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Ms. Elizabeth Appel
Office of Regulatory Affairs and Collaborative Action
US Department of Interior
1849 C Street, N.W. MS 4141-MIB
Washington, DC 20204

Subject: 1076–AF18

Dear Ms. Appel,

First, I would like to acknowledge that the comments in this letter are my own and not necessarily the views of the Chinook Indian Tribe/Chinook Nation (CIN/CT) Council or General Assembly.

Throughout the history of the United States, Native Americans/Indians have faced a multitude of abuses, double standards, and broken agreements by the federal government. This is an ugly truth of our American history. One People that epitomizes this history are those from the tribes of the Chinook.

It began in August 1851, when Superintendent of Indian Affairs for Oregon Territory, Anson Dart, negotiated the Tansey Point Treatiesⁱ for Indian lands covering much of the Columbia estuary. Dart signed treaties with the *Wah-Ki-kum*, *Wheelappa*, *Kathlamet*, *Clatsop*, and *Lower Bands of Chinook*. Despite his orders from the Presidential Act of 1850 to move Indians away from white settlements, the whites and Indians alike convinced him to allow the Chinook to remain in their homelands and promised both provisions and annuities. President Fillmore received these documents of the Tansey Point Treaties for ratification on July 30, 1852. They were read into the record on August 3, but Congress did not ratify them.ⁱⁱ As noted in a land claims investigation by the Office of the Secretary of the Interior in 1908, this was because the treaties did not remove the Chinook from the west coast to east of the Cascades.ⁱⁱⁱ Further justified by three years of appropriation bills and a mention in 1853 by the Oregon Superintendent that vice and disease would wipe the tribes away whether or not Congress affirmed the treaties, the closing recommendation of this investigation stated:

“The fact that the Superintendent of Indian Affairs in Oregon, in 1851, made agreements with these Indians to cede certain territories for specific sums gave them no legal right to the land embraced in such treaties unless they were ratified. If the treaties and the correspondence setting forth the needs of the Indians did not show sufficient merit to justify their ratification by the Senate in 1852, it would seem preposterous to give them any recognition fifty-five years afterwards without further proof of the validity of their claims, and none whatsoever has been furnished.”^{iv}

In other words, the government’s position was that the tribes of the Chinook Indians should not be recognized because the Senate chose – for reasons that had nothing to do with the actual existence of the Chinook – to not ratify the treaties. That because partial appropriations were made, and the People were sick, the 1908 government did not need to compensate the Chinooks for the unfulfilled contracts from 1851. These historical duplicities by the US government have been the plight of many, such as the Chinook tribes.



Fortunately, there is a growing outcry amongst the citizens of the US against these unjust and contradictory government practices. These protests extend to the current criteria used in determining a tribe's federal acknowledgement status by the Office of Federal Acknowledgement's process. Many recognize that it has been the burden of unrecognized tribes to find and deliver the changing scope and requirements of evidence needed to prove continued existence as a tribal entity. Further, the current process pits the penniless and unrecognized tribes against the already established and prosperous tribes within the region – prosperity that comes from the benefit of federal recognition.

Examples for Necessary Revisions

A Long, Burdensome, Expensive Process -

In 1979, the CIT/CN began the process of a Federal Acknowledgement Petition to seek federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the Code of Federal Regulations (25 CFR 83). The Bureau of Indian Affairs (BIA) received a documented petition for federal acknowledgment from the CIT/CN on June 12 1981. The Branch of Acknowledgment and Research (BAR) conducted an Obvious Deficiency (OD) review of the petition and sent a letter dated March 18 1982, outlining deficiencies in the petition. The Chinook submitted a revised petition in July 1987. The second OD letter was dated November 1 1988. The BIA placed the Chinook on active consideration on January 28, 1994.^v In 1997, the Department of Interior released a Summary Under the Criteria and Evidence for Proposed Finding Against Federal Acknowledgment of the Chinook stating, *"It has been determined that the petitioner meets criteria 83.7 (d-g) and that it does not meet criteria 83.7(a-e)."* It further stated,

"This is a proposed finding based on available evidence and as such does not preclude the submission of other evidence to rebut or support the proposed finding during the 120 day comment period which follows publication of this proposed finding. Such new evidence may result in a change in the conclusions reached in the proposed finding. The final determination, which will be published separately after the receipt of the comments, will be based on both the new evidence submitted by the petitioner and interested parties during the response periods to the proposed finding and the original evidence used in formulating the proposed finding."^{vi}

Over the next three years, the CIT/CN and third parties submitted new evidence to refute the preliminary negative ruling, while Assistant Secretary Kevin Gover hired an independent scholar to assess Chinook history and advise on the tribe's federal relationship. In addition, the BIA found a drawer full of evidence that had been overlooked.^{vii} In January 2001, the office of the Assistant Secretary – Indian Affairs, wrote and published the Final Determination For Federal Acknowledgement in favor of Chinook federal recognition, 20 years after the initial submission.

The Unpredictable Interpretation of Criteria and Sufficiency of Proof -

In 2001, the new Assistant Secretary of Indian Affairs Neal McCaleb, by order of the Secretary of the Interior, conducted a Reconsideration of Final Determination. This reversed the Final Determination, citing that the CIT/CN from historical times (1855) to the present (2002) had not been identified as American Indian by outside observers on a continual basis; had not lived in distinct Indian communities; and had not maintained tribal political influence.

Where Assistant Secretary Gover determined that the Quinault Allotment Act of 1911^{viii} and the Act of February 12th, 1925^{ix} provide sufficient proof of under the 1978 and 1994 criteria for 25 CFR 83, Assistant Secretary McCaleb stated that these were unprecedented as confirmation and therefore not

valid.^x With only 17 of 566 tribes/nations approved under the BIA's criteria, new standards would be breached in nearly every acknowledgement.

Further, Assistant Secretary McCaleb stated the CIT/CN evidence was deficient in:

Part 83.7(b) - *"The petitioner did not submit evidence, either during the comment period on the Proposed Finding or during the subsequent IBIA appeal, to address effectively the concerns in the Proposed Finding regarding the post-1950 period. For this time period there is an insufficient evidence regarding actual social interaction among a predominant portion of the petitioner's membership."*^{xi}

Part 83.7(c) - *"There is also very limited evidence that a claims organization existed in the late 1920's and early 1930's, but no evidence that it had any internal political process which resulted in group decisions. There is almost no evidence of political activities or leadership between the early 1930's and 1951. Thus, there is insufficient evidence that the petitioning group exercised political influence over its members between 1855 and 1951"*^{xii}

In this reconsideration however, Assistant Secretary McCaleb relied heavily on the BAR's 1997 Proposed Findings to reference this "insufficient/no evidence" and ignored the additional documentation post 1997 that established that CIT/CN met the 87.3(a) and (b) criteria.^{xiii}

Subject to Undue Political Influence and Manipulation -

As stated in the presentation for the Discussion of Draft Rules, the Final Determination is the only AS-IA decision appealable to the IBIA. This method of reconsideration by appeal weakens the entire process by providing an avenue for political and self-interest agendas to intervene in an already laborious endeavor. A change of an administration and a non-impartial appeal can tear down decades of work via subjective reversals, as is evident in the CIT/CN acknowledgement process.

When the Quinault Indian Nation filed a reconsideration for the Final Determination to Acknowledge the CIT/CN in 2001 to the IBIA, the Board concluded that:

- *"Quinault has failed to show by a preponderance of the evidence that the Assistant Secretary's determinations that Chinook met the requirements of 25 CFR. § 83.7(b) and (c) were not supported by reliable or probative evidence."*
- *"Quinault has failed to show by a preponderance of the evidence that the Assistant Secretary's research into the Department's prior interpretations of the three statutes was materially incomplete or that documents reflecting the Department's contemporaneous interpretation of the 1925 Act constitute "new" evidence."*
- *"Quinault has also failed to show by a preponderance of the evidence that the Department's prior interpretations were not considered in reaching the Final Determination at issue here."*
- *"The Board affirms the Assistant Secretary's Final Determination based on the facts that Quinault did not prove its allegations over which the Board has jurisdiction by a preponderance of the evidence."*
- *"Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR. § 4.1, the Assistant Secretary's Final Determination is affirmed."*^{xiv}



However, under the current 25 CFR. § 83.11(f), the IBIA must refer any requests for reconsideration outside its jurisdiction to the Secretary of Interior. When it did, Secretary Gale Norton directed Assistant Secretary McCaleb to issue a reconsidered determination based on the appeal of the Quinault, resulting in the reversal discussed above.^{xv} The Quinault also appealed the acknowledgement of the Cowlitz Indian Tribe (CIT) in 2001, although the determination was upheld.^{xvi}

The previous year, Congress passed an amendment to the Indian Land Consolidation Act of 1983. It states in this amendment that:

"To prevent Indian lands from passing out of trust, non-Indian heirs will only receive a life estate in Indian lands (a life estate is property that belongs to a person for their lifetime, but cannot be sold or passed on to anyone else until after the death of the person.) Because a non-Indian heir owns less than the full interest, a "remainder interest" is created, and this remainder interest must go to an Indian heir of the first or second degree. If there are no such heirs, the remainder may be purchased by any Indian co-owner of the parcel. If no offer is made to purchase the parcel, the remainder interest passes to the tribe."^{xvii}

The Chinook and the Cowlitz were the only two unrecognized tribes with individual allotments on the Quinault reservation during in 2000. The People of the CIT/CN alone own over 50% of the 220,000 acres of allotted land held in trust on the expanded Quinault reservation.^{xviii xix} If the CIT/CN does not become a federally recognized tribe, its citizens' allotted lands cannot pass on to their "non-Indian heirs," but will pass on to the federally recognized Quinault Indian Nation as the beneficiary tribe mentioned in the paragraph above. This process has already begun with the aging and subsequent deaths of the Chinook elders. This is just one example of how tribes already in privilege of federal recognition use the BIA process to keep interests in their favor.

Under the current BIA rules, unrecognized tribes are made to provide continuous proof of community and political existence through documentation from 1900, or since last date of unambiguous federal acknowledgement from a government that was doing its best to terminate tribal entities for most of the past 200+ years. If asked to provide this same documentation, many federally recognized tribes would also fall short of criteria 87.3(a-g). The decision to establish 1934 as the baseline for the building of evidence puts non-federally recognized tribes on the same playing field of most federally recognized tribes, since this was the year of the Wheeler-Howard Act/Indian Reorganization Act of 1934 (Indian New Deal). This Act created US federal legislation to secure certain rights to Native Americans including the return of self-governance back to tribes.^{xx}

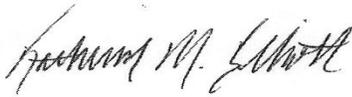
Conclusion -

Ask any American if they know who the Chinook are, and they will say, "Yes!" Ask them if they are aware that the Chinooks are not Federally Recognized and they will say, "No!"

The People of the Chinook tribes have a long and rich history that supersedes many other federally recognized tribes in the region. The only fault of the ancestors of the Chinook tribes is that they insisted on staying in their homeland and not move to the east or the north. Because of this, they and their descendants have paid the price as third class citizens. Throughout the history of the US, we Chinook have been told not to assemble, not to speak our language, as children our elders were sent to boarding schools, and we were not considered US citizens with the right to vote until 1924. Yet here we are today, still a People nearly 3,000 strong, fighting for recognition and the right to stand in front of the decision makers again for a fair chance.

I look forward to reviewing the final draft of 25 CFR 83 and applaud Assistant Secretary Washburn, his team at the Bureau of Indian Affairs, and the National Congress of American Indians for their commitment to making this process just, equitable, and flexible.

hayu masi,



Katherine M. Elliott
Councilwoman, Chinook Indian Tribe/Chinook Nation
Clatsop, Kathlamet, Lower Chinook, Willapa, & Wahkiakum Tribes

cc. Senator Patty Murray
Senator Maria Cantwell
Representative Jaime Herrera Beutler
Committee on Natural Resources, United States House of Representatives
Honorable Sally Jewell
Office of CIT/CN

ⁱ Microfilm version from National Archives available at
<https://docs.google.com/file/d/0B5ubAj27CJAhbJFxbWtRQm1mQzA/edit?usp=sharing>

ⁱⁱ U.S. 60th Congress House of Representatives Document 517, Report On Claims of Chinook and Chehalis Indians, January 7, 1908. Page 46 of United States Congressional Serial Set, U.S. Government Printing Office, 1908
<http://books.google.com/books?id=RRUpAAAAAYAAJ&dq=anson%20dart%20november%207%201851&pg=RA2-PA41#v=onepage&q&f=false>

ⁱⁱⁱ U.S. 60th Congress House of Representatives Document 517, Report On Claims of Chinook and Chehalis Indians, January 7, 1908. Page 42

^{iv} U.S. 60th Congress House of Representatives Document 517, Report On Claims of Chinook and Chehalis Indians, January 7, 1908. Page 51

^v U.S. Department of Interior, Office Federal Acknowledgement, Administrative History, Page 5 of Proposed Finding Documents, 1997 <https://docs.google.com/file/d/0B5ubAj27CJAhQ2xUX2lZbml0WFE/edit?usp=sharing>

^{vi} U.S. Department of Interior, Office Federal Acknowledgement, Summary Under the Criteria §§ 83.7(a-g), Page 7 of Proposed Finding Documents, 1997
<https://docs.google.com/file/d/0B5ubAj27CJAhQ2xUX2lZbml0WFE/edit?usp=sharing>

^{vii} Gover reverses Chinook decision January 4 2001 <http://www.indianz.com/News/show.asp?ID=law/142001-1>

^{viii} U.S. 61st Congress House of Representatives, Session 3, Ch 246, Page 507
<https://docs.google.com/file/d/0B5ubAj27CJAhVC1yczJjWXJ0M1E/edit?usp=sharing>

^{ix} Act of February 12, 1925, ch. 214, 43 Stat. 886.
<https://docs.google.com/file/d/0B5ubAj27CJAhQXZaQ0JqVkl4ZEK/edit?usp=sharing>

^x Reconsideration on Referral by the Secretary and Summary Under the Criteria and Evidence for the Reconsidered Final Determination Against Federal Acknowledgment of the Chinook Indian Tribe - Chinook Nation Pg. 15
<https://docs.google.com/file/d/0B5ubAj27CJAhc0hieXhRWTVxRTg/edit?usp=sharing>

^{xi} Reconsideration on Referral by the Secretary and Summary Under the Criteria and Evidence for the Reconsidered Final Determination Against Federal Acknowledgment of the Chinook Indian Tribe - Chinook Nation Pg. 95

^{xii} Reconsideration on Referral by the Secretary and Summary Under the Criteria and Evidence for the Reconsidered Final Determination Against Federal Acknowledgment of the Chinook Indian Tribe - Chinook Nation Pg. 104.



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- ^{xiii} Reconsideration on Referral by the Secretary and Summary Under the Criteria and Evidence for the Reconsidered Final Determination Against Federal Acknowledgment of the Chinook Indian Tribe - Chinook Nation Pg. 94.
- ^{xiv} Interior Board Of Indian Appeals (IBIA) In re Federal Acknowledgment of the Chinook Indian Tribe-Chinook Nation 36 IBIA 245 <https://docs.google.com/file/d/0B5ubAj27CJAhZIEyRzhyODN6UzA/edit?usp=sharing>
- ^{xv} 2001_11_06 Federal Acknowledgement of the Chinook Indian Tribe-Chinook Nation Petitioner - Interior Board of Indian Appeals Referral <https://docs.google.com/file/d/0B5ubAj27CJAhdXRRNm8zYzFIZWc/edit?usp=sharing>
- ^{xvi} In re Federal Acknowledgment of the Cowlitz Indian Tribe 36 IBIA 140 <http://www.bia.gov/cs/groups/xofa/documents/text/idc-001347.pdf>
- ^{xvii} Indian Land Consolidation Act Amendments of 2000, Public Law 106-462 (114 Stat. 1992) <https://docs.google.com/file/d/0B5ubAj27CJAhaEIKS255X1NXamc/edit?usp=sharing>
- ^{xviii} What Are Quinault Allotted Lands? http://www.aa-at.org/ownership_of_the%20quinault.html
- ^{xix} Native America Today: A Guide to Community Politics and Culture Pg. 123 <http://books.google.ca/books?id=7xnnrSB6dd8C&pg=PP1&pg=PA123#v=onepage&q&f=false>
- ^{xx} U.S. Public Law 73-383, 48 STAT 984 Pg. 20 <http://books.google.com/books?id=sGDSWgdM8ucC&pg=PA20&dq=48%20Stat%20%22Indian%20Reorganization%20Act%22%20Congress&pg=PA20#v=onepage&q=48%20Stat%20%22Indian%20Reorganization%20Act%22%20Congress&f=false>