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Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Determination That the San Juan Southern Paiute Tribe Exists as an Indian Tribe

Correction

In notice document 89-29260 beginning on page 51502 in the issue of Friday, December 15, 1989, make the following correction:

On page 51505, in the second column, in the eighth line, insert "must be served simultaneously to the petitioner. The petitioner" following "petitioner".

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Determination That the San Juan Southern Paiute Tribe Exists as an Indian Tribe

December 11, 1989

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM &

Pursuant to 25 CFR 83.9(h), notice is hereby given that the Assistant Secretary has determined that the San Juan Southern Paiute Tribe, c/o Mrs. Evelyn James, P.O. Box 2956, Tuba City, Arizona 86045, exists as an Indian tribe within the meaning of Federal law.

This notice is based on a determination, following a review of public comments on the proposed finding to acknowledge the group, that the San Juan Southern Paiute Tribe meets all of the criteria set forth in 25 CFR 83.7, and, therefore, meets the requirements necessary for a government-to-government relationship with the United States.

A notice of the proposed finding to acknowledge the San Juan Southern Paiute Tribe was published in the Federal Register on Tuesday, August 11, 1987 (pp. 29735-36, Volume 52, No. 154). The 120-day period provided in the regulations for comment on the proposed finding was extended for 90 days at the request of the Navajo Tribe and to ensure adequate opportunity for all parties to comment on the proposed finding. The Navajo Tribe's comments were received March 8, 1988. Under the regulations, § 83.8(d), the petitioner was afforded a period, initially set at 90 days, to respond to the Navajo comments. This period was extended until September 1, 1988, at the request of the petitioner because of the extent of comments, the length of time afforded the Navajo Tribe and other parties to comment on the proposed finding, and a change of counsel by the petitioner. Limited comments were received from several individual researchers who had worked with the San Juan Paiutes and/or related groups.

This final determination is based on a consideration of new evidence and arguments submitted by the Navajo Tribe in response to the proposed finding and by the San Juan Southern Paiute petitioner in response to the proposed finding and the Navajo Tribe's comments. The extensive evidence and arguments that were presented by the San Juan Paiutes and the Navajo Tribe for the proposed finding or were generated by the Branch of

Acknowledgment and Research's (BAR) staff in the conduct of its own research in preparing the proposed finding were also considered in making this final determination.

The proposed finding concluded that the San Juan Southern Paiute Tribe had been identified as an Indian entity and as Paiute since earliest sustained contact. In response to the proposed finding, additional historical and ethnographic documents from the 19th and 20th centuries were submitted which identified the group as a distinct Paiute entity. No substantial evidence was presented which would change the proposed finding's conclusions. Almost all of the evidence submitted for the proposed finding, the additional evidence presented in response to the proposed finding, and that developed by the BAR staff, indicates that the San Juan Paiutes continue to be identified by Navajos and others in the local areas where they live as a distinct, Paiute entity. The materials submitted with the Navajo response in support of its assertion that the San Juan band's members have been absorbed into the Navajo Tribe and are no longer distinct from Navajos were of a general and recent nature and were inconsistent with the large, detailed body of materials used for the proposed finding and this final determination.

The proposed finding concluded that at first sustained non-Indian contact in 1850, the San Juan Paiute band had a clearly-defined territory and constituted a single, well-defined social unit consisting of several subgroups which were political units under independent leaders. These subgroups had probably become unified into a single political unit by the 1870's. The band remained a culturally and socially distinct community throughout the 19th and early 20th centuries up until the present. Population decrease and the loss of territory due to the expansion of Navajo population led to a reduction of the band's composition to two subgroups by the 1920's. These two subgroups continue to exist today and the band continues to maintain significant internal social and economic relationships within its membership.

The responses to the proposed finding included no significant comment on or new evidence concerning the proposed finding's conclusion that the contemporary San Juan Paiutes maintained significant social contact within the band, including with its non-resident members.

No substantial documentary or ethnographic evidence was presented in the responses concerning the proposed

finding's conclusion that the present-day San Juan Paiutes are a distinct social group from the Navajos on the reservation, despite some participation in Navajo tribal institutions and close social interaction with Navajos which dates to the latter half of the 19th century.

Significant new evidence was presented concerning the historical existence of the San Juan Paiutes as a community. A brief 1933 ethnographic study of the Navajo Mountain Paiutes in 1933 and other new documentation indicated that while the Paiutes at Navajo Mountain were influenced by Navajo culture in some ways, they constituted a distinct group from the Navajos. Miscellaneous additional documentation between the 1890's and the 1930's supported the historical existence of the San Juan Paiutes as a community.

The proposed finding concluded that the Paiutes have maintained a distinct culture, uninfluenced by Navajo culture except in nonfundamental areas. Key institutions such as political and kinship organization and most of the belief systems were not influenced. The Paiutes presented extensive new evidence describing distinct San Juan Paiute beliefs, ceremonies and other cultural practices that have been maintained. Some of the elements of Navajo culture used by the Paiutes are more accurately characterized as due to cultural borrowing rather than acculturation to Navajo culture as the proposed finding had concluded.

The Navajo response challenged the proposed finding's conclusion that certain areas were "San Juan Paiute territory" previous to and after sustained non-Indian contact. It stated that the evidence was weak that the San Juan Paiutes had been a historical band, and that the historical Navajo presence in these areas was greater than the proposed finding had concluded.

The Navajo response did not address most of the basic ethnographic and documentary sources which were used to prepare the proposed finding concerning the existence of the band at the time of first sustained contact with non-Indians and the territory the band then occupied. A review of the evidence indicates that, with some minor modifications, the territory of the San Juan Paiutes in 1890 was substantially as described in the proposed finding.

None of the cited evidence or arguments concerning San Juan territory and the historical existence of the band provided a basis for changing the proposed finding that the San Juan Paiute band had occupied distinct areas, as a community, since first sustained

contact, and that those areas had become reduced as the Navajo population in the area expanded sharply beginning in the 1870's. There was some additional evidence in the responses which supported this conclusion.

Therefore, the San Juan Southern Paiute Tribe has existed as a distinct community occupying a specific area from earliest sustained contact until the present.

The proposed finding described leaders and the exercise of tribal political authority within the San Juan Paiute band from earliest sustained contact until the present. The responses to the proposed finding provided limited additional data concerning the historical exercise of tribal political authority. Additional documentary evidence, from the Paiute response, provided earlier documentation than had previously been available of the leadership of Pakai, who was band leader until about 1930, and some supporting evidence of his role as economic intermediary for the band with outsiders in the early part of the 20th century. The majority of the proposed finding's conclusions concerning San Juan Paiute leaders, the historical exercise of tribal political influence, and the large body of documentary, ethnographic and oral history information on which the conclusions were based were not addressed by the Navajo response.

The Navajo response characterized the decision-making and leadership processes within the San Juan Paiute band as only those that might occur within an extended family rather than a tribe. The San Juan Paiute political system, although partly kinship-based, is also based on non-kinship factors such as religious knowledge and ability to mobilize support. The type of decisions and authority exercised went beyond those of an extended family.

The primary additional information submitted with the responses relevant to the maintenance of tribal political influence as an autonomous entity concerned whether the San Juan Paiutes participated in the political system of the Navajo Tribe and whether the Navajo Tribe was involved in the internal political processes of the band. Substantial new documentary materials concerning Paiute voting and possible involvement in Navajo chapters, tribal courts and tribal programs, were submitted by the Navajo Tribe.

No significant evidence was submitted to change the proposed finding's conclusion that the Navajo Tribe had not influenced the internal political processes of the San Juan Paiutes. Almost all of the evidence submitted was not valid evidence of

such influence. Of the evidence cited by the Navajo response concerning dispute resolution, only one instance involved dispute resolution between Paiutes. The majority concerned disputes or other matters between Navajos and Paiutes. These occurred in Navajo institutions because the institutions' jurisdiction includes non-Navajos as well as Navajos. Paiute involvement, therefore, did not indicate political affiliation.

A detailed analysis was made of the history of Paiute voting in Navajo Tribal elections, based on extensive additional information submitted with the responses together with the evidence available for the proposed finding. Only a small portion of the resident Paiutes, less than 20 percent, had voted consistently. Sixty percent of the resident adult Paiutes, and 73 percent of the total adults in the band, had never been registered or had never voted though they were registered. Voting was the only significant evidence of possible involvement by Paiutes in the Navajo political system. The available evidence was that what voting there was not intended by the Paiutes to signify political participation in the Navajo Tribe.

The proposed finding's basic conclusion that the Paiutes had not been involved in Navajo chapter political or decision-making processes was not changed by the additional evidence submitted. Most of the extensive new evidence concerning the chapters did not indicate any political involvement. However, one individual marginal to the Paiute band was nominated to an important chapter office over 15 years ago. Another individual Paiute, not marginal, was elected to a community board office from that chapter 20 years ago but subsequently resigned because the Navajos on the board refused to respond to Paiute requests.

Substantial additional records concerning receipt of services were provided in the Navajo response. With some exceptions, these confirmed the proposed finding's conclusion that most of the services received were from programs, previously administered by other Federal or State agencies and now administered by the Navajo Tribe, which were not limited to members of the Navajo Tribe. The Paiutes had infrequently, and to a limited degree, received some services and employment through the chapters of a kind usually limited to tribal members. The records concerning services did not provide a basis for changing the conclusion that the San Juan Paiutes were not involved in Navajo chapter political or decision-making processes.

Overall, San Juan Paiute participation in the Navajo political system has not been significant nor continuous and there is little evidence of any participation at all before 1966. There is no significant evidence that a continuous political affiliation with the Navajo Tribe has existed among the San Juan Paiute membership.

The San Juan Paiutes have maintained tribal political influence within the band since earliest sustained historical contact. This has been, and is, autonomous of influence by the Navajo Tribe.

The San Juan Paiute Southern Tribe has no written governing document. The proposed finding concluded that the petition's description of the San Juan band's governing processes and its membership criteria was adequately complete and accurate. No new evidence or argument was presented to change the proposed finding.

The proposed finding concluded that the petitioner had submitted a current membership roll which had been prepared in response to Acknowledgement regulations. Members listed on the current roll were found to meet the tribe's own membership criteria of descent from a San Juan Paiute ancestor and participation in or allegiance to the group as a whole. The Navajo response to the proposed finding provided no evidence to the contrary.

The proposed finding concluded that virtually all of the petitioner's membership can trace their tribal ancestry to historic communities that can be identified as "San Juan Paiute." Their San Juan Paiute ancestry can be documented satisfactorily using records which span a period of 100 years. New materials presented in response to the proposed finding further support the finding that the petitioner's members are Paiute and descend from the historic tribe.

Acceptable evidence of their ancestry as Paiute appears in the historical records of the Federal Government and the records of the Navajo, Ute Mountain Ute, and Paiute Indians of Utah Tribes, and in the writings and field notes of anthropologists who have worked with the San Juan Paiutes and other Indians in the area. Even San Juan Paiutes who have some Navajo blood can be documented as descendants of historical Paiute communities which have been identified historically as "San Juan" Paiute, distinct from the Navajo. Identification of the San Juan Paiutes as "Indian" has never been an issue.

The San Juan Paiutes provided a list of their current members. These members meet the band's own

membership criteria and can establish, using evidence acceptable to the Secretary, that they descend from the historic San Juan Paiute band.

Criterion 83.7(D) requires that a petitioner be principally composed of persons who are not members of an already recognized tribe. The definition of membership in a recognized tribe (83.1(k)) has two parts, each with two subparts. It defines such membership as meeting the membership requirements of the tribe or being recognized by the governing body, and continuously maintaining tribal relations with the tribe or being listed on a tribal roll, if such rolls are kept. The term "tribal roll" is not defined. To meet the definition of "Member of an Indian Tribe," the individual must meet at least one subpart in each of the two parts of the definition. Any combination of one of the subparts of part 1 with one of the subparts of part 2 will suffice. Inherent in and fundamental to the definition of membership in a recognized tribe is the principle that membership is a bilateral political relationship.

The proposed finding was that the 119 San Juan Paiutes who have "Navajo census numbers" were not legitimately members of the Navajo Tribe because they did not meet any of the subparts of the definition of "Member of an Indian Tribe." They further were found to have not maintained a continuous bilateral political relationship with the Navajo Tribe. However, they have maintained such a relationship with the San Juan Paiute band.

The proposed finding concluded that Paiutes with census numbers had not acquired or used them with the intent and understanding of becoming members of the Navajo Tribe. Census numbers were found to have been issued routinely by Bureau and/or tribal census clerks as part of a Bureau process and without approving action by the Navajo Tribal governing body. Legally adopted and in force sections of the Navajo Tribal Code governing membership and enrollment were not being used by the Tribe to enroll Navajos or Paiutes. The proposed finding was that the Navajo Tribe had not been exercising its authority to determine its own membership, Navajo or Paiute. The proposed finding further concluded that the defacto "Navajo Tribal Roll" is a reservation-wide census and did not have the character of a tribal roll within the meaning of the acknowledgment regulations. The Navajo response to the proposed finding provided no significant new evidence to refute the proposed finding's conclusions concerning the character of the "Navajo Tribal Roll."

The proposed finding concluded that the San Juan Paiutes do not meet the requirements for membership in the Navajo Tribe because the membership requirements are vague and ambiguous and do not indicate how much Navajo blood is required of persons "on the official roll" or which version of the BIA's 1940 censuses of the Navajo Reservation is to be used as the Tribe's "official roll." There is no tribal administrative record of determinations of tribal membership to indicate how such issues concerning membership requirements would be decided. Further, there is no evidence that the Tribe's legally adopted membership requirements and enrollment procedures have been used by the Tribe's governing body to determine eligibility for membership for either Navajos or Paiutes. The response to the proposed finding did not provide significant new evidence to refute the proposed finding's conclusions.

The response to the proposed finding did not provide significant new evidence to refute the proposed finding's conclusion that those Paiutes with census numbers have not met the alternative requirement of the definition of membership in a recognized tribe, collective acceptance by the Navajo Tribal government. The Navajo Tribe has not acted on applications, enrolled as members through existing tribal code procedures or otherwise established membership of the Paiutes who have census numbers. While some tribal government actions have implied acceptance of some of the Paiutes as members, there has been significant question in the Navajo Tribe about the legitimacy of the Paiutes holding census numbers and receiving membership benefits. Recent resolutions by tribal governing bodies do not constitute conclusive evidence of collective recognition of the Paiutes as members by the Navajo tribal governing body, given the circumstances surrounding their passage, the history of past questions about Paiute membership and the lack of clear membership standards.

We conclude that the Paiutes have not maintained tribal relations with the Navajo Tribe on a substantially continuous basis, and, therefore, do not meet that part of the definition of membership in a recognized tribe. Finally, they are not listed on a "tribal roll" of exclusively Navajo tribal members within the meaning of the Acknowledgment regulations and therefore we conclude they do not meet that part of the definition.

There was no new compelling evidence to refute the proposed finding's

conclusions that the Paiutes did not meet the membership criteria of the Navajo Tribe and that they had not been collectively recognized by the members of the Navajo Tribal governing body. It was not necessary to finally resolve these issues, since the 119 Paiutes with "Navajo census numbers" are neither listed on a tribal roll nor maintaining tribal relations with the Navajo Tribe and, therefore, do not meet the definition of membership in a recognized tribe set forth in the regulations.

In summary, the 119 Paiutes with "Navajo census numbers" do not meet the definition of membership in a recognized tribe. The names of 46 other Paiutes (24 percent) appeared only on the San Juan Paiute membership roll. The names of the 23 (12 percent) remaining members of the San Juan Paiute band appears on the rolls of one of three other recognized tribes. The relationships of the 23 to the other tribes was not researched in depth under criterion f because the size of this portion of the membership was not sufficient in and of itself to affect the determination under criterion f. The 23 were, however, found to be maintaining tribal relations with the San Paiute band.

At least 165 (88 percent) of the members of the San Juan Southern Paiute Tribe were found not to be members of any other North American Indian tribe. Therefore, the petitioner's membership is composed principally of persons who are not members of any other North American Indian tribe.

No legislation terminating the San Juan Paiutes or affecting their ability to be acknowledged as an Indian tribe was found. The 1922 executive action restoring to the public domain the reservation established in 1907 for the San Juan Paiutes did not constitute "termination" of them as a tribe. Subsequent executive branch actions indicate that they continued to be recognized. The 1974 Hopi-Navajo Settlement Act (Public Law 93-531), which provides for individual allotments for Paiutes "not now members of the Navajo tribe," deals with some of the Paiutes as individuals. The act makes no reference to, nor provisions for or against, the San Juan Paiutes as a tribal entity and thus does not forbid their acknowledgement as a tribe.

This determination is final and will become effective 60 days after the date on which this notice appears in the Federal Register unless the Secretary of the Interior requests a reconsideration by the Assistant Secretary—Indian Affairs pursuant to 25 CFR 83.10(a-c). Requests to the Secretary for

reconsideration may be made by any party and must be received within 30 days of publication of this notice. Requests should be accompanied by a detailed statement of grounds and new evidence and should include a copy of such new evidence. Requests from parties other than the petitioner will have fifteen days to comment on any request to reconsider this decision to acknowledge it as a tribe. If necessary, the 60-day time limit in 83.10(a) may be extended to allow the Secretary a period of 30 days from the receipt of a request for reconsideration and any responses in which to act.

The Secretary may, at his discretion, consider the submission of materials after the closure of the comment period. If not considered in preparation of this final determination, as a request for reconsideration. The party submitting these materials may withdraw or supplement them within 30 days of the publication of this notice.

If the Secretary receives a request for reconsideration or considers materials submitted after the closure of the comment period to be a request for reconsideration, the Assistant Secretary—Indian Affairs, will recommend that such a request, together with any comments, be referred to the Director of the Office of Hearings and Appeals (OHA) and that the OHA will be authorized (pursuant to 43 CFR part 4) to determine whether reconsideration is merited on the grounds stated in 83.10(c)(1-3) of the Acknowledgement regulations (25 CFR 83). The Director of OHA may assign preparation of the decision to such other officials in his office as he may deem appropriate. The OHA may request that the Assistant Secretary submit comment on a request for reconsideration. The Assistant Secretary—Indian Affairs will further recommend that within 60 days the OHA shall either affirm this determination or, if the reconsideration request is merited, vacate the decision and return it to the Assistant Secretary for reconsideration. This determination will become final upon receipt by the Assistant Secretary of a decision by the OHA to affirm the determination. If the determination is returned for reconsideration, the Assistant Secretary shall, in accord with § 83.10(a), issue a reconsidered determination within 60 days of receipt of the OHA's decision. The reconsidered determination shall be final and effective upon publication in the Federal Register.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

(FR Doc. 89-29260 Filed 12-14-89; 8:45 am)

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