

**(11) Federal Register Notice of Reconsidered Final  
Determination**

**- July 12, 2002**

**FOR FURTHER INFORMATION CONTACT:** Teresa McPherson, (907) 271-3322 or e-mail [Teresa\\_McPherson@ak.blm.gov](mailto:Teresa_McPherson@ak.blm.gov).

**SUPPLEMENTARY INFORMATION:** The council provides advice and recommendations on resource and land management issues for 86 million acres of public lands administered by the BLM in Alaska. The council includes representatives from energy, tourism, and commercial recreation interests; conservation organizations; and elected officials, Alaska Native organizations, and the public at large.

**Authority:** The Alaska Resource Advisory Council meets in accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972.

Dated: May 29, 2002.

**George P. Oviatt,**

*Acting State Director.*

[FR Doc. 02-17638 Filed 7-11-02; 9:31 am]

BILLING CODE 4310-JA-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Reconsidered Final Determination To Decline To Acknowledge the Chinook Indian Tribe/Chinook Nation

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of reconsidered final determination.

**SUMMARY:** This notice is published in the exercise of authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8. Pursuant to 25 CFR 83.10(m) and 25 CFR 83.11(h)(3), notice is hereby given that the Assistant Secretary declines to acknowledge the Chinook Indian Tribe/Chinook Nation, c/o Mr. Gary Johnson, P.O. Box 228, Chinook, Washington 98614, as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group does not meet all seven criteria set forth in 25 CFR 83.7 in the 1978 regulations, or in 25 CFR 83.7 as modified by 25 CFR 83.8 in the 1994 regulations.

**DATES:** Pursuant to 25 CFR 83.11(h)(3), this reconsidered determination is final and effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208-3592.

**SUPPLEMENTARY INFORMATION:** The Department published a proposed finding to decline to acknowledge the Chinook Indian Tribe, Inc., in the

*Federal Register* on August 22, 1997 (62 FR 44714). The Department published a final determination to acknowledge the Chinook Indian Tribe/Chinook Nation in the *Federal Register* on January 9, 2001 (66 FR 1690). The Quinault Indian Nation requested reconsideration of the final determination before the Interior Board of Indian Appeals (IBIA). On August 1, 2001, the IBIA affirmed the final determination with respect to matters within its jurisdiction (36 IBIA 245). However, the IBIA referred to the Secretary nine additional issues that it found to be outside of its jurisdiction. The Secretary then referred eight of those issues to the Assistant Secretary for reconsideration of the final determination. Those issues require a reconsideration of only criteria (a), (b), and (c). This decision addresses the eight issues referred and reconsiders the final determination to the extent impacted by the resolution of those issues. This reconsidered final determination is based on a reconsideration of all the evidence before the Department relevant to those criteria in accordance with the analysis of the eight referred issues.

The Chinook petitioner's members descend from the Lower Band of Chinook and also from the Wahkiakum, Kathlamet, and Willapa bands of Chinook, and the Clatsop tribe, also a Chinookan-speaking group, that lived historically along the lower Columbia River. The population of the Chinook bands was severely reduced by a series of epidemics in the 1780's, the 1830's, and the late 1850's. The United States negotiated treaties with these separate Chinook bands in 1851, but the Senate did not ratify them. Chinook representatives refused to sign a treaty negotiated in 1855. The Government created the Shoalwater Bay Reservation by executive order in 1866 for the "Indians on Shoalwater Bay," who were intermixed Chinook and Chehalis Indians. The Government enlarged the Quinault Reservation by executive order in 1873 for the "fish-eating Indians on the Pacific coast," a definition that has been interpreted as including the Chinook. By 1900, some Chinook descendants were listed on the censuses of these and other reservations. Other Chinook descendants lived off reservations among the non-Indian population and tended to cluster geographically in three separate settlements: at Bay Center on Shoalwater Bay, at Ilwaco at the mouth of the Columbia, and upriver along the shore of the Columbia around Dahlia. After the mid-1850's, the evidence of Chinook band or tribal organization

becomes scarce. Chinook descendants participated in claims activities, seeking compensation for the loss of Chinook aboriginal territory, in the first decade of the 20th century, the decade after 1925, and the 1950's. These judicial proceedings also resulted, however, in a conclusion by the Court of Claims in 1906 that the Lower Band of Chinook had "long ceased to exist" as a band and a conclusion by a Federal district court in 1928 that the Chinook had lost their tribal organization. From the mid-1850's until 1951, when Chinook descendants organized to pursue historical Chinook claims, there is scant evidence to suggest that any Chinook community or organization existed as a distinct entity or that informal leaders had political influence over ancestors of the petitioner.

On the eight issues referred by the Secretary, this reconsidered final determination concludes that the previous Assistant Secretary had the authority to review the Chinook petition under the 1994 revised acknowledgment regulations, and that a reconsidered final determination should be made under both the 1978 and 1994 regulations to resolve the questions raised in this case about whether the result would be different under the revised 1994 regulations than under the original 1978 regulations. It also concludes that the previous Assistant Secretary had authority to retain an outside consultant to assist him in his consideration of the Chinook petition.

The final determination explicitly relied upon 1911, 1912, and 1925 statutes in deciding that the petitioner met criteria (a), (b) and (c). This reconsidered final determination concludes that those three statutes are not evidence that the Federal Government understood or identified the Chinook as still existing at the time the statutes were enacted. The 1925 claims statute, used in the final determination as evidence of previous Federal acknowledgment of the petitioner, was not "clearly premised" on the existence in 1925 of a Chinook political entity with a government-to-government relationship with the United States, which is the standard under the acknowledgment regulations for finding unambiguous previous Federal acknowledgment. This conclusion regarding these statutes is important for the reconsidered final determination because the final determination expressly found that "[w]ere it not for the acts of Congress in 1911, 1912, and most importantly, 1925, it would not have been possible to make a positive determination on the evidence presented."

This reconsidered final determination also concludes that the final determination improperly relied on the petitioner's members or ancestors living in Bay Center, combined with the petitioner's claims and acknowledgment activities, to find that the petitioner as a whole met the requirement of community, criterion (b). With respect to Chinook claims organizations and their activities between 1920 and 1970, this reconsidered final determination concludes that the final determination incorrectly relied on them as sufficient evidence for satisfying criteria (b) and (c) under both the 1978 or 1994 regulations. This reconsidered final determination also clarifies and restates the Department's position that there is no presumption of continuous existence and that the evidentiary benefits afforded to previously acknowledged petitioners are already incorporated in the regulations. The evidence under criteria (a), (b), and (c) is evaluated below in the context of these conclusions on these referred issues.

The 1994 regulations require an evaluation of whether the petitioner was a previously acknowledged tribe within the meaning of the regulations. Because the United States engaged in treaty negotiations with a Chinook tribal entity in 1851 and 1855, it has been determined that the petitioner meets the definition of unambiguous Federal acknowledgment in section 83.1 and is eligible to be evaluated under modified requirements provided in section 83.8 of the 1994 regulations, with 1855 as the date of last Federal acknowledgment. Conclusions concerning previous acknowledgment are solely for the purposes of a determination of previous acknowledgment under 25 CFR part 83, and are not intended to reflect conclusions concerning successorship in interest to a particular treaty or other rights.

Criterion 83.7(a) requires a demonstration of external identification of the petitioner as an Indian entity, from first sustained contact with non-Indians under the 1978 regulations or from the date of last Federal acknowledgment under sections 83.8(d)(1) or 83.8(d)(5) of the 1994 regulations. The proposed finding concluded that the petitioner did not meet criterion 83.7(a) under the 1978 regulations. The final determination concluded that the petitioner met the criterion under both the 1978 and 1994 regulations. Given the conclusions of the proposed finding that a historical Chinook tribe had been identified until 1873 and that several Chinook organizations had been identified since 1951, the petitioner needed to

demonstrate that it was identified as an Indian entity by external observers on a substantially continuous basis between 1873 and 1951.

The petitioner did not provide new evidence of identifications of a Chinook Indian entity between 1873 and 1924. The petitioner provided examples to show that some of its ancestors were identified in 1925 and 1927, and again in 1951 and the following years, as a group or groups bringing claims on behalf of a historical Chinook tribe against the United States, but that evidence does not show that a Chinook entity was identified on a substantially continuous basis between 1927 and 1951. A few identifications during a three-year period of the three-quarters of a century between 1873 and 1951 does not constitute "substantially continuous" identification. The evidence is insufficient to show that the petitioner meets the requirements of this criterion between 1873 and 1951. Because the evidence in the record does not show that the petitioning group has been identified as an Indian entity "from historical times until the present," or from last acknowledgment in 1855 until the present, on a "substantially continuous" basis, this reconsidered final determination concludes that the petitioner does not meet the requirements of criterion 83.7(a) either under the 1978 regulations or as modified by sections 83.8(d)(1) or 83.8(d)(5) under the 1994 regulations.

Criterion 83.7(b) in the 1978 regulations requires the petitioner to demonstrate that "a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area." The 1994 regulations similarly require that a "predominant portion of the petitioning group comprises a distinct community." As modified by section 83.8(d)(2), a petitioner that has been previously acknowledged is required only to meet this criterion "at present." "Community" is defined in the 1994 regulations, section 83.1, as "any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers." The proposed finding concluded that the petitioner did not meet criterion 83.7(b) under the 1978 regulations. The final determination concluded that the petitioner met the criterion under both the 1978 and 1994 regulations.

The final determination found that evidence submitted by the petitioner in response to the proposed finding was

sufficient to show continuous significant social interaction between the Indians living in Bay Center and the Chinook descendants concentrated in Dahlia or Ilwaco between 1880 and 1950. The social interaction in the 1930's and 1940's appears to be based on relations that were established during earlier periods and to rest primarily in the older generation. As people who had been closely connected as children and young adults died, the succeeding generations interacted less often and intensely until the community of Chinook descendants became indistinguishable from the rest of the population. For the post-1950 time period, there is insufficient evidence regarding actual social interaction among a predominant portion of the petitioner's membership. Because the petitioner has not demonstrated that "a substantial portion of the petitioning group" has formed a community "distinct from other populations in the area" since 1950, nor that a "predominant portion of the petitioning group comprises a distinct community" at present, this reconsidered final determination concludes that the petitioner does not meet the requirements of criterion 83.7(b) either under the 1978 regulations or as modified by section 83.8(d)(2) under the 1994 regulations.

Criterion 83.7(c), in both the 1978 and 1994 regulations, requires the petitioner to demonstrate that it has maintained "political influence" or authority over its members as an autonomous entity throughout history. The definition of "political influence or authority" in section 83.1 of the 1994 regulations is "a tribal council, leadership, internal process or other mechanism" which the group has used to influence or control the behavior of its members in significant respects, or make decisions for the group which substantially affect its members, or represent the group in dealing with outsiders in matters of consequence. As modified by 83.8(d)(3), a petitioner that has been previously acknowledged is required to demonstrate that it meets the requirements of the criterion "at present" and, for the period between last Federal acknowledgment and the present, the petitioner must demonstrate that "authoritative, knowledgeable external sources" identified leaders or a governing body who exercised political influence or authority over the petitioning group, and also demonstrate one form of evidence listed in section 83.7(c). This reconsidered final determination concludes that the petitioner did not provide such

evidence. In this situation, the regulations provide, in section 83.8(d)(5), that the petitioner alternatively may demonstrate that it meets the requirements of criterion 83.7(c) from "last Federal acknowledgment until the present." The proposed finding concluded that the petitioner did not meet criterion 83.7(c) under the 1978 regulations. The final determination concluded that the petitioner met the criterion under both the 1978 and 1994 regulations.

The record for this case lacks examples of an internal political process, either formal or informal, among the petitioner's ancestors, or of formal or informal political leadership or influence over the petitioner's ancestors as a group between 1855 and 1925. There is evidence of some leadership by George Charley during the late 1920's on behalf of a federally recognized tribe and a portion of the petitioner's ancestors at Bay Center, but not on behalf of the petitioner's ancestors along the Columbia River. 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. There is evidence for the years between 1951 and 1970 that two organizations were active to pursue a claims case, but insufficient evidence that either organization had an internal decision-making process that embodied a bilateral political relationship between leaders and members which existed broadly among the membership. During the most recent decades the petitioner has had a formal political organization. The proposed finding concluded that there was "very little information available about the internal political processes of the petitioner from 1970 to the present," and a lack of evidence that the organization was broadly based. The petitioner's new evidence does not change this conclusion. Because the available evidence does not include identifications of leaders or a governing body by "authoritative, knowledgeable external sources," this reconsidered final determination concludes that the petitioner does not meet criterion 83.7(c) as modified by section 83.8(d)(3) under the 1994 regulations. Because the available evidence does not demonstrate that the petitioning group has exercised political influence over its members from historical times until the present, or from last acknowledgment in 1855 until the present, this reconsidered final

determination concludes that the petitioner does not meet the requirements of criterion 83.7(c) either under the 1978 regulations or as modified by section 83.8(d)(5) under the 1994 regulations.

The available evidence demonstrates that the petitioner does not meet all seven criteria required for Federal acknowledgment. Specifically, the petitioner does not meet criteria 83.7 (a), (b), or (c) under the 1978 regulations, nor those three criteria under the 1994 regulations as modified by sections 83.8(d)(1), (d)(2), (d)(3), or (d)(5). The petitioner was found to meet criteria 83.7 (d), (e), (f), and (g) in the original final determination. Those criteria were not at issue in the referral by the Secretary. In accordance with the regulations set forth in 25 CFR 83.7 [1978] and 25 CFR 83.10(m) [1994], failure to meet any one of the seven criteria requires a determination that the group does not exist as an Indian tribe within the meaning of Federal law.

The final determination on whether or not the Chinook petitioner meets criteria (a), (b), and (c) is superceded by this reconsidered final determination. The Federal Register notice of the final determination published on Jan. 9, 2001 (66 FR 1690), is superceded by this notice. This reconsidered determination is final and effective upon publication.

Dated: July 5, 2002.

Neal A. McCaleb,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02-17551 Filed 7-10-02; 9:48 am]

BILLING CODE 4310-4J-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-020-02-1990-EX]

#### Notice of Intent To Prepare a Supplemental Environmental Impact Statement To Analyze the Proposed Millennium Project Plan of Operations for Glamis Marigold Mining Company and Notice of Public Scoping and Public Meetings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent to Prepare a Supplemental Environmental Impact Statement to analyze the Proposed Millennium Project Plan of Operations for Glamis Marigold Mining Company (GMMC) and notice of public scoping and public meetings.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal

Regulations 1500-1508 Council on Environmental Quality Regulations, and 43 Code of Federal Regulations 3809, the Bureau of Land Management (BLM), Winnemucca Field Office will be directing the preparation of a third-party Supplemental Environmental Impact Statement (SEIS) to analyze a proposed new mine expansion called the Millennium project. The project would disturb approximately 1,394 acres of public and private lands and is located in Humboldt County, Nevada.

**DATES:** This notice initiates the public scoping process. Comments can be submitted in writing to the BLM, Winnemucca Field Office at the address listed below. All public meetings will be announced through the local news media and newsletters at least 15 days prior to the meetings.

**Public Participation:** The purpose of these public meetings is to identify potentially significant issues to be addressed in the SEIS, to determine the scope of issues to be addressed, to identify viable alternatives, and to encourage public participation in the NEPA process. Additional briefings will be considered, as appropriate. Comments, including names and street addresses of respondents, will be available for public review at the Winnemucca Field Office located in Winnemucca, Nevada, during regular business hours, and may be published as part of the SEIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

**ADDRESSES:** Written comments should be addressed to the Bureau of Land Management, Winnemucca Office, Attention: Jeff Johnson, 5100 E. Winnemucca Blvd., Winnemucca, Nevada 89445.

**FOR FURTHER INFORMATION CONTACT:** Jeff Johnson, BLM Winnemucca at (775) 623-1500 or FAX # (775) 623-1503.

**SUPPLEMENTARY INFORMATION:** Since 1988 the Marigold Mine located approximately three miles south of Valmy, Nevada has been in commercial operation. The Marigold mine presently has mineral/development interests on approximately 19,000 acres of private