

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT *ex rel.*  
RICHARD BLUMENTHAL, ATTORNEY  
GENERAL, and  
TOWNS OF NORTH STONINGTON,  
LEDYARD, and PRESTON, CONNECTICUT

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE  
INTERIOR, et al.,

Defendants

and

EASTERN PEQUOTS  
and  
PAUCATUCK EASTERN PEQUOTS,

Defendant-Intervenors

Case No. 3:01CV88 (AVC)  
Judge: Hon. Alfred V. Covello

**DECLARATION OF R. LEE FLEMING**

I, R. Lee Fleming, do hereby state as follows:

1. I am employed by the Bureau of Indian Affairs (BIA) within the United States Department of the Interior (Department), which has responsibility for matters arising out of Indian relations with the United States.
2. I hold the position of Chief, Branch of Acknowledgment and Research (BAR) in the Office of Tribal Services (OTS) of the BIA.
3. As Chief of the BAR, I oversee the BAR's operations, including the processing and

evaluation of petitions for acknowledgment submitted by groups seeking Federal acknowledgment as Indian tribes under the Department's *Procedures for Establishing That an American Indian Group Exists as an Indian Tribe*, 25 C.F.R. Part 83, and the compilation and maintenance of administrative files and records on these petitions.

4. The Federal Defendants' Status Report filed in this matter on October 24, 2001, projected June 4, 2002, as the date for issuing the final determination on the petitioner Eastern Pequot Indians of Connecticut (EP) and the final determination on the petitioner Paucautuck Eastern Pequot Indians of Connecticut (PEP).
5. The October 24, 2001, status report was based on my declaration dated October 18, 2001, which references the extensive workload of each researcher in the BAR. My declaration defined the known workload of the BAR researchers, delineated the multiplicity of responsibilities of the BAR researchers to numerous petitioners, defined the extensive amount of material submitted in response to the proposed finding on the EP and the proposed finding on the PEP, defined the complex nature of the issues raised that must be analyzed in the two final determinations, and projected June 4, 2002, as the date for issuing the final determinations on these two Pequot petitioners.
6. Following discussion with the researchers and the Assistant Secretary - Indian Affairs' office, an updated Federal Defendants' Status Report, filed on April 23, 2002, provided that the June 4, 2002, projected date was still a reasonable projected date, and if there were a change to the date, the Department would inform the court.
7. The BAR researchers assigned to prepare the two final determinations on the EP and PEP petitions have finished their evaluation, analysis, and review and have prepared, for

internal review, draft summaries under the criteria on these two petitions.

8. The researchers have briefed the Assistant Secretary's staff on the major issues presented in the submissions on the proposed findings over a course of five meetings in April and May 2002.
9. Three meetings to brief the Assistant Secretary - Indian Affairs are scheduled for two different weeks when the Assistant Secretary is in Washington, D.C., including in May 2002, and in June 2002. The Assistant Secretary traveled extensively in May and will be on travel the week of June 10-14, 2002, and June 17-18, 2002, precluding his attention to the EP and PEP petitions.
10. Although the researchers assigned to the work on these two final determinations have completed their review, analysis, and evaluation of the extensive comments on the proposed findings received from the EP and PEP petitioners, the Towns, and the State of Connecticut, and the responses of both petitioners to these extensive comments, this work took longer than calculated for purposes of projecting the June 4, 2002, date.
11. Paragraph 68 of the October 18, 2001, declaration referenced the responsibilities that the BAR research team assigned to the EP and PEP final determinations has to the Schaghticoke Tribal Nation petitioner. The small size of the professional staff in the BAR precludes the researchers assigned to evaluate the EP and PEP petitions from devoting their undivided attention to them.
12. In Schaghticoke, under a negotiated and court approved scheduling agreement, the BAR researchers assigned to EP and PEP are responsible for the work on the development of the new database software and supervising the entry of data and preparation of documents

for scanning for the Schaghticoke petition into that database.

13. These researchers spent more staff time than anticipated in the development of the software and in supervising the data entry than calculated in projecting the date for the EP and PEP final determinations. Since this is a pilot project never before undertaken by the BAR, it was difficult to anticipate the amount of time that the researchers would have to spend in the required development and supervision.
14. In addition, at the request of other parties in the Schaghticoke litigation, there is an amended schedule that post-dated our initial calculations for issuing the final determinations in EP and PEP. The database in the Schaghticoke litigation must now be served on the parties in that litigation on June 5, 2002. Further, based on other parties' requested extensions, documents for entry into that database arrived in the Department on April 26, 2002, after our updated status report in this case.
15. Anticipated work on the Nipmuc(k) petitions for a formal meeting on the record as delineated in paragraphs 53-54 of the declaration dated October 18, 2001, did occur on January 23, 2002, for the Nipmuc Nation petitioner, requiring one of the researchers assigned to the EP and PEP petitions to divert her attention from those final determinations to provide technical assistance to the Nipmuc petitioner.
16. On December 21, 2001, the Federal District Court in the District of Columbia ordered that a proposed finding on the Mashpee petitioner be published on June 21, 2002. Although the United States sought reconsideration of that decision, appealed it, and sought a stay of that order, and has appealed the denial of a stay, the D.C. Circuit has not yet granted any relief.

17. There are only two anthropologists on staff - one working on the EP and PEP petitions and one working on a court ordered deadline in another matter. Therefore, no anthropologist was assigned to the Mashpee researcher team. Because no anthropologist did the primary review of the Mashpee petition materials for the proposed finding, both staff anthropologists are assigned to the peer review of the draft Mashpee proposed finding.
18. Since the anthropologist assigned to the EP and PEP petitions had prepared the technical assistance letter to the Mashpee petitioner and had attended technical assistance meetings with them, his involvement in peer review provided useful knowledge and continuity.
19. Similarly, the historian assigned to the EP and PEP petitions is assigned to the peer review of the Mashpee petition. This historian's unique regional expertise, which is not duplicated in the small researcher staff, justifies her role in the Mashpee peer review.
20. The district court order in the Mashpee litigation was not calculated into the projected date for issuance of the EP and PEP final determinations. Similarly, the inability to obtain a stay of the court's order was not calculated into the projected date for issuance of the final determinations.
21. Work by the researchers assigned to the final determinations for the EP and PEP on the peer review of the Mashpee proposed finding was not anticipated or calculated into the projected date of June 4, 2002. As of the date of the last status report, no decision had been made concerning the peer review on Mashpee and its impact on the research team assigned to the EP and PEP petitions if the D.C. Circuit did not rule on the motion to stay.
22. The final determination on the EP, the final determination on the PEP, and the proposed

finding on the Mashpee will need to be reviewed by the Assistant Secretary at approximately the same period of time.

23. The BAR, in consultation with the Office of the Solicitor and the Office of the Assistant Secretary - Indian Affairs, project a new date for issuing the final determinations on the EP and PEP petitioners of June 25, 2002, and will inform the court if there is any change to that date.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 22<sup>nd</sup> day of May, 2002.



R. Lee Fleming  
Chief, Branch of Acknowledgment  
and Research  
Bureau of Indian Affairs  
Department of the Interior