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(4310-G1-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5A211.IA000414]

Final Determination Against Federal Acknowledgment of the Tolowa Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: The Department of the Interior (Department) gives notice that the Assistant Secretary – Indian Affairs (AS–IA) declines to acknowledge the petitioner known as the Tolowa Nation (Petitioner #85) as an Indian tribe within the meaning of Federal law. The AS–IA makes this final determination (FD) because the petitioner does not satisfy one of the seven mandatory criteria in the applicable regulations (25 CFR Part 83.7), specifically criterion 83.7(b), and therefore, does not meet the requirements for a government-to-government relationship with the United States. Based on the limited nature and extent of comment, and consistent with previous practices, the Department did not produce a separate detailed report or other summary under the criteria pertaining to this FD. This notice is the FD.

DATES: This determination is final and will become effective on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to section 83.10(1)(4), unless a request for reconsideration is filed pursuant to section 83.11.

ADDRESS: Requests for a copy of the Federal Register notice should be addressed to the Office of the Assistant Secretary – Indian Affairs, Attention: Office of Federal Acknowledgment, 951 Constitution Avenue, N.W., MS: 34B-SIB, Washington, D.C. 20240. The Federal Register notice is also available through www.bia.gov/WhoWeAre/AS-IA/OFA/RecentCases/index.htm.

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

SUPPLEMENTARY INFORMATION: On November 18, 2010, the Department issued a proposed finding (PF) that the Tolowa Nation was not an Indian tribe within the meaning of Federal law because the petitioner did not meet one of the seven mandatory criteria for Federal acknowledgment as an Indian tribe, criterion 83.7(b). This criterion requires that a predominant portion of the petitioner comprises a distinct community and has existed as a community since historical times to the present. The evidence for the PF was insufficient to demonstrate that the petitioner met criterion 83.7(b) from first sustained contact in 1853 to the present. The Department issued a PF denying acknowledgment under that one criterion, 83.7(b). This FD affirms the PF and concludes that the Tolowa Nation does not satisfy criterion 83.7(b).

The acknowledgment process is based on the regulations at 25 CFR Part 83. Under these regulations, the petitioner has the burden to present evidence that it meets the seven mandatory criteria in section 83.7. Failure to meet any one of the mandatory criteria results in a determination that the petitioning group is not an Indian tribe within the meaning of Federal law. The Department issues this determination under 25 CFR 83.10(m) and the Guidance and Direction notice (73 FR 30148) published by the AS–IA on May 23, 2008, which permit decisions against acknowledgment based on failure to meet fewer than seven criteria.

The Department published a notice of the PF in the Federal Register on November 24, 2010 (75 FR 71732). Publishing notice of the PF initiated a 180-day comment period during which time the petitioner, and interested and informed parties, could submit arguments and evidence to support or rebut the PF. The initial comment period ended May 23, 2011. At the petitioner's request, the comment period was extended 180 days to November 21,

2011. The petitioner submitted 267 pages of documents on that same day by express service, which the Department received on the following day. None of the interested parties submitted comments. Two third parties, however, submitted comments. Wesley D. Taukchiray submitted a five-page letter on February 9, 2011, and Gordon Bonser submitted a two-page letter on May 17, 2011. The petitioner submitted no response to these third-party comments.

On June 21, 2013, the AS-IA announced a “preliminary discussion draft of potential revisions to Part 83.” By letter dated May 31, 2013, the Department provided the petitioner the option to request a suspension of consideration of its petition during the process of revising the regulations or to continue under the existing Part 83 regulations. By letter postmarked July 23, 2013, received at OFA on July 29, Petitioner #85 requested to proceed with a FD under the existing regulations. The Department started active consideration of the FD on September 3, 2013.

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.” As stated in the PF, the petitioner contends its membership and its ancestors lived as a continuously existing tribe of Indians descended from the Tolowa, a group of Indians residing in Del Norte County, California at first sustained contact. The petitioner also claims its members are the descendants of those Tolowa who were not enrolled at the Smith River and the Elk Valley Rancherias (“Tribe” or “Tribes”), two federally-recognized Indian tribes from that region. The Federal Government set aside land for the Smith River Rancheria and the Elk Valley Rancheria in 1906 and 1908, respectively. The PF, however, concluded that the evidence in the record was insufficient to show the petitioner’s ancestors existed as a distinct community from first sustained contact in the early 1850s to the early 1900s before lands for the Smith River and

the Elk Valley Rancherias were set aside. The evidence in the record was not sufficient to show that the petitioner's ancestors constituted an entity distinct within, or from, the Smith River and the Elk Valley Tribes. The evidence in the record was insufficient to show the petitioner's ancestors evolved as a distinct community after the lands for the Smith River and the Elk Valley Rancherias were set aside, or from any other Tolowa entity that may have existed before 1908. The evidence in the record was not sufficient to show that the Del Norte Indian Welfare Association (DNIWA) was a distinct community or provided leadership over an evolving entity that included both the petitioner's ancestors and the Smith River or the Elk Valley Tribes from the 1930s to the 1980s. The evidence in the record did not show that petitioner's ancestors were distinct within the DNIWA or that the DNIWA evolved into the petitioner as a community after the 1980s. Noting the shortcomings in the evidence in the record, the PF requested the petitioner to provide a list of its ancestors, their locations, and an analysis of their relations with others in a community to determine whether the petitioner evolved from one or several villages. The analysis also needed to show how those ancestors evolved as a community to become the current petitioner with its specific membership (PF 12). The PF encouraged the petitioner to submit evidence that its ancestors constituted a distinct community from the time of sustained contact in 1853 to the setting aside of land for the Rancherias from 1903-1915, that it was distinct from or evolved from the tribes inhabiting the Rancherias, and that its present-day activities involve the broader membership on a consistent basis (PF 41). The comments the petitioner submitted, however, do not provide evidence that changes the analysis or conclusions in the PF that the petitioner's ancestors did not form a distinct community.

Many of the petitioner's submissions are brief excerpts from both old and recent secondary sources covering the pre-contact period, the Spanish Colonial era, or the very early

years of American settlement in northern California in the 1850s and 1860s. These documents did not provide any new evidence because they discussed the Tolowa Indians or northern California Indians in very general terms and provided little evidence about the petitioner's ancestors.

Many of the petitioner's documents for the period from the 1900s to the 1980s were secondary sources that dealt with individual Tolowa Indians associated with the Smith River Tribe. These documents do not show the petitioner or its ancestors were a community distinct within, or from, the Smith River Tribe during those years. Other documents from this period were marriage and death certificates or land records from the first three decades of the 20th century. These documents dealt with just a few of the petitioner's ancestors, particularly the Fred Charles family, who were Elk River Rancheria members. While these records provided some evidence of genealogical connections or residence and land ownership for some of the group's ancestors, they did not demonstrate any social interaction among those ancestors as a distinct group. Nor did they show the petitioner was part of a community of Indians separate from the Smith River and the Elk Valley Tribes. The petitioner also submitted Indian censuses from around the 1920s for the Hoopa Valley Reservation of northern California. These same censuses were evaluated and cited in the PF and did not provide evidence that the petitioner's ancestors formed a distinct social community.

The petitioner submitted some articles from unidentified newspapers from the 1950s and 1960s that dealt with the Smith River Tribe and not the petitioner. A few articles, some already referenced in the PF, discussed activities related to the DNIWA. These documents also did not show the DNIWA later evolved into the petitioner or that petitioner's ancestors were distinct within the DNIWA.

Given that Petitioner has failed to satisfy 83.7(b) for the period from 1930 to 1980, petitioner has failed to satisfy this criterion. The petitioner's evidence for the 1980s to the present is also insufficient to demonstrate criterion 83.7(b). For example, some documents dealt with the activities of the Smith River Tribe, while others, like portions of the Advisory Council on California Indian Policy Recognition Report (1997), dealt with recommendations for revising the Federal acknowledgment regulations as they applied to California Indian groups in general. Two letters from 1982 concerned a group much broader than the petitioner and did not provide evidence of community for the petitioner. Other documents included flyers from the 1990s and 2000s announcing gatherings the petitioner sponsored. These events, such as the "National Indian Observance Day," "Drums on the Beach," or "California Indian Observance Day," without more information, appeared pan-Indian in orientation and standing alone did not provide sufficient evidence that the petitioner was a distinct community. Other evidence, such as photographs, minutes of limited meetings attended by some council members, and environmental efforts attended by the general public and a few of petitioner's members were insufficient evidence to demonstrate significant social relationships.

Comments on the PF by two third parties added no significant information on community. Wesley Taukchiray detailed his analysis of the location or composition of the Tolowa Indian villages in the late 19th century. He believes that the modern-day petitioner's ancestors are "successors in interest" to these villages. Mr. Taukchiray did not provide any documentation with his submission to support his arguments. None of his analysis shows the petitioner's ancestors were a community distinct within or from the Smith River and the Elk Valley Tribes, or that the petitioner evolved out of those two Tribes.

Gordon Bonser wrote that he had lived in the Crescent City area since the early 1990s and had many friends among the petitioning group. Based on his personal experience, he attested to the fact the petitioner's members viewed "themselves as being both Native American and Tolowa" and as "separate from the Smith River or Elk Valley people." He provided no documentation to support this opinion and contrary evidence in the record outweighs his claims.

In summary, the evidence for the PF and the FD does not demonstrate that the petitioner's ancestors evolved as a community distinct either from the Smith River and Elk Valley Tribes or from any other Tolowa entity that may have existed before 1908. The evidence does not demonstrate that the group's claimed precursor, the DNIWA, was an entity that constituted a community distinct from the membership of the Smith River and the Elk Valley Tribes from the 1930s to the 1980s, or that petitioner's ancestors were distinct within it. Finally, the evidence of the petitioner's activities since the 1980s does not satisfy the regulations or change the conclusion that the evidence was insufficient between 1930 and the 1980s. Thus, the evidence in the record is insufficient to demonstrate that the petitioner constituted a distinct community.

The evidence in the record for the PF and the FD is insufficient to change the conclusions in the PF. Thus, the Department declines to acknowledge the petitioner known as the Tolowa Nation as an Indian tribe within the meaning of Federal law. The Department will provide a copy of this Federal Register Notice to the petitioner and interested parties, and is available to other parties upon written request or as posted on the BIA web site. Those parties wishing a paper copy of the FD should address their requests to the Assistant Secretary as instructed in the **ADDRESS** section of this notice. After the publication of this notice in the Federal Register, the petitioner or any interested party may file a request for reconsideration with the Interior Board of

Indian Appeals (IBIA) under the procedures in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the publication of this notice in the Federal Register. The FD will become effective, as provided in the regulations, 90 days after the Federal Register publication unless the IBIA receives a request for reconsideration within that time.

Dated: January 24, 2014.

Kevin K. Washburn,
Assistant Secretary – Indian Affairs.

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