(4337-15)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G]

Proposed Finding against Federal Acknowledgment of the Southern Sierra Miwuk Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) gives notice that the Assistant Secretary–Indian Affairs (AS–IA) proposes to determine that the petitioner, Southern Sierra Miwuk Nation (SSM), is not an Indian Tribe within the meaning of Federal law. This notice is based on a determination that SSM does not meet one of the seven mandatory criteria for a government-to-government relationship with the United States. This proposed finding is based on only one criterion.

DATES: Comments on this proposed finding (PF) are due on or before [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. We must receive any request for a technical assistance meeting by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. *See* the **SUPPLEMENTARY INFORMATION** section of this notice for more information about these dates.

ADDRESSES: Please address comments on the PF or requests for a copy of the report to the Department of the Interior, Office of the Assistant Secretary-Indian Affairs, Attn:

Office of Federal Acknowledgment, 1849 C Street NW, MS-4071 MIB, Washington, DC 20240. Parties who make comments on the PF must also provide a copy of their comments to the petitioner.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment (OFA), (202) 513-7650.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 83.10(h), the Department gives notice that the AS–IA proposes to determine that the Southern Sierra Miwuk Nation (SSM, Petitioner #82), c/o William H. Leonard, 4630 Ben Hur Road, Mariposa, California 95338, is not an Indian Tribe within the meaning of the Federal law. This notice is based on a preliminary finding that the petitioner fails to satisfy one of the seven mandatory criteria for acknowledgement set forth in 25 CFR 83.7(a) through (g), and thus, does not meet the requirements for a government-to-government relationship with the United States.

The Department received a letter of intent from the petitioner under the name "American Indian Council of Mariposa County" (AICMC) on April 24, 1982, and designated it Petitioner #82. The petitioner submitted a narrative and partial documentation on April 19, 1984. The Department replied with an "obvious deficiency" (OD) review letter on May 1, 1985. The petitioner responded with documentation on December 12, 1986. At the request of the petitioner, the Department sent a second OD review letter on April 11, 1988. The Department received the petitioner's response on January 16, 1998. The Department then placed Petitioner #82 on the "Ready, Waiting for Active Consideration" list.

Active consideration began on November 1, 2010, after which the Department asked for an updated membership list and any other materials within 60 days (70 FR 16514). The petitioner requested an "extension of time to submit documentation," and the Department received the petitioner's submission on February 8, 2011, containing documentation, meeting minutes, membership list, articles, newspapers, and governing documents.

During review of Petitioner #82's documented petition, OFA identified technical issues with the petitioner's membership files that needed to be resolved in order to complete the review for the PF. For this reason, the AS–IA extended the original due date for issuance of the PF, from November 1, 2011 to April 30, 2012. During further review, additional technical issues with the petitioner's membership vital records arose, and the AS–IA found good cause to suspend the issuance of the PF under 83.10(g).

On July 31, 2015, the Department issued a final rule that revised the acknowledgment regulations and provided the petitioner the opportunity to choose to complete the evaluation either under the revised 2015 regulations or under the 1994 regulations (80 FR 37862-37895). Petitioner #82 decided to continue with the review of its petition under the 1994 regulations. Active consideration resumed, with the AS–IA ultimately extending the deadline for this PF to November 16, 2018.

Criterion 83.7(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." Section 83.1 defines "Community" 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.. *Community* must be understood in the context of the history, geography, culture and social organization of the group." The definition of "the present" is tailored to each petitioner's unique history. For this petitioner, "the present" is defined as 1982 (the year when the petitioner submitted its Letter of Intent) to 2011(the year when the petitioner submitted supplemental membership information).

Evidence in the record shows involvement by some members of the petitioner in group activities, but not by a predominant portion of the membership. Events sponsored by the formal organization are attended by some of the petitioner's members, but also by non-Indians and non-Miwok Indians (some of whom may be closely related to the petitioner but who are enrolled in federally recognized Tribes). Participation in these activities appears to include some members from various families, but it is unclear to what extent this participation represents a cross-section of the entire membership. The record contains very little information regarding how often members interact with each other outside of the functions organized by the group's leadership. The materials and interviews contained few descriptions of members from multiple families socializing at birthday parties, baby showers, graduations, anniversaries, or other events not sponsored by the group's governing body. There is also little to no discussion in the interviews or in any of the documents in the record of members informally looking after each other's children, taking in other members if they were rendered homeless, helping other members to secure employment, or aiding other members in times of sickness or financial hardship.

The evidence in the record is insufficient to demonstrate that Petitioner #82 meets the criterion 83.7(b), one of the seven mandatory criteria of the regulations for a

determination that the petitioning group is an Indian Tribe. In accordance with the regulations, the failure to meet all seven criteria requires a determination that the petitioning group is not an Indian Tribe within the meaning of Federal law. *See* 25 CFR §83.6(d) and 25 C.F.R. §83.10(m). Therefore, the Department proposes to decline to acknowledge Petitioner #82 as an Indian Tribe.

According to the AS–IA OFA; Guidance and Direction Regarding Internal Procedures of May 23, 2008:

> If during the evaluation of a petition on active consideration it becomes apparent that the petitioner fails on one criterion, or more, under the reasonable likelihood of the validity of the facts standard, OFA may prepare a proposed finding or final determination not to acknowledge the group on the failed criterion or criteria alone, setting forth the evidence, reasoning, and analyses that form the basis for the proposed decision. (73 FR 30146-30148)

The burden of providing sufficient evidence under the criteria in the regulations rests with the petitioner (25 CFR 83.5(c)). Because Petitioner #82 has not met criterion §83.(b) as a distinct community, it is not necessary, at this time, for the Department to make conclusions regarding the other six mandatory criteria.

Additionally, due to the fact that the petitioner fails to meet the requirements of 83.7(b) ("the present"), the Department considers it unnecessary to conduct an analysis whether a predominant portion of the group comprised a distinct community and existed as a community from historical times. If additional evidence is provided after the PF is

published, the Department may find it necessary to conduct an analysis of community from historical times to the present.

The PF is based on the evidence currently in the record. Additional evidence may be submitted during the comment period that follows publication of this finding. If new evidence provided during the comment period results in a reversal of this conclusion, the AS–IA will issue an amended PF evaluating all seven criteria. (73 FR 30146-30148)

Publication of this notice of the PF in the Federal Register initiates a 180-day comment period during which the petitioner and interested and informed parties may submit arguments and evidence to support or rebut the evidence relied upon in the PF. Comments on the PF should be addressed to both the petitioner and the Federal Government as required by 25 CFR 83.10(i) and as instructed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The regulations, 25 CFR 83.10(k), provide the petitioner a minimum of 60 days to respond to any submissions on the PF received from interested and informed parties during the comment period. After expiration of the comment and response periods described above, the Department will consult with the petitioner and interested parties to determine an equitable timeframe for consideration of written arguments and evidence. The Department will notify the petitioner and interested parties of the date such consideration begins. After consideration of the written arguments and evidence rebutting or supporting the PF and the petitioner's response to the comments of interested parties, the AS–IA will either issue an amended proposed finding or make a final determination regarding the petitioner's status. The Department will publish a summary of this determination in the Federal Register.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal information from public review, we cannot guarantee that we will be able to do so.

Dated: NOV 16 2018

Tara Sweeney,
Assistant Secretary – Indian Affairs.