

(7) Federal Register Notice of Final Determination

- June 25, 2004



listed as endangered or threatened. Under the Act, the following activities are defined as take: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, we may issue permits to authorize "incidental take" of listed species. Incidental take is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 13 and 50 CFR 17.

California Condor

The Tejon Ranchcorp is requesting a permit for incidental take of the California condor on lands included in the Tejon Ranch Condor HCP. The Tejon Ranch Condor HCP includes all lands within the boundaries of the Tejon Ranch that are owned by the Tejon Ranchcorp or its affiliates that lie outside the San Joaquin Valley floor area, and encompass approximately 340 square miles. For the purposes of the Tejon Ranch Condor HCP, the Ranch is divided into three major sections: the Antelope Valley Floor, the Tehachapi Mountain Uplands, and the Tunis and Winters Ridge Area. The Tunis and Winters Ridge Area is the area designated in the Tejon Ranch Condor HCP as the "Condor Study Area." The Tejon Ranch Condor HCP is designed principally to avoid the take of the California condor, but includes provisions to minimize and mitigate the impacts of any take that may occur.

Activities covered by the proposed Tejon Ranch Condor HCP (Covered Activities) include ranchwide activities, such as livestock grazing and range management, motion picture filming, construction and maintenance of all underground utilities including any oil, gas, water, or other pipelines and fiber optic cables; and recreational activities such as fishing, fishing-related construction, equestrian activities, bicycling events, boating, sailing, swimming, camping, hiking, four-wheel driving, bird watching, and other nature-based activities. Proposed Covered Activities that occur in the Antelope Valley Floor area include construction, maintenance, and operation of highway commercial facilities, general commercial facilities, heavy and light industrial facilities, antennae, high-tension power lines, resorts, indoor and outdoor entertainment and recreational facilities and parks, residential subdivisions, roads, and other infrastructure necessary to these activities. Proposed

Covered Activities in the Condor Study Area include ranchwide activities and limited construction activities. Covered Activities that could occur in the Tehachapi Mountain Uplands include the possible future development of a recreational complex uphill of the Old Headquarters area of the Ranch. Low-density, low-profile residential and destination resort development in the Tejon Lake-Beartrap Area of the Ranch would occur in this area as well.

The Tejon Ranch Condor HCP describes how the effects of the Ranch's activities on the California condor will be minimized and mitigated through the implementation of take avoidance, minimization, mitigation, and monitoring measures. Under the proposed HCP, development on the Ranch over the proposed 50-year permit term, will occur in areas that are rarely used by the California condors and the development will be designed to maintain the value of areas used by California condors.

Environmental Impact Statement

The Tejon Ranchcorp and the Service have selected LSA Associates, Inc. to prepare the EIS. The document will be prepared in compliance with the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*). The LSA Associates, Inc. will prepare the EIS under the supervision of the Service, who is responsible for the scope and content of the document.

The EIS will consider the proposed action, the issuance of a section 10(a)(1)(B) permit under the Act, and a reasonable range of alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS. Several alternatives will be considered and analyzed, representing varying levels of conservation, impacts, and permit area configurations. A No Action alternative will be included in the analysis of the alternatives considered. The No Action alternative means that the Service would not issue a section 10(a)(1)(B) permit.

The EIS will also identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, economics, and other environmental issues that could occur with the implementation of the proposed actions and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

Review of the EIS will be conducted in accordance with the requirements of

the NEPA Council on the Environmental Quality Regulations (40 CFR 1500–1508), the Administrative Procedures Act, other applicable regulations, and the Service's procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues raised by the public, related to the proposed action. Written comments from interested parties are welcome to ensure that the full range of issues related to the permit request is identified. While written comments are encouraged, we will accept both written and oral comments at the public meetings. In addition, you may submit written comments by mail, e-mail, or facsimile transmission (*see ADDRESSES*). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: June 18, 2004.

Paul Henson,

Acting Deputy Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 04-14314 Filed 6-24-04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgement of the Webster/Dudley Band Chaubunagungamaug Nipmuck Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(m), notice is given that the Principal Deputy Assistant Secretary—Indian Affairs declines to acknowledge a group known as the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, Petitioner 69B, c/o Mr. Edwin Morse, Sr., 265 West Main Street, P.O. Box 275, Dudley, Massachusetts 01501, as an Indian tribe within the meaning of Federal law. This notice is based on a final determination that the petitioning group does not satisfy all seven of the criteria set forth in Part 83 of Title 25 of the Code of Federal Regulations, specifically criteria 83.7(a), (b), and (c), and, therefore, the petitioner does not meet the requirements for a government-

to-government relationship with the United States.

DATES: This determination is final and will become effective on September 23, 2004, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

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

SUPPLEMENTARY INFORMATION: Under delegated authority, the Secretary of the Interior (Secretary) ordered, through the Assistant Secretary—Indian Affairs (AS-IA), the Principal Deputy Assistant—Secretary (PD AS-IA) “to execute all documents, including regulations and other *Federal Register* notices, and perform all other duties relating to Federal recognition of Native American tribes.” Pursuant to this order, the PDAS-IA makes the determination regarding the petitioner’s status, as defined in the acknowledgment regulations as one of the duties delegated by the Secretary to the AS-IA (209 Department Manual 8), and from the AS-IA to the PDAS-IA (Secretarial Order No. 3252).

The Nipmuc Tribal Council, Hassanamisco Reservation, in Grafton, Massachusetts, submitted a letter of intent to petition for Federal Acknowledgment on April 22, 1980, and was designated as petitioner 69. The “Nipmuck Indian Council of Chaubunagungamaug” [Chaubunagungamaug Band (CB)], which was created in 1981, was nominally included in petitioner 69 as a single organization. Under the leadership of Edwin W. Morse, Sr., the CB withdrew from petitioner 69, submitted a separate letter of intent to petition for Federal acknowledgment on May 31, 1996, and was designated petitioner 69B. The remaining group, now called the Nipmuc Nation, was designated as petitioner 69A. The formal name of petitioner 69B, as of December 10, 1996, is the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians.

A notice of a proposed finding (PF) to decline to acknowledge petitioner 69B was published in the *Federal Register* on October 1, 2001. The notice was based on a determination that petitioner 69B did not satisfy three of the seven mandatory criteria set forth in Part 83 of Title 25 of the Code of Federal Regulations (25 CFR 83.7). Specifically, for criterion 83.7(a), the available evidence did not show that petitioner 69B had been identified as an American Indian entity since 1900. For 83.7(b), the available evidence did not demonstrate that petitioner 69B had been a distinct

community from historical times to the present. For 83.7(c), the available evidence did not demonstrate that petitioner 69B had maintained political influence or authority over its members from historical times to the present. Therefore, petitioner 69B did not meet the requirements for a government-to-government relationship with the United States.

Petitioner 69B submitted comments in response to the PF on September 30, 2002. The State of Massachusetts and the State of Connecticut are interested parties to petitioners 69A and 69B. Connecticut submitted comments and exhibits on September 30, 2002. Massachusetts did not submit comments, but the Town of Sturbridge, Massachusetts, submitted comments pertaining to both petitions on October 10, 2001. Petitioner 69B responded to third party comments on December 2, 2002.

The PF found that from 1900 to 1978 there were occasional external identifications of individuals and single families as descendants of the Dudley/Webster Indians, but there were “no external identifications of petitioner 69B or any group antecedent to petitioner 69B as an American Indian entity” (66 FR 49971). The PF also found that in many instances the identifications of individuals as Dudley/Webster descendants were of individuals who did not have descendants in 69B; therefore, the identifications did not pertain to the petitioner. There were external identifications of petitioner 69B, which was an organization that the PF concluded consisted essentially only of one extended family, as an American Indian entity only from 1981 to the present.

For the FD, 69B submitted a considerable amount of documentation, the majority of which was retrospective, dealing with Dudley/Webster Indians who lived during the 19th century, rather than identifications of a Dudley/Webster entity that continued to exist from 1900 to the present as required by the regulations. Petitioner 69B submitted a number of 20th century “last of the Nipmuck” articles, many of which identified an individual as having Nipmuc ancestry, often specifying Dudley/Webster Nipmuc ancestry, but none of them identified any continuing Nipmuc entity, group, settlement, or community to which the individual was a part. Many of the items cited in the petitioner’s response to third party comments dated before 1891 and since 1978. Criterion 83.7(a) requires external identification only since 1900. The PF found that 69B met

criterion 83.7(a) only from 1981 to the present.

The petitioner also argued that “racial discrimination” was a form of identification of a Dudley/Webster Nipmuc “entity,” citing the testimony of individuals in the petitioner’s membership as evidence that “Dudley/Webster Nipmucks themselves clearly identify racism leveled against them as a substantial force in their lives. Their accounts span the entire twentieth century.” However, the testimony, which comes almost entirely from within the petitioner’s membership, is a form of self-identification and relevant to criterion 83.7(b), rather than to 83.7(a). Petitioner 69B has not presented any contemporary primary documents showing external identifications of an entity composed of their ancestors between 1900 and 1980, whether racially-based or not.

This FD reexamined the evidence for two events that might have provided external identifications of an existing Dudley/Webster entity: the formation of the Algonquian Indian Council of New England, a pan-Indian organization, in 1923 and the formation of a Worcester County chapter of the National Algonquin Indian Council (NAIC), another New England pan-Indian group, in 1950. However, neither event provided identification of a Dudley/Webster entity comprising the antecedents of the petitioner 69B. All but one of the Dudley/Webster descendants mentioned in connection with these organizations were from families now associated with the Nipmuc Nation, petitioner 69A. The articles describing the 1950 NAIC organization also did not refer to an existing Dudley/Webster entity.

Petitioner 69B asserted that Zara Ciscoe Brough, head of the Hassanamisco group recruited Edith (Morse) Hopewell, sister of Edwin W. Morse Sr., “to compile a list of Indian families who lived in the area,” and because she was able to find descendants of the Dudley/Webster Indian families, it was “an indicator of community continuity and of her knowledge of its parameters.” The *Indian Census Notebook*, compiled in 1976 by Mrs. Hopewell, is a listing of persons claiming Indian descent from Nipmuc tribes and other Indian tribes who resided in central Worcester County, Massachusetts, in the mid-1970’s; however, it did not identify the antecedents of petitioner 69B as a separate group, other than listing the descendants of Elizabeth (Henries) Morse, the compiler’s mother, together.

The additional evidence submitted for the FD, like that previously reviewed in

the PF, does not provide substantially continuous external identification of an American Indian entity antecedent to petitioner 69B from 1900 to the present. Specifically there is no evidence of a continuing Dudley/Webster entity after 1891 that was antecedent to the Chaubunagungamaug Band (now petitioner 69B) that organized in 1981. The conclusion of the PF stands. Petitioner 69B does not meet the requirements of criterion 83.7(a).

In regard to criterion 83.7(b), the PF found that the historical Dudley/Webster Indian tribe met criterion 83.7(b) from first sustained European contact through 1870, primarily because of the residence of more than 50 percent of the membership on a state-supervised reservation. For the period 1870 through 1891, the evidence for community among Dudley/Webster descendants as a whole was minimal, but the group was found to have met criterion 83.7(b). The PF found that the evidence from 1891 through the 1970's did not demonstrate community between the extended Morse family and other Dudley Nipmuc Indian families, including other sub-lines of the Sprague/Henries family of which the Morse line is one sub-line.

Petitioner 69B, currently known as the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians (CB), was created in 1981. It initially consisted essentially of only part of one family line of the Dudley/Webster descendants, the Sprague/Henries/Morse family. The Morse family still comprises more than 42 percent of the membership. Beginning in the mid-1980's, a portion of another Dudley/Webster line was added, as well as a portion of a third family line. About 18 percent of the present membership does not have documented Dudley/Webster ancestry.

Although the CB petitioner was nominally included in a single organization of Nipmucs (petitioner 69), until it withdrew from the Nipmuc Nation (now petitioner 69A) in 1996, in practice the CB, or petitioner 69B, functioned as a separate organization from its inception in 1981. Consequently, for purposes of this evaluation the CB, petitioner 69B, is treated as a separate entity from 69A.

This FD concludes that petitioner 69B did not constitute a community either before or since 1980. Evidence did not support the petitioner's view that the group was simply a formalization of an existing community made up of three "traditional family lines." Although the present membership is largely drawn from three genealogically definable "family lines," there is no evidence to demonstrate that these families formed

a single community before 1980, or evidence that they form a community now. Interview evidence indicates that members of the two lines added in the 1980's did not know the Morse family, who had created the CB organization, before they joined it.

The organization's primary events, which have been held annually since 1980, were "Indian-style" gatherings that were largely attended by non-CB individuals. Non-CB individuals, with the status of "associate members," also played a substantial role in the CB organization's activities before 1993, and two non-Nipmuc individuals played important leadership roles, including the organization of "community events," before 1987. The importance of these two individuals and the associate members provides evidence against the existence of a community that limits itself to individuals of long-standing association or close social ties with each other. The organization's formal membership requirements do not require any demonstration of social relationships in a community, but are open to anyone who descends from one of the Dudley/Webster Indians identified on the 1861 *Earle Report* or the 1891 Dudley/Webster distribution list of assets from the sale of the Dudley/Webster reservation land. Thus, the character of the enrollment processes does not provide positive evidence of the existence of a community. Petitioner 69B does not meet the requirements of criterion 83.7(b).

The evidence in the record for the FD does not show any political influence or authority for a group antecedent to petitioner 69B from 1891 through 1980. The data presented by the petitioner for the period from 1891 through 1980 pertained either to intra-family activities or to pan-Indian activities. There is no evidence that the petitioner's ancestors were "a group" at any level beyond that of the individual extended families which was "able to mobilize significant numbers of members and significant resources from its members for group purposes" (83.7(c)(1)(i)). There is no indication in the data that throughout that period, "most of the membership consider[ed] issues acted upon or actions taken by group leaders or governing bodies to be of importance (83.7(c)(1)(ii)). There is no evidence that there was "widespread knowledge, communication and involvement in political processes by most of the group's members" (83.7(c)(1)(iii)). There were no "conflicts showing controversy over valued goals, properties, policies, and/or decisions" (83.7(c)(1)(v)).

For the entire period from 1891 through 1980, there is no contemporary, primary evidence in the record that shows political authority or influence among the ancestors of petitioner 69B's members as a distinct community. Some of the evidence the petitioner cites has been taken entirely from certain oral histories (interviews), which were gathered at dates much later than the activities were claimed to have occurred. Some interviews contain statements that are in conflict with other evidence in the record. There is no evidence that the speaker was either a member of the claimed community or a direct observer of the group, at the time the events would have occurred. The petitioner did not provide corroboration of these interview statements by primary, documentary evidence.

The available evidence indicates that there was not a community within which political influence or authority, leadership, or a bilateral relationship between leaders and followers existed before 1980. The petitioner itself concludes that before 1980 there were only individual leaders of the separate family lines, and does not claim that there were any overall leaders. Oral history interviews of persons who are now political leaders of 69B and whose direct ancestors would have constituted its antecedents contain specific statements that there was not, prior to 1980, any group antecedent to petitioner 69B, contrary to the claims asserted by the petitioner. The creation of the organization in 1981 was not the formalization of a preexisting system of informal, family leadership as petitioner 69B asserts.

The primary focus of the petitioner 69B's argument for political influence from 1981 to the present is the organization's conflicts with petitioner 69A over membership requirements and definitions that occurred before the two organizations separated. Several times officers of the CB attacked the other part of the combined petitioner 69, now petitioner 69A, as having too broad a membership definition and including as members individuals without demonstrable Nipmuc ancestry of any kind. There was little evidence, however, that these attacks were anything other than the opinions of these officers, as opposed to being issues of political importance to the CB membership in general.

There was little evidence to demonstrate, even in the past several years, that the petitioner's claimed process of political "appointment" by the claimed three "traditional families" has occurred, nor is there evidence that these named "traditional families" are

vehicles for substantial political communication. There is little evidence that the members who are in each of the three genealogically defined family lines comprise actual social or political units. No elections by the membership have ever been held to fill political offices. The councils have been essentially self-appointed.

There was some limited evidence of internal conflicts within the CB organization that were more than simply conflicts between individuals. These conflicts tended to focus on the control of the group by Edwin Morse, Sr., and his immediate family. There was not enough evidence in the record to demonstrate substantial membership interest in the conflicts, or in the associated issues, to demonstrate knowledge and involvement of the group as a whole in political processes.

Petitioner 69B has not demonstrated that there was a Dudley/Webster Indian group or community that continued to exist after 1891, within which political influence or authority was exercised, that was antecedent to the CB that formed in 1981. Petitioner 69B has not demonstrated that it has exercised political influence or authority over its membership since it formed in 1981. Therefore, petitioner 69B does not meet the requirements of criterion 83.7(c).

The PF found that 69B had a constitution dated August 8, 1996, but questioned whether it had been "validly adopted" and asked that the petitioner submit a copy of the "complete current governing document so designated and formally certified by the full governing body." For the FD the petitioner submitted a new constitution dated November 9, 2001, which was certified by 69B's council resolution on September 20, 2002.

Article I of the 2001 constitution states that individuals who provide "adequate documentary evidence of direct lineal descent from a person identified as Chaubunagungamaug Nipmuck Indian" on either the 1861 *Earle Report* or the 1890 Dudley/Webster disbursement list, "excluding any amendments or supplements thereto" were eligible for membership. Article II of the 2001 constitution deals with governance. It describes two governing bodies: a "Tribal Sachem/Elders Council" to "provide continuity of the heritage, language and spiritual roots" and a "Tribal council" to administer the group's business affairs.

Petitioner 69B has provided a copy of its most recent governing document that describes the group's membership criteria and governing procedures; therefore, petitioner 69B meets criterion 83.7(d).

The PF found that petitioner 69B met criterion 83.7(e); it provided a copy of its membership list, dated 1997 with 212 names on it, and it provided evidence that about 87 percent (185 of 212) of the members descended from at least one individual who had been identified as a Dudley/Webster Indian in the 1861 *Earle Report*. For the FD, petitioner 69B submitted a new membership list dated September 2002 with 357 people on it. There are 212 individuals on the 2002 list who were on the 1997 membership list and for the most part the new members are the children, grandchildren, siblings, nieces or nephews, or cousins of individuals on the previous list. Eighty-two percent of the people on the 2002 membership list descend from at least one ancestor who was identified as a Dudley Indian on the 1861 *Earle Report*. About 79 percent of the members have descent from the Sprague/Henries and Sprague/Nichols families identified in the PF, including over 42 percent who descend from the Sprague/Henries/Morse family. Two other family lines identified on the 1861 *Earle Report* are each represented with 4 descendants in petitioner 69B's membership (1 percent each). The petitioner has not submitted any new evidence to demonstrate Dudley/Webster ancestry for the descendants of Martha (Dorus) Hewitt, who are members of 69B (17 percent, 62 of 357). Neither she, nor her parents, nor her children were listed on the 1861 *Earle Report* or the 1891 Dudley/Webster distribution list, although there is a reasonable likelihood that she was of Indian descent and a collateral relative of a Dudley/Webster family. Petitioner 69B has not documented the ancestry of four other individuals (1 percent) on the 2002 membership list; therefore, 18 percent of the petitioner's members do not have documented descent from the historical Dudley/Webster tribe. However, 82 percent of the members have documented descent from the historical tribe that was identified in 1861, which is within precedents for meeting the criterion. Therefore, petitioner 69B meets criterion 83.7(e).

Petitioner 69B does not have any members who are known to be enrolled with any acknowledged North American Indian tribe; therefore, petitioner 69B meets criterion 83.7(f). Neither petitioner 69B nor its members are the subjects of congressional legislation that terminated or forbade the Federal relationship; therefore, the petitioner 69B meets the requirements of criterion 83.7(g).

Under Section 83.10(m), the PDAS-IA is required to decline to acknowledge that a petitioner is an Indian tribe if the

petitioner fails to satisfy any one of the seven mandatory criteria for Federal acknowledgment. The evidence in the record, including new evidence submitted by petitioner 69B, does not demonstrate that it meets criteria 83.7(a), (b), and (c), and, therefore, does not satisfy the requirements to be acknowledged as an Indian tribe in order to establish a government-to-government relationship with the United States.

This determination is final and will become effective September 23, 2004, unless a request for reconsideration is filed pursuant to section 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (section 83.11(a)(1)). These requests must be received no later than 90 days after publication of the PDAS-IA's determination in the *Federal Register* (section 83.11(a)(2)).

Dated: June 18, 2004.

Aurene M. Martin,
Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04-14393 Filed 6-24-04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Nipmuc Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(m), notice is given that the Principal Deputy Assistant Secretary—Indian Affairs declines to acknowledge a group known as The Nipmuc Nation, petitioner 69A, c/o Mr. Walter Vickers, 156 Worcester-Providence Road, Suite 32, Sutton Place Mall, Sutton, Massachusetts 01590, as an Indian tribe within the meaning of Federal law. This notice is based on a final determination that the petitioner does not satisfy all seven of the criteria set forth in part 83 of title 25 of the Code of Federal Regulations (25 CFR part 83), specifically criteria 83.7(a), (b), (c), and (e), and, therefore, does not meet the requirements for a government-to-government relationship with the United States.

DATES: Unless a request for reconsideration is filed pursuant to 25 CFR 83.11, this determination is final and will become effective on September 23, 2004, pursuant to 25 CFR 83.10(l)(4).