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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

IN RE FEDERAL ACKNOWLEDGMENT)	Notice of Timely Request for
OF THE JUANEÑO BAND OF)	Reconsideration, Threshold
MISSION INDIANS, ACJACHEMEN)	Jurisdictional Determination,
NATION)	Order Allowing Showing of
)	Interested Party Status, and Order
)	Granting Petitioner's Motion for a
)	Protective Order
)	
)	Docket No. IBLA 11-124
)	
)	
)	June 28, 2011

On June 20, 2011, the Board of Indian Appeals (Board) received a request for reconsideration (Request) from the Juaneño Band of Mission Indians, Acjachemen Nation, Petitioner #84A (Petitioner), through Anthony Rivera, Jr., Tribal Chairman. The Request seeks review of the Final Determination Against Acknowledgment of the Juaneño Band of Mission Indians, Acjachemen Nation (Final Determination). The Final Determination concluded that Petitioner is not entitled to be acknowledged as an Indian tribe within the meaning of Federal law because it did not meet four of the seven mandatory criteria under 25 C.F.R. § 83.7 for such acknowledgment. The Final Determination was signed by the Assistant Secretary - Indian Affairs on March 15, 2011, and notice of the determination was published in the Federal Register on March 21, 2011. 76 Fed. Reg. 15337. Petitioner's Request was filed pursuant to 25 C.F.R. § 83.11 of the acknowledgment regulations.

On June 22, 2011, the Board received a Motion for Protective Order from Petitioner. The Board first addresses several matters pertaining to the Request, and then addresses Petitioner's motion.

Assignment of Docket Number and Determination of Timeliness

The Request is docketed under the above case name and docket number, which should be cited in all future filings, correspondence, or inquiries regarding this matter.

Requests for reconsideration of a final determination on a petition for acknowledgment must be received by the Board no later than 90 days after notice of the final determination is published in the Federal Register; *see* 25 C.F.R. § 83.11(a)(2), which in the present case was June 20, 2011. The Board finds that Petitioner's Request was received on the 90th day after the notice was published in the Federal Register, and therefore the Request is timely.

Threshold Jurisdictional Determination

Section 83.11(c)(2) of 25 C.F.R. provides that the Board shall determine, within 120 days after the date of publication of notice of the Final Determination, whether the request alleges any of the four grounds for reconsideration over which the Board has jurisdiction. Those four grounds are identified in 25 C.F.R. § 83.11(d), which provides:

The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:

- (1) That there is new evidence that could affect the determination; or
- (2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or
- (3) That petitioner's or the [Bureau of Indian Affairs'] research appears inadequate or incomplete in some material respect; or
- (4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7(a) through (g).

Petitioner's Request alleges that all four grounds exist for granting reconsideration, and refers to two exhibits as more fully describing the grounds for reconsideration. *See* Request at 1-2. In Exhibit 1, Petitioner alleges in several places that one or more of the grounds for reconsideration exist under § 83.11(d). For example, Petitioner states that new evidence has been located that "could or will substantially affect the outcome of the [Final Determination] and provide reasonable alternative interpretations that were not previously considered." Request, Ex. 1 at 3. Petitioner also alleges that the Office of Federal Acknowledgment "relie[d] on evidence and research that was unreliable and of little probative value" in the Final Determination. *Id.* at 8. Further, in Exhibit 2, Petitioner

alleges that it “offers evidence and findings that meet the criteria as set forth and defined in § 83.11(d)(1)-(4),” and contends that it offers rebuttals to the Final Determination that include “new evidence.” Request, Ex. 2 at 5-6. Based on these allegations, the Board finds that Petitioner has alleged grounds for reconsideration that are within the Board’s jurisdiction.

Order Allowing Motions for Interested Party Status

For purposes of the preliminary proceedings in this case, the Board has included on its distribution list the individuals and entities identified by the Assistant Secretary as interested parties when this matter was pending before him.

Any individual or entity on the attached distribution list may now submit a motion to the Board to be considered an interested party for purposes of participating in this proceeding. In order to establish “interested party” status, individuals or entities must show that they (or the entities they represent) meet the definition in 25 C.F.R. § 83.1:

Interested party means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. “Interested party” includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

If the Board determines that a person or entity is an interested party for purposes of this proceeding, that person or entity will be given an opportunity to file an answer brief responding to Petitioner’s Request.

The Governor and Attorney General of California are interested parties under 25 C.F.R. § 83.1, and they need not file a motion for interested party status.

Motions for interested party status in this proceeding shall be filed with the Board on or before July 28, 2011, shall be served on the individuals and entities listed on the attached distribution list, and shall be accompanied by a certificate of service.

Responses to any motions for interested party status may be filed with the Board on or before August 15, 2011.

Order Granting Petitioner's Motion for a Protective Order

Petitioner seeks to prevent the public disclosure of three documents submitted with its Request, stating that the documents include sensitive information such as its members' names, dates of birth, and genealogical information. Petitioner identifies the documents as follows:

1. Exhibit 1: Document titled JBA Members Linked or Verified to [San Juan Capistrano] Indian 2/19/2008
2. Exhibit 2: Document titled JBA 2009 ML - Descent Verification Results ALPHA.
3. Exhibit 2: Document titled Genealogy Worksheets 1, 2 and 4[,] contained in Exhibit 2.

Specifically, Petitioner requests that: 1) the documents not be disclosed on the Board's website; 2) it not be required to serve the documents on other parties; and 3) if disclosure of the documents is required, the disclosure shall remain confidential and the documents returned to Petitioner at the conclusion of the appeal.

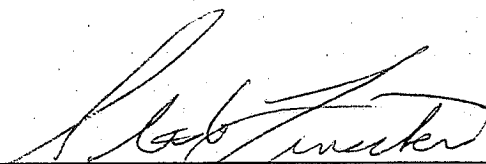
Because it appears possible that the documents at issue may be subject to the Privacy Act, 5 U.S.C. § 552a, and therefore may be exempt from public disclosure, at least in part, e.g., Petitioner's members' names, dates of birth, and genealogical information, it appears that there are grounds for granting Petitioner's request. *See* 43 C.F.R. § 4.31(a)-(b). Thus, the Board grants Petitioner's motion, subject to consideration of any requests from interested parties to be served with copies of the documents upon compliance with the requirements of 43 C.F.R. § 4.31(c).¹

¹ A person or entity seeking to participate in this proceeding as an interested party shall state whether they seek to be provided with a copy of some or all of the documents that are subject to this protective order. If the Board determines that the person or entity is an interested party for purposes of this proceeding, that party will be required to comply with the conditions set forth in 43 C.F.R. § 4.31(c) before Petitioner will be required to provide that person or entity with copies of the requested documents. The Board notes that Petitioner contends that the California Cities for Self Reliance Joint Powers Authority (JPA) is not an interested party as defined by 25 C.F.R. § 83.1. *See* Request at 6-13. Unless and until files a motion to participate in this proceeding as an interested party, it is premature for the Board to consider Petitioner's arguments on JPA's status.

Further Proceedings

In accordance with 25 C.F.R. § 83.11(e)(8), the Board requests that the Assistant Secretary designate and transmit to the Board copies of critical documents central to the portions of the determination under Petitioner's request for reconsideration.² The Assistant Secretary is requested to prepare a list of such documents and to send copies of the list to the Board and the parties shown on the attached distribution list. The Board requests that the Assistant Secretary transmit the documents and list on or before September 30, 2011, or, within that time frame, inform the Board and the parties in writing of the date upon which they will be transmitted.

A briefing schedule for answer briefs and a reply brief by Petitioner will be set after the Board has addressed any motions for interested party status and after the Board receives the critical documents and list from the Assistant Secretary.



Steven K. Linscheid
Chief Administrative Judge

Distribution: See attached list.

² Copies of the critical documents may be submitted in electronic format.

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