature of the historical development of the Cowlitz entity, the interaction among the Cowlitz subgroups at the tribal level is primarily political in nature. The subgroups no longer have separate formal leadership or decision making processes; however, the active communication and interaction among members of subgroups promotes informal leaders and political activity within each group and supports participation of individuals from each subgroup in the larger political arena of the tribe. New field work by the BIA added to the information utilized for the proposed finding and confirms that arguments, issues and behind the scenes coalition building were widespread and information about such topics was widely dispersed throughout the membership. Members held strong opinions, and they based their political positions on knowledge they gained not only from formal meetings and CIT publications but also from communications and rumors they heard during informal discussions in everyday social situations. News about tribal affairs is filtered through a lens of general knowledge which members have about each other gained through lifetimes of association.

The proposed finding found that CIT was not merely a claims organization, and that it operated independently of claims events originating outside the tribe. CIT existed before and after Northwestern Indian Federation efforts to form claims organizations, the push to enroll at Quinault and the compiling of the Roblin Roll. From 1912 through 1950, the existence of an externally named leadership, along with evidence for the continuation of structured political activity and influence under 83.8(d)(3), demonstrated that the Cowlitz leaders undertook activities in

addition to claims which demonstrated a bilateral relationship between them and tribal members. At present, arguments concerning resources and land use, the direction of the tribe, priorities, the acknowledgment petition, the membership requirements and elections clearly illustrate that the tribe is involved in a number of activities. Politically active CIT members utilize this knowledge to advance their programs or points of view.

The CIT generally has made a smooth transition from one leader to another without even minor breaks. Clearly, through the changes from a hereditary chief, to an appointed chief, to a democratically elected council, the membership remained unchanged in its basic character. This clear identification of the Cowlitz entity and the consistency of its large core membership since 1870 contrasts significantly with some other western Washington petitioners whose histories show ten year and longer periods without leadership and whose memberships (and the related social and political character of the group) change radically from one leader to the next. In contrast, the Cowlitz petitioner can trace an unbroken line of leaders and a relatively unchanging membership.

This organization held meetings attended by a significant portion of the voting members of the tribe almost annually from 1912 through 1939, and from 1950 through the present. Quinault argued that the 12 year hiatus constituted a significant interruption of continuous tribal existence. Documents in the record show that activity during the war years was extremely low but individuals continued to communicate and leaders met at an individual's home. When regular meetings commenced again in 1950, the same general population attended as before the war and the same group of leaders presided. New analyses comparing lists of participants and of the leaders before the war with lists from after the war found that individuals and subgroups were basically of the same social and political character during both periods. This 12-year fluctuation in activity is not a cause for denial of acknowledgment. See, 83.6(e).

Outside events such as the introduction of residency requirements and dual enrollment prohibitions in Yakima enrollment procedures in the late 1940's, and changes in membership rules within the tribe to prohibit dual enrollment and to establish a 1/16th blood-degree requirement have defined more strictly the tribe's boundaries during the 20th century, but have not changed the distinct characteristics of

the Cowlitz core population. Quinault questioned an apparent discrepancy between the anthropologist's and historian's technical reports on the topic of the 1973-74 CIT enrollment changes and language is included in the final determination to clarify the proposed finding. Although a few active individuals were removed from the membership as a result of these changes in the membership rules, the general membership was knowledgeable about the effect the vote for these changes would have, and they were able to enforce them. The genealogical makeup of the tribe was not drastically altered by these changes; the membership still descended from the same historical groupings in roughly the same proportions.

The Quinault presented extensive specific arguments together with documentary and affidavit evidence to support their fundamental argument that CIT, and the predecessor organization called by other names, was only a voluntary organization formed solely for the purposes of pursuing land and other claims against the Government. A careful review of their comments and evidence found that Quinault's argument, based in part on the content of the council minutes, ignored other evidence concerning not only activities outside of council meetings but also the purpose and character of the minutes themselves, which were not transcripts of everything that went on at the meetings but were focused on actions taken. While the tribe was very involved in dealing with these claims activities, it also performed other welfare, economic, governmental and cultural functions that were significant to members. Quinault also cited descriptions of acculturated Cowlitz as "negative" evidence. Degree of cultural acculturation does not prohibit acknowledgment if other evidence demonstrates that the tribe continues to exist.

The annual General Council meeting continues to be the primary political event of each year. Supplementary meetings are sometimes held. There are political strains over the General Council's role vis-a-vis the Tribal Council and rivalries between the elected leadership of the General Council and that of the Tribal Council continue to display publicly the larger controversies within the tribe. The 1973/1974 decisions concerning enrollment qualifications have continued to have political impact to the present. Some family groups with Yakima-enrolled close relatives maintain that they remain active in the Tribal Council to protect their

membership status. The $\frac{1}{16}$ Cowlitz blood-quantum provision continues to provoke membership-eligibility disputes within the general membership and within the Tribal Council. As recently as 1999, individuals stepped down from the tribal council because of problems they had meeting the membership requirements. Quinault's arguments do not require a change in the proposed finding and additional information confirms that the petitioner meets criterion 83.7(c) as modified by criterion 83.8(d).

Quinault Nation's comments challenge the conclusion in the proposed finding that the CIT membership is descended from the historical Cowlitz bands which amalgamated and therefore met the requirements of criterion § 83.7(e). Their analysis mixed previous acknowledgment with their discussion of § 83.7(e). Their comment, based on a misinterpretation of the proposed finding, questioned the inclusion of m^o'tis descendants in the tribe. Quinault interpreted the proposed finding as treating the Cowlitz metis as a separate Indian entity which amalgamated with the Lower Cowlitz and the Upper Cowlitz. However, the proposed finding explained that the Cowlitz metis were descendants of Lower Cowlitz Indians and French Canadians, such "half bloods" being often referred to in documents as "metis." The "Cowlitz metis" included the mixed-blood descendants of individual Indian women from other tribes, who had been accepted into the tribe before treaty times. These women and their children functioned as members of the Cowlitz tribe prior to the latest date of previous unambiguous Federal acknowledgment. The proposed finding did not state that there was a metis entity which had amalgamated with the Lower Cowlitz. Rather the Cowlitz metis or metis descendants were always part of the Cowlitz tribe. Because Quinault misstated the Proposed Finding's treatment of the Cowlitz metis, their conclusions based on their misunderstanding are also not valid, and CIT meets 83.7(e).

The CIT met criteria 83.7(d), (f), and (g) for the proposed finding. Quinault argues that CIT did not actually follow their constitution or that some provisions within the document indicated that its tribal existence had not been continuous. Criticisms of statements in constitutions have not been viewed as significant in past determinations and are not weighed as significant here. The requirement for 83.7(d) is to submit the group's governing document including its

membership criteria. The document submitted reflects the CIT governing and membership practices. The CIT satisfied 83.7(d). Significant comment or evidence was not submitted to refute the finding concerning criteria § 83.7(f) and (g). Consequently, this final determination confirms that CIT meets these criteria.

In concluding that the CIT is a tribe within the meaning of 25 CFR part 83, the Department is not rendering any conclusions concerning treaty rights or matters pertaining to rights in, or the governance of, the Quinault Reservation. The Federal acknowledgment process does not require a decision on such issues.

This determination is final and will become effective 90 days from the date of publication, unless a request for reconsideration is filed pursuant to 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Appeals (83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the *Federal Register* (83.11(a)(2)).

Dated: February 14, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00-4012 Filed 2-17-00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-320-1990-02 24 1A]

Extension of Currently Approved Information Collection, OMB Approval Number 1004-0025

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request extension of approval to collect certain information from all owners of unpatented mining claims or mill sites who desire to apply for a mineral patent to their mining claim or mill site. Also included in this extension request are collections of information from any rival claimant with overlapping claims to the land applied for, or from anyone challenging the issuance of the patent upon alleged failure to follow law or