

NOTICES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Tolowa Nation

Wednesday, November 24, 2010

AGENCY: Bureau of Indian Affairs, Interior.

*71732 ACTION: Notice of proposed finding.

SUMMARY: The Department of the Interior (Department) gives notice that the Assistant Secretary—Indian Affairs proposes to determine that the Tolowa Nation, of Fort Dick, CA is not an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group 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 one criterion alone.

DATES: We must receive comments on this proposed finding by May 23, 2011. We must receive any request for a technical assistance meeting by January 24, 2011. See the SUPPLEMENTARY INFORMATION section of this notice for more information about these dates.

ADDRESSES: Address comments on the proposed finding or requests for a copy of the report to the Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., MS: 34B-SIB, Washington, DC 20240. Parties who make comments on the proposed finding must also provide a copy of their comments to the petitioner.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (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 Tolowa Nation, P.O. Box 213, Fort Dick, CA 95538, c/o Ms. Sharon Sligh, is not an Indian tribe within the meaning of Federal law. This notice is based on a preliminary finding that the petitioner fails to satisfy one of the seven mandatory criteria for acknowledgment 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 Tolowa Nation, Petitioner #85, submitted a letter of intent to petition for Federal acknowledgment on September 11, 1982. It submitted partial documentation on March 22, 1983, and made subsequent submissions in 1983, 1986, 1987, 1996, and 1999. The Department provided technical assistance in 1988 and in 1995. The petition was ready for evaluation on August 3, 2009.

To evaluate unambiguous previous Federal acknowledgment under [25 CFR 83.8](#), OFA's review of Petitioner #85's narrative and documentation revealed three factors for consideration: the estab-

lishment of the Klamath Reservation from 1855 to 1861 and the Smith River Reservation from 1862 to 1869; the establishment of the Smith River, Elk Valley, and Resighini Rancherias in 1906, 1908, and 1938 respectively; and Federal interaction with the Del Norte Indian Welfare Association (DNIWA) from 1941 through 1968.

There is not substantial evidence in the record to show previous unambiguous Federal acknowledgment of the Athabascan-speaking Indians, residing in the villages in Del Norte County, California, known as "Tolowa," either as separate entities or as one entity that included the ancestors of Petitioner #85. Evidence is also insufficient to show that the petitioner evolved from the Indian groups at the Klamath Reservation established in 1855, or at the Smith River lease in 1862, or from the Resighini Rancheria.

Unambiguous Federal acknowledgment of the Elk Valley and Smith River Rancherias, which include descendants of Athabascan-speaking Tolowas from Del Norte County, California, continues to the present day. Because a group of the petitioner's ancestors did not enroll at these rancherias and did not evolve as a group from them, Petitioner #85 has not shown unambiguous previous Federal acknowledgment based on the government's acknowledgment of the Smith River and Elk Valley Rancherias.

The Federal Government never recognized DNIWA as a tribal political entity. There is no substantial evidence of unambiguous previous Federal acknowledgment in the record. Therefore, the petitioner is evaluated under [25 CFR 83.7](#). Whether the petitioner is eligible to be evaluated under 83.8 of the regulations is subject to reconsideration based on new evidence at the time of an amended proposed finding, if any, or the final determination.

Petitioner #85 maintains that its membership and its ancestors existed continuously as a tribe of Indians descended from the Tolowa, an Athabascan-speaking group of Indians residing in Del Norte County, California. The petitioner maintains that its members specifically are the descendants of those Tolowa who were not enrolled at the Smith River and Elk Valley Rancherias.

In order to meet criterion 83.7(b) a petitioner must demonstrate that a predominant portion of its group comprises a distinct community and has existed as a community from historical times until the present. Petitioner #85 did not provide sufficient evidence to demonstrate the petitioner's ancestors existed as a distinct community from first sustained contact in 1853 to 1903, before the rancherias formed. The evidence shows that some of Petitioner #85's ancestors were involved in interaction indicative of a social community, but does not show that they constituted an entity distinct from the others, or were part of any entity evolving from the people described in the record. For the period 1903 through 1949, Department researchers examined recollections from this time gathered from interviews conducted during their site visit in 2010, as well as Federal census material, BIA enrollments, and BIA correspondence to document further DNIWA's activities and informal social interaction. Researchers also consulted BIA enrollments conducted by Henry Roe Cloud in 1939. The evidence is insufficient to show that the petitioner's ancestors evolved as a distinct community from 1903 through the 1930s, after the Elk Valley and Smith

River Rancherías formed, or later. DNIWA, claimed by the petitioner as its precursor, did not function as a distinct community from its alleged beginnings in the 1930s through the 1980s. The evidence for this time does not support the assertion by Petitioner #85 that DNIWA provided leadership over an evolving entity that included both the ancestors of Petitioner #85 and the Smith River or Elk Valley Rancherías, or that it evolved into the petitioner in the *71733 early 1980s. Evidence for this time is insufficient to show the existence or evolution of a community distinct from these rancherías and ancestral to the petitioner.

Finally, the evidence does not show the petitioner's membership functioning as a community from 1980 to the present. Petitioner #85 thus did not provide sufficient evidence to demonstrate that its members interact with each other, outside of the organization itself, or that there are significant social relationships within its membership and that its members are differentiated from, and identified as distinct from, nonmembers. A comparison of Petitioner #85's membership lists shows a high variability and turnover between 1986 and 1996, with the 2009 membership list reflecting a remnant of the 1996 membership. Such high variability or turnover is indicative of individuals or families recruited by the leadership from a population which has little other involvement in the petitioner's organization. This indication is further supported by interviewee accounts, and the fact that very few individuals who were not on successive membership lists joined Smith River Rancheria between 1991 and 1995, as some of the petitioner maintained. Petitioner #85 does not meet the requirements of criterion 83.7(b), based upon the materials submitted by the petitioner and developed by Department researchers during active consideration of this petition.

The evidence in the record is insufficient to demonstrate that Petitioner #85 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 ([§ 83.6\(d\)](#), [§ 83.10\(m\)](#)). Therefore, the Department proposes to decline to acknowledge Petitioner #85 as an Indian tribe.

According to the Assistant Secretary—Indian Affairs Office of Federal Acknowledgment; 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 30147](#))

The burden of providing sufficient evidence under the criteria in the regulations rests with the petitioner, [25 CFR 83.5\(c\)](#). Because Petitioner #85 has not met criterion [§ 83.7\(b\)](#) as a distinct community, it is not necessary for the Department to make conclusions regarding the other six mandatory criteria.

This proposed finding 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 Assistant Secretary—Indian Affairs will issue an amended proposed finding evaluating all seven criteria. ([73 FR 30147](#))

Publication of the Assistant Secretary's 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 conclusions in the PF ([25 CFR 83.10\(i\)](#)). Comments should be submitted in writing to the address listed in the ADDRESSES section of this notice. Interested or informed parties must provide copies of their submissions to the petitioner. The regulations at [25 CFR 83.10\(k\)](#) provide petitioner with a minimum of 60 days to respond to any submissions on the PF received from interested and informed parties during the comment period.

At the end of the periods for comment and response on a PF, the Assistant Secretary 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 and informed parties, the Assistant Secretary 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 identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 18, 2010.

George T. Skibine,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010-29585 Filed 11-23-10; 8:45 am]

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75 FR 71732-01, 2010 WL 4737950 (F.R.)

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