

(6) Final Determination Documents

- February 14, 2000

Summary Under the Criteria and Evidence for
Final Determination for Federal Acknowledgment

of the

Cowlitz Indian Tribe

Prepared in response to a petition submitted to the Assistant
Secretary - Indian Affairs for Federal acknowledgment that this
group exists as an Indian Tribe.

Approved: FEB 14 2000
(date)

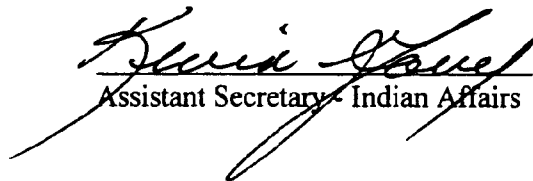

Assistant Secretary - Indian Affairs

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INTRODUCTION

Administrative History

Administrative History of the Proposed Finding. The Bureau of Indian Affairs (BIA or Bureau) received a request for Federal Acknowledgment from the Cowlitz Indian Tribe (CIT) on September 17, 1975 (CIT Pet. 1975). The Bureau did not act upon the petition then because consideration was being given to the establishment of the Federal Acknowledgment Project, designed to deal with acknowledgment issues under a uniform set of regulations rather than on a case-by-case basis.

The proposed finding for this case in favor of acknowledgment was published February 27, 1997. The administrative history of the petition to that date was presented in the Summary under the Criteria for the proposed finding (CIT PF, Summ. Crit.) and is summarized briefly in the technical report for the final determination.

Administrative History Since the Proposed Finding. The 180-day comment period provided under the regulations ended August 26, 1997, but was extended to November 19, 1997, at the request of the Quinault Indian Nation (Quinault). The administrative history of this case has been made complex first by an administrative appeal, and then by litigation, concerning a Freedom of Information Act (FOIA) request for the petitioner's file and records made by Quinault, a third party in the administrative proceeding.

Petitioner's Response to Proposed Finding. On August 8, 1997, CIT advised the BIA that it would not submit a response to the proposed finding (Barnett to Reckord 8/8/1997), and did not submit one.

Request for Extension of Comment Period. The FOIA administrative appeal and litigation have proceeded at the same time as the administrative acknowledgment process. The processing of the petition became linked to the FOIA request when, during mediation of the FOIA litigation, the Government agreed to reopen the third party comment period and the petitioner's response period. Quinault had already submitted substantial comments during the original comment period. As a result of a Stipulated Order entered on the docket in this litigation, the public comment period was reopened for 75 days to allow Quinault time to submit additional comments, which they did. During this period, a formal meeting on the record was held as requested by Quinault. At this meeting, Quinault, petitioner and other interested parties were afforded the opportunity to inquire into the reasoning, analyses and factual bases for the proposed finding. The BIA received additional comments from Quinault on December 12, 1998, and the CIT submitted its reply to them on February 9, 1999, three days before the response period was scheduled to close February 12, 1999.

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Third Party Comments. Quinault Nation submitted documents with a cover letter from Richard Reich, Attorney for Quinault Indian Nation (Reich to Gover 11/17/1997).

Petitioner's Response to First Set of Quinault Comments. The petitioner submitted a response to Quinault's 1997 comments on January 12, 1998 (CIT Response 1998).

Quinault Comments, December 14, 1998. The cover letter to the second group of Quinault comments stated that, "[t]his memorandum revises and supplements the memorandum in opposition dated November 16, 1997 . . ." (Reich to Gover, 12/12/1998).

Petitioner's Second Response to Third Party Comments. The BIA received the petitioner's response to Quinault's second set of comments (CIT Final Submission 1999) on February 9, 1999.

Preparation of Final Determination. Under stipulation in the litigation, the BIA was required to assign a team to work on preparation of the technical report to the final determination by February 19, 1999 (one week after expiration of the petitioner's regulatory 60-day response period for response to third-party comments). This was done. The final determination, according to the 60 days allowed under the 25 CFR Part 83 regulations, would have been due on April 20, 1999. The BIA asked the AS-IA for a 120-day extension of time to prepare the technical report for the final determination (Maddox to Gover 2/19/1999). The AS-IA extended the period until August 18, 1999 (Gover [approval handwritten on request memorandum] 2/24/1999). The BIA notified CIT and Quinault of the extension on March 19, 1999 (Maddox to Barnett 3/19/1999).

BIA researchers were taken away from evaluating this petition in order to work on other litigation. The BIA also requested items from the Cowlitz that they needed to complete and submit in order to finish a roll that could be used for organizational purposes should the Final Determination be positive. As a result, the final deadline was extended to November 17, 1999 (Tuell to Barnett, 98/13/99) and then further extended to "the end of the month [November]" in order to complete the surnaming process (Tuell to Barnett 11.19/99). Because certain offices in the surnaming process had no personnel available to review the final determination, the deadline was extended to January, 2000. (Tuell to Barnett, 11/30/99).

Prior Federal Acknowledgment under 25 CFR 83.8

Overview of the Proposed Finding. The AS-IA determined in the Proposed Finding that the petitioner had previous unambiguous Federal acknowledgment through 1855. This date of previous Federal acknowledgment was based on the presence of Cowlitz at the Chehalis River treaty negotiations. The proposed finding determined that: 1.) the Cowlitz present at the negotiations, specifically the Lower Cowlitz band, had refused to sign the proposed treaty, but the Federal government's willingness to negotiate with them constituted previous acknowledgment; 2.) the Cowlitz métis, or "half-bloods" were part of the Lower Cowlitz at the time of the negotiations; and 3.) the Lower Cowlitz and another band, the Upper Cowlitz, amalgamated later in the century. This

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determination enabled the petitioner to proceed under criteria 83.7(a)-(g) as modified by the provisions of 83.8 for previously acknowledged tribes.

The proposed finding did not determine that Federal acknowledgment actually ceased in 1855. The 1855 date was used solely for preparation of that finding (CIT PF 1997, Summ. Crit. 3). The BIA at that point in the process believed that it was unnecessary to determine a post-1855 date of previous recognition because the Cowlitz had received the advantage of a reduced burden of evidence allowed previously acknowledged tribes based on the date of the treaty negotiations.

Review for the Final Determination. Quinault challenged the BIA's determination of previous unambiguous Federal acknowledgment for the Cowlitz petitioner on two points. First, they specifically questioned whether Cowlitz métis, or "half-bloods" were present at the 1855 treaty negotiations, and whether they were included in the 1855 treaty negotiations. These Cowlitz "half-bloods" have been viewed as distinct by many who wrote about them because they had French Canadian background and spoke French. Second, Quinault pointed out that the Upper Cowlitz, a band which the government administratively joined with the Lower Cowlitz two decades after the treaty negotiations and which amalgamated with them, had not been present at the treaty negotiations and had not been part of the Cowlitz entity involved in the negotiations. Quinault argued that the entire Cowlitz petitioner, which includes Cowlitz métis and Upper Cowlitz descendants, could not proceed under the regulatory provisions for previously acknowledged tribes based on the 1855 treaty negotiations because the Cowlitz métis and the Upper Cowlitz had not been present. In short, they were arguing on two fronts that only part of the present-day petitioner had been previously acknowledged, and therefore the petitioner was ineligible to proceed under 83.8.

The documentation submitted by Quinault contained some new material dealing with OIA contacts with the Lower Cowlitz and Upper Cowlitz bands between 1856 and 1880. Their submissions also included documents already in the record at the time of the proposed finding. These materials and others in the record had not been analyzed during the proposed finding to determine whether there was a date after 1855 when the amalgamated petitioner had been acknowledged or any date when the Upper Cowlitz had been acknowledged.

Quinault uses their submissions to argue that the métis were not involved in the treaty negotiations in 1855. It is accurate that there is no documentation that any métis members of the Lower Cowlitz tribe were present at the Chehalis River Treaty Council. However, there is also no documentation that the Lower Cowlitz group present at the Chehalis River Treaty Council in 1855 did not include métis. Thus, the evidence is silent concerning the presence of Cowlitz métis at the Treaty Council.

Quinault has not placed their argument in context. It is unrealistic to expect that the métis would have been part of the Lower Cowlitz leadership in 1855. The oldest known Cowlitz métis was born in 1827. Aside from the marriage which produced this child, Cowlitz-French Canadian marriages had only begun to occur in the 1830's. Even the oldest métis offspring would have been only teenagers and young adults in 1855. They would probably not have had sufficient seniority to act

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as tribal spokesmen in 1855. More importantly, other evidence indicates that the métis were part of the historical tribe before the treaty negotiations and were part of the Cowlitz tribe that was present at the 1855 treaty negotiations. For example, Indian Agents before and after 1855 classified Cowlitz métis and “half-bloods” as Cowlitz. Quinault’s analysis does not change the conclusions of the proposed finding that Cowlitz métis were part of the Lower Cowlitz band beginning in the 1830’s.

Quinault also used the materials in their submissions to argue that the Upper Cowlitz had not been part of the entity that was previously acknowledged. The proposed finding found that through a gradual process, the government administratively joined the Lower Cowlitz and the Upper Cowlitz. By 1878-1880, the BIA was dealing with the two bands together, treating them as one tribe composed of two bands.

Conclusion for the Final Determination. In response to Quinault’s criticisms, the BIA reevaluated the evidence concerning previous recognition for the petitioner with particular focus on whether the Upper Cowlitz had been federally acknowledged. Based on new analysis of all the evidence in the record, this determination now extends the date of previous Federal acknowledgment of the Lower Cowlitz Indians at least to 1878-1880 and determines that the Upper Cowlitz Indians also had previous unambiguous Federal acknowledgment until at least 1878/1880.

The determination of previous Federal acknowledgment is based on the previous acknowledgment of two entities, the Lower and the Upper Cowlitz, which were administratively amalgamated by the Government in 1878-1880. Both entities were previously acknowledged. Quinault’s argument that only part of the petitioner was previously acknowledged is not accurate.

The administrative analysis of the two bands is demonstrated by the actions of Federal Indian agents, when they appointed Atwin Stockum chief of the “Cowlitz Indians” in 1878. The OIA also enumerated both the Lower Cowlitz and Upper Cowlitz bands in two OIA censuses taken in 1878 and 1880. They compiled separate lists for each band, but then listed the two groups together in the statistical tabulation. Quinault’s documentary submissions concerning the 1878 and 1880 Office of Indian Affairs (OIA) enumerations show that the Indian Office realized that both groups still did exist, as of 1878, and that they had headmen with whom the OIA communicated when they were required to research and produce status reports. Although other Government documents of the 1860’s and 1870’s noted separate Cowlitz bands, they treated them in the same way, usually together, listing both bands under a common heading and making efforts to put both bands of the tribe on the Chehalis reservation.

A distinction should be made between the administrative amalgamation of the Upper and Lower Cowlitz by the Federal government, which acknowledged them first separately and then dealt with them together, and the amalgamation of the two bands’ political processes. It is unclear whether the Upper and Lower Cowlitz were already acting together as one entity or acting as two separate entities as late as the 1870’s. The documentation indicates that the process of political amalgamation occurred over several decades, in part as a result of the administrative actions of the government

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which treated them as amalgamated. Not until 1910-1912 was it clear that the Upper Cowlitz and Lower Cowlitz Indians were functioning as a single entity, although even at that date some cultural and linguistic distinctions remained.

Conclusion: Both the Upper and Lower Bands were recognized separately by the Federal government and by 1878-80 were treated as one by the Federal government. The two Bands acted together by the 1870's and were fully amalgamated by 1910. The petitioner may proceed under 83.8 as both of its parts had unambiguous Federal recognition.

Overview of the Proposed Finding

Conclusions under the Mandatory Criteria. The AS-IA found that the CIT met all seven criteria required for Federal acknowledgment (CIT PF 1997, Summ. Crit. 10).

Under criterion 83.7(a) as modified by 83.8(d)(1), the petitioner had been identified as an American Indian entity on a substantially continuous basis since 1855, and the petitioner was the same group as the one previously federally acknowledged. Identifications existed in Federal records, including identifications by the BIA, by local historians, anthropologists and ethnologists, and in local newspapers (CIT PF, Summ. Crit.10-20).

Under criterion 83.7(b) as modified by 83.8(d)(2), the petitioner demonstrated that a predominant portion of its membership comprised a distinct community at the present (CIT PF, Summ. Crit. 20-31).

Under criterion 83.7(c) as modified by 83.8(d)(3), the proposed finding concluded that the petitioner had maintained a sequence of named leaders identified by knowledgeable sources, along with at least one other form of evidence, for the period from March 2, 1855, to the present. This was based on the existence of traditional chiefs prior to 1878, the appointment by the Office of Indian Affairs (OIA) of chief for the Lower Cowlitz band in 1878, correspondence concerning the appointment of a chief for the Upper Cowlitz band and subsequent dealings with him as chief, the transfer of authority from these still-living chiefs to an elected leadership in 1912, and an unbroken elected leadership since 1912. For each of these time periods, a variety of documents in the record, both external, including BIA records, and internal, including minutes and other records of the tribal organizations, showed the existence of political influence and authority at a level sufficient to meet the criterion (CIT PF 1997, Summ Crit. 31-44).

Under criterion 83.7(d), the petitioner submitted copies of its governing document, thus meeting the criterion (CIT PF, Summ. Crit. 44).

Under criterion 83.7(e), the BIA determined that all of the petitioner's members on the 1994 membership list were descended from the historical Cowlitz tribe. The definition of this historical

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tribe allowed for regional patterns of inter-tribal marriages and for the association of non-Cowlitz families with the Cowlitz prior to March 2, 1855, the date of last unambiguous Federal acknowledgment used in the proposed finding. The definition also took into consideration the consistent acceptance and identification of such associated families as Cowlitz by the tribe, the Federal Government, and the BIA (CIT PF, Summ. Crit. 44-47).

Under criterion 83.7(f), the membership of the petitioner was found to be composed principally of persons who were not members of any acknowledged North American Indian tribe (CIT PF, Summ. Crit. 47-48).

Under criterion 83.7(g), neither the petitioner nor its members were the subject of congressional legislation that had expressly terminated or forbidden the Federal relationship (CIT PF, Summ. Crit. 48).

Bases for the Final Determination

This final determination is based upon all materials utilized for preparation of the proposed finding, third party comments submitted, the petitioner's response to the third-party comments, the on-the-record meeting, the petitioner's submission of the final membership list, and research by BIA staff. The final determination reaches factual conclusions based on a review and reanalysis of the existing record in light of the new evidence. The conclusions of the proposed finding are adopted for the final determination except as supplemented and modified based on this additional analysis and review.

Abbreviations and/or Acronyms Used in the Final Determination and Technical Report

AS-IA	Assistant Secretary - Indian Affairs
BAR	Branch of Acknowledgment and Research, Bureau of Indian Affairs
BIA	Bureau of Indian Affairs
COIA	Commissioner of Indian Affairs
Ex.	Exhibit Submitted by the CIT or by the Quinault Indian Nation
FD	Final Determination
FR	FEDERAL REGISTER
OIA	Office of Indian Affairs, 19 th -century title of the Bureau of Indian Affairs

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PF Proposed Finding

Quinault The Quinault Indian Nation

Summ. Crit. Summary under the Criteria.

Standardized Spellings

When discussing Indian tribes and bands in the body of the narrative, the technical reports for the Proposed Finding and the technical report for the Final Determination use the current standardized spellings, for example, "Cowlitz." Where specific historical documents are quoted within the technical report, these names are spelled as found in the original.

Several families use variant spellings of the same name, e.g. Cottonoire, Cottenoir, Cottonware. When discussing the historical ancestor, the technical report uses a standardized spelling. When discussing individuals in modern families, it uses the spelling utilized by that branch of the family.

SUMMARY CONCLUSIONS UNDER THE CRITERIA

83.7(a-g) and 83.8(a-d)

83.7(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met

83.8(d) To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that: (1) The group meets the requirements of the criterion in 83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity.

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in 83.7(a) through (c) from last Federal acknowledgment until the present.

Under criterion 83.7(a) as modified by 83.8(d)(1), the proposed finding concluded that the petitioner had been identified as an American Indian entity on a substantially continuous basis since 1855, the date of last unambiguous prior Federal acknowledgment used by the proposed finding, and that it was the same group as the one previously federally acknowledged. Such identifications existed in Federal records, where they had been made by the BIA, and in census records. Similar identifications had been made by anthropologists and ethnologists, by local and regional historians, and by local newspapers (CIT PF, Summ. Crit.10-20).

Few of the third party comments appeared to be directed at criterion 83.7(a). On procedural rather than factual grounds, Quinault disputed the evidence used to demonstrate Cowlitz met criterion 83.7(a) in the proposed finding. However, they confused the concepts of "recognition" and "identification." "Recognition" refers to an actual government-to-government relationship between

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an Indian tribe and the Federal Government, and "identification," as required under 83.7(a) refers to naming the petitioner as an Indian entity, without analyzing the actual political, ancestral or social character of the entity or the political relationship that entity may or may not maintain with the Federal government. In effect, Quinault held the petitioner to a higher standard -- Federal recognition rather than simple identification -- on criterion 83.7(a) than required by the regulations.

Other portions of the Quinault comments were directed at the fact that many of the early identifications of the petitioner had not specifically identified the amalgamated tribe. The proposed finding determined that because of the wide dispersion of the Cowlitz population, most identifications were only of a part of the Upper Cowlitz or Lower Cowlitz and not the entire tribe. These identifications before 1910 were viewed as supporting evidence for criterion (a) and the government's identification of the two bands were accepted as evidence to meet criteria (a). After 1878, the government had continued to identify both the Upper and Lower Cowlitz, but increasingly between 1880 and 1910 identified them together as an amalgamated entity. After 1910, most identifications refer to the single Cowlitz entity. Identification of the separate tribes before the amalgamation and during the process of amalgamation are acceptable under the regulations. Therefore, the separate identifications of the Upper and Lower Cowlitz entities between 1855 and 1910 provide evidence that the petitioner meets criteria (a).

Since the evidence evaluated during the proposed finding had already satisfied the requirements of identification of an Indian entity from the 1855 date of Federal acknowledgment used for the proposed finding, the extension of previous acknowledgment to the later date of 1878-1880 means that the years 1855-1880 no longer have to be analyzed under this criterion. The petitioner only needs to show that it meets criterion (a) from 1880 to the present. This task was already accomplished during the proposed finding. The new documentation pertaining to criterion 83.7(a) submitted by the third party, such as the newspaper coverage of Upper Cowlitz meetings concerning fishing rights in the later 1920's, provided additional evidence which shows that the CIT meets criterion 83.7(a).

Evidence in the record for the proposed finding, evidence submitted as comment and other evidence located by BIA researchers during the proposed finding evaluation demonstrates that the petitioner meets criteria 83.7(a) from 1878-1880 to the present. Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(a) as modified by 83.8(d)(1) is affirmed.

83.7(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

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83.8(d)(2) The group meets the requirements of the criterion in section 83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.

The regulations define “community” for the purposes of 83.7(b) as follows:

Community means 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. *Community* must be understood in the context of the history, geography, culture and social organization of the group (25 CFR 83.1).

Thus, under 83.8(d)(2), the regulations require that the Cowlitz demonstrate that they meet the criterion for community (83.7(b)) only for the present day, or modern, community. They do not need to demonstrate that they meet the criterion for community from 1878-80, the last point of unambiguous Federal acknowledgment, until the present. Under criterion 83.7(b) as modified by 83.8(d)(2), the proposed finding concluded that the petitioner demonstrated that a predominant portion of its membership comprised a distinct community at the present (CIT PF, Summ. Crit.).

Quinault criticized the Government’s proposed finding for using pre-1981 evidence to demonstrate community for a later period. The proposed finding and final determination define the period for the Cowlitz modern community as 1981 to the present, starting some ten years before the documented petition and the response to the technical assistance letters were submitted. However, some discussion in both documents extends to the early 1970’s when the Indian Claims Commission made the Cowlitz judgment award and the Cowlitz modified their membership requirements. This material provides useful background for evaluating later evidence on community. Some of the issues from that period continue to resonate in CIT’s community at present. These issues include the 1/16th blood requirement, the participation of certain individuals with Yakima background in the political organization, and even the traditional status of certain family lines and individuals. The pre-1981 data did not in the proposed finding, and does not in this final determination, provide actual evidence for meeting 83.7(b) at present.

Quinault commented extensively on the period between 1878 and 1978 and attempted to demonstrate that CIT did not meet the requirements of 83.7(b) during this 100 years. They often compared the evidence utilized in other cases to the petitioner’s evidence in an attempt to show that the criteria were applied arbitrarily. To evaluate the evidence submitted under 83.7(b) for all time periods as Quinault suggests should have been done, would misapply the regulations as they pertain to previously acknowledged tribes. Section 83.8(d)(2) specifically provides that the group need not provide evidence to demonstrate existence as a community historically. Therefore, this final determination finds that most of Quinault’s comments on 83.7(b) are irrelevant because they discuss

evidence for community during time periods when the petitioner is not required to demonstrate that it meets criterion 83.7(b).

For the final determination, additional evidence contained in the petitioner's response showed that interaction by members in the community at present was extensive and involved people in all subgroups in proportion to the subgroup's size in the overall CIT membership. This finding strengthens to some extent the evaluation of actual social interaction among the petitioner's members made in the proposed finding.

Quinault accused the cultural anthropologist assigned to the proposed finding of bias in favor of the petitioner. The evidence presented to support this accusation included two small phrases uttered by the anthropologist in many hours of field interviews with Cowlitz members. These interviews were taped and some were transcribed. In context, the two phrases were clearly meant only to encourage the person being interviewed to cooperate with the government researcher. The BIA considered Quinault's complaint and found no evidence of bias in favor of the petitioner.

BIA researchers performed quantitative analysis on the data submitted as comment and response or collected for the final determination. This analysis demonstrated that a significant proportion of members of CIT are documented as either actually participating in CIT affairs or closely related as a parent, child or sibling to an individual who actually participated in CIT affairs. Participation in the context of this analysis did not include having one's name appear on a list of members or participating in activities limited to a particular subgroup. Activities counted in this analysis included participating in the council or executive committee, organizing at social events, serving on committees, relaying information about the tribe from one individual to another, providing food and other help to indigent and elderly tribal members who are not close family members, maintaining the community's property, representing the tribe to outsiders, and so forth. Because a significant proportion of the membership actually participates in formal and informal tribal activities, the proposed finding that actual interaction occurs at a significant level is confirmed.

Much of the evidence submitted by the petitioner for the proposed finding and in response to it concerns the political organization of the tribe. This evidence directly pertains to meeting criterion (c). However, political processes often generate communications and interactions, and can be used to describe social connections between the petitioner's members in order to demonstrate that the petitioner meets criterion (b). Additional field work by the BIA added to the information utilized during the proposed finding to show that political arguments, issues and behind-the-scenes coalition building are widespread, and that information relating to controversial or topical political issues are widely dispersed throughout the membership. This fieldwork also found that members hold strong opinions, and they base their political positions on knowledge they gain not only from formal meetings and CIT publications, but also from rumors they hear during informal discussions in everyday social situations. News about tribal affairs is filtered through a lens of general knowledge which members have about each other. Such knowledge is gained through lifetimes of association.

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The high level of knowledge of tribal activities gathered outside formal meetings and publications provides supporting evidence that the petitioner meets 83.7(b) at present.

The petitioner presented data pertaining to the period since the Proposed Finding, and limited additional data from the period 1981-1994. Little of this evidence was new. Some was documentation of events since the proposed finding. The third party comments presented no data pertaining to the petitioner's community at present. The evidence gathered in field interviews by the BIA anthropologist assigned to evaluate the petition for the final determination was very similar to that collected by the anthropologist who worked on the proposed finding. The new evidence confirmed the proposed finding.

The third party comments, which were procedural criticisms and were not new evidence, do not require a change to the proposed finding. The petitioner demonstrated community for the proposed finding. The petitioner has submitted more and updated evidence to show that they meet the requirements of criteria (b) for the modern period. The BIA anthropologist on the final determination made a field visit and gathered more and updated information concerning the modern period. She also made some new analyses which confirmed the conclusion at the proposed finding. This evidence is similar to that before the BIA evaluators for the proposed finding and confirms it.

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(b) as modified by 83.8(d)(2) is affirmed.

83.7(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present

83.8(d)(3) The group meets the requirements of the criterion in section 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in section 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, with demonstration of one form of evidence listed in section 83.7(c).

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d)(1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in 83.7(a) through (c) from last Federal acknowledgment until the present.

Under criterion 83.7(c) as modified by 83.8(d)(3), the proposed finding concluded that the petitioner had maintained a sequence of leadership identified by knowledgeable external sources for the period from 1855 to the present.

Under 83.8(d), the petitioner needs to demonstrate that it meets the requirements of criterion 83.7(c) only from the point of last Federal acknowledgment through the present, rather than from first sustained contact with non-Indians. It provides for a reduced burden of evidence to demonstrate that criterion 83.7(c) is met from the date of last unambiguous Federal acknowledgment until the present-day community (83.8(d)(3)). The burden is met if the group shows that authoritative, knowledgeable external authorities, such as state or Federal officials in close contact with the band, identified, on a substantially continuous basis until the present, group leaders and/or a governing body which exercised political influence or authority, and one other form of evidence. The petitioner must also demonstrate that the group exercises political authority at present.

The CIT meets the requirements of 83.7(c) as modified by 83.8(d) from 1880 to the present and demonstrates political authority at present. The proposed finding listed a sequence of leaders of CIT and one form of other evidence under 83.7(c) from the point of last Federal acknowledgment (1855) to the present. This evidence demonstrated that the petitioner met this criteria as modified by 83.8(d)(3). Because this determination now finds that the Cowlitz bands were acknowledged until roughly 1878-1880, the sequence of leaders must now be shown only from the latter date of 1878, when Atwin Stockum was appointed chief of the Cowlitz tribe by an Indian agent, through 100 years, which included an uneventful shift from traditional chiefs to an elected executive council in 1910-1912, until the current CIT chairman John Barnett. This demonstration has been made in the proposed finding. The other evidence required under 83.8(d)(3) is discussed in the response to Quinault's comments.

Quinault's criticism of these findings fall under two main categories: 1) the named leaders were only leaders of separate tribes or ethnic groups and not of a unified tribal entity in the 19th century; and even after they came together in the 20th century organization, the named leaders were only leaders within their subgroups and not part of an amalgamated tribal entity; and 2) the named leaders were only officials of a claims organization not a tribe.

The final determination evaluates Quinault's comments in detail and finds that in respect to the first issue, unity is not required under the regulations before the group amalgamated. The proposed

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finding demonstrated that the historical Upper and Lower Cowlitz bands had chiefs who were identified by knowledgeable outside sources until the late 1880's. After that, Federal documents show that the two entities amalgamated. Their individual band chiefs and leadership clearly acted together in the early 1900's. Significant data indicates that these subgroups and their leaders cooperated in filing claims in 1910-12 and in litigating fishing rights in 1927-34. During the period from 1912 to 1938, the Cowlitz leaders came from both the Upper and Lower Cowlitz Bands, including several of the Lower Cowlitz métis families. The Cowlitz were careful to make their leadership representative and this alternation was purposeful. Since 1950, the leadership has not been dominated by a single subgrouping. Today, various historical subgroups which characterize the tribe are represented in the leadership. Recent arguments concerning resources and land use, the current direction of the tribe, priorities, the acknowledgment petition, the membership requirements and elections clearly illustrate how people within one subgroup know who within another subgroup is an effective political contact. Politically active CIT members utilize this knowledge to advance their programs or points of view. This evidence demonstrates leadership in the amalgamated tribe. This sequence of leadership of the Cowlitz bands before 1910 and of a Cowlitz entity after 1910 provide part of the evidence that the petitioner meets 83.7(c) as modified by 83.8(d)(3).

Quinault's second issue is that CIT and the formal predecessor organizations, the Cowlitz Tribal Organization (CTO) from 1912 through 1950 and the Cowlitz Tribe of Indians (CTI) from 1950 to 1974, have been merely claims organizations. Quinault refers to some previous acknowledgment findings which denied recognition to certain groups whose only purpose was to pursue land claims.

The proposed finding found that CIT and its predecessors were not merely claims organizations, although the CTO and CTI did pursue claims. First CIT's predecessor group, the CTO, did not develop in response to the push to enroll at Quinault, to Thomas Bishop's Northwestern Indian Federation's efforts to form claims organizations, to the compiling of the Roblin Roll or to other forces beyond the tribe. The Cowlitz tribe existed before these events and operated independent of these external events. Second, Roblin only identified two unenrolled Indian "tribes" in his 1919 Report. One was the Cowlitz. Third, for the period from 1912 through 1950, the existence of an externally named leadership, along with evidence for the continuation of structured political activity and influence demonstrated that the leaders of CTO and CTI undertook activities in addition to these claims, such as fishing rights litigation and environmental preservation of natural spawning areas. These activities demonstrated a bilateral relationship between the leadership and the members. The minutes and other documents from this period demonstrate that non-claims issues were dealt with by the various Cowlitz organizations. Such evidence provides another "form of evidence" that the petitioner meets 83.8(d)(3). The Cowlitz organization was not simply a claims organization.

As a consequence of the nature of the historical development of the Cowlitz entity, the interaction among the Cowlitz subgroups at the tribal level in recent years is primarily political in nature. These subgroupings trace to earlier geographical bands and social groupings. No evidence was submitted to show that these subgroups have separate formal leadership or decision making processes; however, the active communication and interaction among members of subgroups promotes informal

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political activity within each group and supports participation of individuals from each subgroup in the larger political arena of the tribe. This final determination finds that subgroup activity is supporting evidence for meeting 83.7(c).

The analysis done for the final determination revealed that the representation on the council is proportional to the representation of the subgroup in the tribe's population, which supports, albeit weakly, the proposed finding that individuals vote for those people who will represent their own subgroup on council. The subgroups form a single political system, and show no signs of breaking away from each other, despite the presence of conflicts among important and politically active segments of the tribe, which are resolved by the group as a whole. Evidence of wide-ranging representation on the council and in the leadership since 1910 and of dispute resolution on a tribal level at present provides supporting evidence that the petitioner meets 83.7(c).

The CIT has made a smooth transition from one leader to another without even minor breaks. A modern day exception occurred when the Tribal Council President and the Chairman of the Executive Council clashed. Clearly, the Cowlitz entities led by Atwin Stockum and Capt. Peter in the late 1800's is the same one that developed a democratically elected council in 1910-12, since both of the traditional chiefs participated in the formation of the modernized organization. During the changes from a hereditary chief, to an appointed chief, to a democratically elected council, the membership remained unchanged in its basic character.

The Cowlitz petitioner can trace an unbroken line of leaders identified by knowledgeable external sources and a relatively unchanging set of families that have provided the core membership. This organization held meetings attended by a significant portion of the voting members of the tribe almost annually from 1912 through 1939, and from 1950 through the present.

Quinault argued that the ten-year hiatus of meetings constituted a significant interruption of continuous tribal existence. Like other petitioners, Cowlitz activity during the war years was extremely low due in part to gas rationing, war industry migration and military service. Nevertheless, at least three documents exist in the record to show that individuals continued to communicate and some leaders met at an individual's home. When regular meetings recommenced, the same general population attended as before the war and the same group of leaders presided. Analyses comparing lists of participants and of the leaders before 1938 and after 1950 shows continuity spanning the period of low activity for the tribe. Although evidence between 1938 and 1950 is sparse, when considered in historical context under 83.6(e), it does show political activity at a level to demonstrate the group meets criterion 83.7(c).

The introduction of residency requirements and dual enrollment prohibitions in Yakima enrollment procedures in the late 1940's and changes in CIT membership rules to prohibit dual enrollment and to establish a 1/16th blood-degree requirement in the 1970's have defined more strictly the tribe's boundaries during the 20th century. These changes have not changed the distinct characteristics of the Cowlitz core population. Quinault questioned an apparent discrepancy between the

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anthropologist's and historian's technical reports on the topic of the 1973-74 CIT enrollment changes. Language is added to the final determination to clarify the proposed finding. This language explains that a few active individuals were removed from the CIT membership as a result of these changes, most notably the Sareault family and the leader of the Yakima Cowlitz, Emma Mespli. The general membership was knowledgeable about the effect the vote of these controversial changes would have, but the Cowlitz maintained its stability. Many tribal members were distressed when they saw a few individuals who had low blood quanta, but who had maintained close social relationships with other Cowlitz, removed from the rolls. At the same time, the genealogical makeup of the tribe was not drastically altered by these changes; the membership still descended from the same historical groupings in roughly the same proportions. These clarifications in analysis did not require a change in the conclusion of the proposed finding that petitioners evolved from the previously acknowledged Cowlitz Bands and meets criterion (c).

The Quinault presented extensive specific arguments together with documentary and affidavit evidence to support their fundamental argument that predecessor organizations, CTO and CTI, as well as CIT were only voluntary organizations formed solely for the purposes of pursuing land and other claims against the Government. A careful review of their comments and evidence found that Quinault's attempt to base their argument in part on the content of the council minutes ignored other evidence concerning not only activities outside of council meetings but also the purpose and character of the minutes themselves, which were not transcripts of everything that went on at the meetings but rather usually focused on actions taken. While the tribe was very involved in dealing with these claims activities, it also performed other welfare, economic, governmental and cultural functions that were significant to members.

The proposed finding found that in 1967, an informally functioning executive committee which had developed under the 1950 constitution of the CIT was expanded by resolution of the general membership at the annual meeting into a formal tribal council. The Tribal Council was then incorporated into the 1974 constitutional revision, which also was adopted by vote of the general membership. The annual membership, or General Council, meetings are not superficial or inconsequential political events. Decisions are made by the General Council, elections are held and controversies are discussed publicly. Supplementary meetings are sometimes held.

There are political strains over the General Council's role vis-a-vis the Tribal Council and rivalries between the elected leadership of the General Council and that of the Tribal Council continue to reveal publicly larger controversies within the tribe. Arguments continue between the so-called traditional sweat lodge grouping and John Barnett and his followers. Recently, the advancement of the Quinault allottees' interests by the CIT is brought up as problematical by some members who are not allottees. Many question the priority placed on economic development at what they believe is the expense of welfare matters. Membership issues continue to involve a predominant proportion of the tribe. These activities indicate that the general membership is well informed and concerned about tribal business and is involved in the political processes of the tribe; they are evidence to demonstrate that CIT meets criteria (c) at present.

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In addition, the proposed finding found that there was considerable evidence of informal leadership during the period 1950-1973 by community elders, but the final determination finds that increasingly, younger people are taking positions of leadership both in formal tribal venues and also in informal situations, as the elders become infirm or die. Increasingly, individuals in mid-life are opinion leaders within the tribe. The passing on of political leadership from one generation to the next indicates that political authority does not merely come from elderly individuals who depend for their authority on past customs and childhood relationships established at a time when the tribal members were not yet acculturated. Rather, the political authority of the present leaders rests on modern-day interactions, relationships and activities of individuals. Evidence of the passage of leadership from one generation to the next demonstrates that political organization meets criteria (c) at present.

The 1973/1974 decisions concerning enrollment qualifications have continued to have political impact to the present. Some family groups with Yakima-enrolled close relatives maintain that they remain active in the Tribal Council to protect their membership status. The 1/16 Cowlitz blood-quantum provision continues to provoke membership-eligibility disputes within the general membership and within the Tribal Council in this decade, as recently as this year when individuals stepped down from the tribal council because of problems they had meeting the membership requirements and pressures from the general membership to apply membership requirements equally.

The Tribal and General Council have responded to demands from the general membership to broaden the focus of CIT activities, and to intervene in other matters of concern to the general membership. This process provides evidence, most clearly laid out in the oral interviews, for continuous functioning by leaders, leaders' influence on the membership, members' influence on the policies of the governing body, and acknowledgment of leaders by followers under 83.8(d)(3).

In summary, the petitioner submitted evidence that shows that leaders have been identified since the last point of Federal acknowledgment in 1878-1880 until the present. Evidence also demonstrates that since that time, the Cowlitz have undertaken a variety of activities which demonstrate political authority. Singly, these forms of evidence are not sufficient to meet criterion 83.7(c). However, when these forms of evidence are combined, they provide evidence that the petitioner meets the criterion.

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(c) as modified by 83.8(d) is affirmed.

83.7(d) A copy of the group's present governing document, including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

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Under criterion 83.7(d), the proposed finding concluded that petitioner had submitted a copy of its present governing document, thus meeting the criterion. Quinault's comments argued that CIT did not actually follow their constitution. The requirement of 83.7(d) is to submit the present governing documents, including its membership criteria. The document submitted reflects the CIT's general governing and membership practices and demonstrates that CIT meets criterion (d). Quinault additionally maintained that some statements within the preamble and body of the 1950 CTI constitution and the 1974 CTI constitution indicated that the petitioner's tribal existence had not been continuous. Criticisms of general statements in constitutions have not been viewed as significant in past determinations and are not viewed as significant here.

No new evidence was submitted in connection with criterion 83.7(d).

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(d) is affirmed.

83.7(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

Neither the third party nor the petitioner submitted new evidence in relation to criterion 83.7(e).

Quinault's comments were procedural and challenged the proposed finding that the CIT membership descends from the historical Cowlitz tribe as it existed in 1855. Quinault's mixed the discussion of previous unambiguous Federal acknowledgment with the discussion of 83.7(e).

Quinault's comments questioned the inclusion of métis descendants in the tribe on two grounds. One ground was based on a misinterpretation of the proposed finding: Quinault continually discussed the Cowlitz métis as if the proposed finding treated them as a separate Indian entity which amalgamated with the Lower Cowlitz and the Upper Cowlitz. The proposed finding explained that the Cowlitz métis were descendants of Lower Cowlitz Indians and French Canadians, such "half bloods" being often referred to in documents as "métis." The proposed finding never stated that a separate métis entity had amalgamated with the Lower Cowlitz. It stated that individual French Canadian/métis had joined or married into the Lower Cowlitz before treaty times.

The second argument presented by Quinault had already been considered in detail in the proposed finding. The "Cowlitz métis" included the mixed-blood descendants of several Indian women from other tribes. These women and their children functioned as members of the Cowlitz tribe prior to

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the latest date of previous unambiguous Federal acknowledgment. They had been incorporated into the historical tribe. Thus their offspring descend from the historical tribe.

Virtually all CIT members have demonstrated that they descend from individuals who were part of the historical Cowlitz tribes which historically amalgamated. Of a total "green card" membership of 1,482, there are only three individuals whose genealogy has not been traced to a member of the historical Cowlitz Indian tribe as defined in the paragraph above.

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(e) is affirmed.

83.7(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.

The proposed finding concluded that the petitioner met criterion 83.7(f).

No new evidence was submitted pertaining to dual enrollment by the petitioner's members. In the course of checking the final membership list, the BIA researcher determined that although CIT has a dual enrollment prohibition, there are approximately six "green card" holders (individuals of at least 1/16th Cowlitz blood) who are dually enrolled with the Lummi tribe. This small number, of the total membership (1,482), does not make the CIT "principally" composed of members of any acknowledged North American Indian tribe.

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(f) is affirmed.

83.7(g) Neither the petitioner nor its members are the subject of congressional legislation that has

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expressly terminated or forbidden the Federal relationship.

Under criterion 83.7(g), the Proposed Finding concluded that neither the petitioner nor its members were the subject of congressional legislation that had expressly terminated or forbidden the Federal relationship (CIT PF, Summ. Crit.).

No comments were received or new evidence submitted in connection with criterion 83.7(g).

Therefore, the conclusion of the proposed finding that the petitioner meets criterion 83.7(g) is affirmed.

AFFIRMATION OF PROPOSED FINDING

Therefore, the proposed finding is affirmed except as modified above.

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2/1/1983 Documentation Received by BIA
6/15/1983 **OD Letter** sent to Petitioner
2/10/1987 Response Received by BIA
10/21/1988 **2nd OD Letter** sent to Petitioner
2/24/1994 Response Received by BIA
4/04/1994 Placed on "Ready" List
1/28/1994 Placed on Active Consideration
2/2/1997 **Proposed Finding to acknowledge signed by AS-IA;
Summary Under the Criteria
Technical Reports attached:
Historical Technical Report
Anthropological Technical Report
Genealogical Technical Report
List of Sources**
2/12/1997 **Proposed Finding** Published in Federal Register
8/11/1997 1st Comment Period Closes
11/17/1997 2nd Comment Period Closes
1/16/1998 60-day Period for Petitioner to Respond to 3rd Party Comments Closes
2/12/1999 Period for Additional Petitioner's Response to Third Party Comments Closes
2/19/1999 Preparation of Final Determination Begins per Court Stipulation
2/14/2000 **Final Determination for Federal Acknowledgment** signed by AS-IA Kevin
Gover; **Technical Report** attached.
2/18/2000 **Final Determination** Published in Federal Register
6/7/00 Quinault Nation files Request for Reconsideration before IBIA
9/4/2001 Decision Affirmed by IBIA; Remanded to Secretary for Consideration of Nine
Issues
12/31/2001 **Reconsidered Final Determination signed** by AS-IA Neal A. McCaleb
1/4/2002 **Reconsidered Final Determination Published** in Federal Register
1/4/2002 Reconsidered Final Determination is Final and Effective

Documents on Electronic Disc:

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I. INTRODUCTION.

This document is a technical report to accompany the Final Determination (FD) for the Cowlitz Indian Tribe (CIT), a petitioner for Federal acknowledgment. This FD, including the technical report, is based on documentary and interview evidence which confirmed the Proposed Finding (PF) and new analysis of the information and argument received in response to the PF.

Documentary materials and transcripts of field interviews in the case record for the PF were reviewed again in light of new information and arguments submitted during the comment periods by third parties and the petitioner.

A. Administrative History.

1. Administrative History of the Proposed Finding. The Bureau of Indian Affairs (BIA or Bureau) received a request for Federal Acknowledgment from the Cowlitz Indian Tribe (CIT) on September 17, 1975 (CIT Pet. 1975).¹ The Bureau did not act upon the petition because consideration was then being given to the establishment of the Federal Acknowledgment Project, designed to deal with acknowledgment issues under a uniform set of regulations rather than on a case-by-case basis. After the Federal Acknowledgment Project was established in 1978, and the CIT's petition was transferred to it, the petition was assigned priority number 16, based on its submission date.

Under the 25 CFR Part 83, or acknowledgment, regulations, the CIT submitted a documented petition (CIT Pet. 1982) on February 1, 1983,² and was sent an obvious deficiency (OD) letter dated June 15, 1983 (Fritz to Cloquet 6/15/1983). The group withdrew their 1983 petition and on February 10, 1987, submitted a second documented petition dated January 20, 1987, as a response to the OD (CIT Pet. 1987).³ The BIA reviewed the 1987 petition and sent the CIT a second OD letter dated October 21, 1988 (Elbert to Barnett 10/21/1988). The CIT submitted a response to the second OD dated January 29, 1994. The BIA received this response on February 24, 1994 (CIT Response 1994),⁴ with a cover letter stating that the petitioner considered the petition ready for active consideration (Barnett to Reckord 1/29/1994). After reviewing this response, the BIA determined that the petition was ready for active consideration on April 4, 1994.

¹See List of Sources for components of this submission.

²See List of Sources for components of this submission.

³See List of Sources for components of this submission.

⁴See List of Sources for components of this submission.

The revised Federal acknowledgment regulations became effective March 28, 1994 and they included a provision at 83.8 which allowed petitioners who had been Federally acknowledged in the past to proceed using a reduced burden of proof. The BIA determined that the CIT were eligible to proceed under the provisions of section 83.8, and notified them of their eligibility by a letter dated May 3, 1995 (Roth to Barnett 5/3/1995). The petition was placed on active consideration July 11, 1995. The Assistant Secretary - Indian Affairs (AS-IA) signed the CIT proposed finding February 2, 1997 (CIT PF 1997), to acknowledge the petitioner as a Federal Tribe because they met all seven mandatory criteria 83.7 (a)-(g).

2. *Administrative History Since the Proposed Finding.* The administrative history of this case has been made complex first by an administrative appeal, and then by litigation. Both actions concerned a FOIA request made by the Quinault Nation for the petitioner's files and records. The FOIA administrative appeal and litigation have proceeded at the same time as the administrative acknowledgment process. The processing of the petition became linked to the FOIA appeals when, during mediation on the FOIA litigation, the Government agreed to reopen the third party comment period and the petitioner's response period in the acknowledgment procedure. A chronological description of these events follows.

a. Extensions and FOIA Administrative Appeal. Notice of the CIT proposed finding was published in the Federal Register on February 27, 1997 (62 FR 8983-8985), initiating the regulatory 180-day period for the petitioner to respond to the proposed finding and for receipt of public comments. This comment period was scheduled to close August 26, 1997, but on August 18, 1997, at the request of Quinault Nation, the AS-IA extended the comment period 90 days "from date of this letter" (Deer to Capoeman-Baller 8/18/1997).

Almost one year before the PF was published, on April 2, 1996, the Quinault Nation, a recognized Indian tribe located in western Washington, submitted an extensive FOIA request which pertained to both the Chinook and Cowlitz petitions for Federal acknowledgment (Capoeman-Baller to Director, Office of Administration, Bureau of Indian Affairs 4/2/1996). In order to process this comprehensive request, the BIA answered the Quinault FOIA letter, generally describing the types of materials that would be released and would not be released, on June 11, 1996, and made a large number of documents available to them at the Department of the Interior. Consistent with existing policy, the BIA withheld materials were protected under the FOIA and Privacy Acts, including membership files, the petitioner's rolls, membership lists and genealogies, and other information about individuals which was of a highly personal nature. The Quinault filed an administrative appeal to the June 11, 1996 FOIA response.

By November 11, 1996, the DOI had responded to the Quinault Nation's administrative appeal of the FOIA and had upheld the BIA's withholding from release documents which held highly personal information about Cowlitz members.

On July 28, 1997, Quinault requested reconsideration of their appeal of withholdings in the

FOIA. The Quinault nation subsequently requested a 180-day extension to the comment period. On August 18, 1997, the AS-IA granted a 90-day extension to the comment period, thus closing the comment period November 17, 1997 (Deer to Capoeman-Baller 8/18/1997). On September 8, 1997, the Quinault requested a reconsideration of their request for an extension of their response time beyond November 17.

b. Litigation (*Quinault v. Gover*). On October 7, 1997, Quinault sued the Department, the Cowlitz Indian Tribe, and the Chinook Indian Tribe, Inc., alleging four counts concerning the FOIA and the acknowledgment process. Two days later, on October 9, 1997, the AS-IA signed a letter to Quinault, denying their September request for a further extension (Deer to Reich 10/9/97). A week later on October 21, 1997, Quinault filed a motion for a preliminary injunction to stop the final determinations ([get cite]), which the court denied December 3, 1997 ([get cite]).

Quinault's first set of comments on the CIT proposed finding was received by the BIA on November 19, 1997, the closing date of the extended comment period. Under the 25 CFR Part 83 regulations, the petitioner had 60 days to respond to the third party comments. The CIT response to the Quinault comments was received within the regulatory time frames by the BIA on January 12, 1998.

On June 16, 1998, the BIA informed CIT that a team of researchers would be assigned to prepare the CIT final determination within the next 60 days (Maddox to Barnett 6/16/1998). Quinault objected.

As part of a joint stipulation in the litigation, the BIA reopened the comment period for 75 days on September 28, 1998, to allow Quinault time to submit additional comments.⁵ On September 28, 1998, the U.S. District Court addressed the records claim and upheld the Department's position that it did not have to turn over the list of members or the genealogies under the FOIA, the Privacy Act, or the Federal acknowledgment regulations.⁶ Quinault appealed to the Ninth Circuit. Quinault submitted a second set of comments on the CIT proposed finding on December 14, 1998. The 60-day period for the petitioner to respond to third party comments ended February 12, 1999. The CIT submitted its reply to the second set of CIT comments on February 9, 1999.⁷

c. On-the-Record Technical Assistance Meeting (11/23/1998). On November 12, 1998,

⁵United States District Court for the Western District of Washington at Tacoma No. C97-5625RJB, Stipulation for Order Dismissing Certain Claims; Order Thereon, September 28, 1998.

⁶Transcript of Hearing before the Honorable Robert J. Bryan, United States District Judge, Docket No. C97-5625RJB, October 19, 1998.

⁷For summaries of all these post-proposed finding submissions, see section I.C. of this report.

Quinault requested a formal on-the-record technical assistance meeting in regard to the CIT petition (Reich to Gover and Fleming 11/12/1998) as provided in 83.10 (j)(2). This letter was accompanied by a proposed agenda (Quinault Proposed Agenda 11/12/1998). The BIA arranged for the meeting to be held November 23, 1998. On November 19, 1998, the BIA transmitted a copy of the approved agenda (BIA Agenda 11/19/1998) to CIT and Quinault (Roth to Reich 11/19/1998). The meeting was held as scheduled, and transcribed by a court reporter:⁸

Under stipulation in the litigation, the BIA was required to assign a team to work on preparation of the technical report to the final determination by February 19, 1999 (one week after expiration of the petitioner's regulatory 60-day response period for response to third-party comments).⁹ This was done. The final determination, according to the 60 days allowed under the 25 CFR Part 83 regulations, would have been due on April 20, 1999. The BIA asked the AS-IA for a 120-day extension of time to prepare the technical report for the final determination (Maddox to Gover 2/19/1999). The AS-IA extended the period until August 18, 1999 (Gover [approval handwritten on request memorandum] 2/24/1999). The BIA notified CIT and Quinault of the extension on March 19, 1999 (Maddox to Barnett 3/19/1999).

The BIA requested a second extension to respond to the many complicated legal issues raised by the petitioner and because the researchers working on the technical report had been drawn away from their case work to work on three separate appeals and litigation. The extension was granted by the AS-IA, and the petitioner was notified by an August 13, 1999 letter to the Chairman signed by the Director of the Office of Tribal Services. (Tuell to Barnett 8/13/1999). This extension closed on November 17, 1999.

B. Overview of the Proposed Finding

1. Introduction: Relationship of the Summary under the Criteria to the Technical Reports. Decisions on Federal acknowledgment of Indian tribes are made by the AS-IA, who reports to the Secretary of the Interior. The BIA or the BAR do not make the decision on acknowledgment. The ultimate responsibility of acknowledgment decisions lies with the AS-IA. These are Departmental, not Agency decisions, as implied by the petitioner and the commenters.

⁸"Transcript, On-the-Record Meeting Concerning the Proposed Finding Cowlitz Indian Tribe, Monday, November 23, 1998" (Cowlitz On-the-Record 1998).

⁹"3. Federal defendants agree that within seven days of the close of the period afforded the Cowlitz petitioners to reply to any additional comments from plaintiff Quinault Indian Nation, but no earlier than January 15, 1999, federal defendants will begin consideration of the written arguments and evidence submitted in response to the proposed finding, as provided in 25 C.F.R. 83.10(l), and the parties agree to waive any right they may have to additional consultation under 25 C.F.R. 83.10(l) concerning an equitable time frame for the initiation of such consideration" (*Quinault v. Gover*, No. 97-5625RJB, Stipulation for Order Dismissing Certain Claims; Order Thereon, 3).

The Branch of Acknowledgment and Research (BAR), which is located within the Office of Tribal Services (OTS) of the Bureau of Indian Affairs (BIA), conducts a review of the documented petition and initiates research relative to analyzing the documented petition. then makes recommendations to the Assistant Secretary - Indian Affairs. The Summary Under the Criteria and Evidence for Proposed Finding (CIT PF 1997, Summ. Crit.), or recommended decision, was accompanied by three technical reports prepared by BIA researchers.¹⁰ These technical reports present the facts on the petitioner. The technical reports do not, however, constitute the decision making document. The reports analyze and discuss the supporting documentation and are much more extensive than the Summary Under the Criteria.

The Summary Under the Criteria, which is the decision signed by the AS-IA, describes the primary evidence which the AS-IA relied upon for a decision and how that evidence was weighed. In most cases a decision is based on a substantial body of evidence, derived from a variety of sources, rather than a single document. The Summary Under the Criteria does not specifically describe every piece of evidence relied upon.

Technical Reports also do not describe every piece of evidence that was considered. The fact that a particular document is cited, discussed, or described in a technical report shows that it was evidence which was considered but does not mean that it was evidence relied upon to support the decision. Commenters in this case often misstated how evidence in the record was evaluated or weighed by the Government by saying that the decision maker "relied upon" a single piece of evidence (as if it was sufficient in itself) to come to a specific conclusion, when in fact, the decision maker weighed several, often numerous, pieces of evidence in combination to reach their conclusions.

A finding considers a broad variety of evidence that is presented in a petition. The BIA reviews and considers all materials submitted by the petitioner and by third parties, as well as material obtained by BIA researchers. The administrative record of a case includes all of the materials considered in reaching a determination, whether specifically cited or not cited in a technical report or decision, and whether in support or not of the decision itself. These practices are clarified here because the comments, tended to misstate how specific evidence was handled in the evaluation.

Similarly, the listing of an item, whether an original, primary document or a secondary source, in the bibliography or "List of Sources" that accompanies a Proposed Finding and Final Determination does not necessarily mean that the AS-IA "relied upon" that item to support his conclusion. The "List of Sources" provides citations for all items considered or reviewed in the technical reports, whether or not they were utilized for the Summary Under the Criteria and

¹⁰These reports were the Historical Technical Report (HTR); Anthropological Technical Report (ATR); and Genealogical Technical Report (GTR).

whether or not the statements made in the item were accepted by the AS-IA. The appearance of a book title or document in any bibliography mean necessarily that the author "relied upon" that document or book, but only that the author considered either the entire or some portion of that document or book. Every item discussed in the technical reports is included in the "List of Sources," even if the item was specifically repudiated in the finding.

2. *Prior Federal Acknowledgment under 25 CFR 83.8.* The AS-IA determined in the proposed finding that the petitioner had previous unambiguous Federal acknowledgment through the date of March 2, 1855, the end of the Chehalis River treaty negotiations (CIT PF 1997, Summ. Crit. 3). A finding of previous recognition enabled the petitioner to proceed under criteria 83.7(a)-(g) as modified by the provisions of 25 CFR 83.8. This finding was not a finding that Federal acknowledgment ceased as of March 2, 1855. The date was used solely for acknowledgment purposes during preparation of the proposed finding.

3. *Conclusions under the Mandatory Criteria.* The AS-IA found that the CIT met all seven criteria required for Federal acknowledgment (CIT PF 1997, Summ. Crit. 10). Readers should consult the Proposed Finding (PF) and the Summary Under the Criteria (Summ. Crit.) contains more detail than that which is provided below.

Under criterion 83.7(a) as modified by 83.8(d)(1), the petitioner had been identified as an American Indian entity and as the same group as the one previously federally acknowledged on a substantially continuous basis since 1855. Such identifications existed in Federal records, and were made by the BIA, certain ethnographers, local historians, and local newspapers (CIT PF 1997, Summ. Crit. 10-20).

Under criterion 83.7(b) as modified by 83.8(d)(2), the petitioner demonstrated that a predominant portion of its membership comprised a distinct community at the present. The proposed finding identified the existence of several social subgroups within the merged Cowlitz tribe and found that there was strong community within the subgroups and a weaker, but still sufficient to meet the criterion, level of community within the petitioner as a whole. This conclusion was based both upon documentation submitted by the petitioner and on verification by BIA researchers (CIT PF 1997, Summ. Crit. 20-31).

Under criterion 83.7(c) as modified by 83.8(d)(3), the proposed finding concluded that the petitioner had maintained a sequence of named leaders identified by knowledgeable sources, along with at least one other form of evidence, for the period from March 2, 1855, to the present. This finding was based on the existence of traditional chiefs prior to 1878, the appointment by the Office of Indian Affairs (OIA) of chiefs for the Upper Cowlitz and Lower Cowlitz bands in 1878, the transfer of authority from these still-living chiefs to an elected leadership in 1912, and an unbroken elected leadership since 1912. For each of these time periods, a variety of documents in the record, both external, including BIA records, and internal, including minutes and other records of the tribal organizations, showed the existence of political influence and

authority at a level sufficient to meet the criterion (CIT PF 1997, Summ Crit. 31-44).

Under criterion 83.7(d), the petitioner submitted a copy of its governing document and membership requirements, thus meeting the criterion (CIT PF 1997, Summ. Crit. 44).

Under criterion 83.7(e), the BIA determined that all of the petitioner's members on the 1994 membership list were descended from the historical Cowlitz tribe. The definition of this historical tribe allowed for regional patterns of inter-tribal marriages and for the association of non-Cowlitz families with the Cowlitz prior to March 2, 1855, the date of last unambiguous Federal acknowledgment used in the proposed finding. The definition also took into consideration the consistent acceptance and identification of such associated families as Cowlitz by the tribe, the Federal Government, and the BIA (CIT PF 1997, Summ. Crit. 44-47).

Under criterion 83.7(f), the membership of the petitioner was found to be composed principally of persons who were not members of any acknowledged North American Indian tribe. The petitioner's constitution contains a dual enrollment prohibition, which is enforced (CIT PF 1997, Summ. Crit. 47-48).

Under criterion 83.7(g), neither the petitioner nor its members were the subject of congressional legislation that had expressly terminated or forbidden the Federal relationship (CIT PF 1997, Summ. Crit. 48).

C. New Materials Under Consideration for the Final Determination. The final determination takes into consideration all materials in the case file at the time of the proposed finding, the formal meeting proceedings, and all the materials submitted by the petitioner and third parties, and located by BIA researchers, since the issuance of the proposed finding. These latter materials consist primarily of comments received during the public comment period from Quinault and the CIT's responses to the Quinault submissions. Individual CIT members also sent the BIA a few materials, which the BIA did not consider to be part of the official CIT submissions. However, because these materials were submitted by members of the petitioner, they were also not classified as third-party comments. They were evaluated and are now part of the record. These post proposed finding submissions are described in more detail below.

1. *Petitioner's Response to Proposed Finding.* On August 8, 1997, CIT advised the BIA that it would not submit a response to the proposed finding (Barnett to Reckord 8/8/1997), and did not submit one.

2. *Quinault Comments 1997.*¹¹ Quinault Nation submitted documents with a cover letter from Richard Reich, Attorney for Quinault Indian Nation (Reich to Gover 11/17/1997). They

¹¹See List of Sources for contents of this submission.

consisted primarily of three items:

a. Memorandum in Opposition, signed by Quinault Nation Attorney Richard Reich, dated November 16, 1997: "Before the Bureau of Indian Affairs, United States Department of the Interior. In the Matter of the Proposed Determination for Federal Acknowledgment of the Cowlitz Indian Tribe. Quinault Nation's Memorandum in Opposition to Proposed Determination" (Quinault Memorandum 1997);

b. Affidavit of Prejudice, signed by Richard Reich, Attorney for Quinault Indian Nation, dated November 14, 1997: "Before the Bureau of Indian Affairs, United States Department of the Interior. In the Matter of the Proposed Determination for Federal Acknowledgment of The Cowlitz Indian Tribe. Affidavit of Prejudice" (Quinault Affidavit of Prejudice 1997);

c. Nicklason Report: "Nicklason Research Associates Historical Report concerning Proposed Finding Cowlitz Indian Tribe. November 1997" (Nicklason 1997).

3. *Petitioner's Response to First Set of Quinault Comments*. The petitioner submitted a response to Quinault's 1997 comments on January 12, 1998, through its counsel, Dennis J. Whittlesey, "Before the Bureau of Indian Affairs, United States Department of the Interior. In the Matter of the Proposed Determination for Federal Acknowledgment of the Cowlitz Indian Tribe. Cowlitz Response to Quinault Opposition to Proposed Determination" (CIT Response 1998). The narrative response was accompanied by documentary exhibits.¹²

4. *Quinault Comments, December 14, 1998*.¹³ A cover letter from Richard Reich, Reservation Attorney accompanied Quinault's 1998 comments. It stated that, "[t]his memorandum revises and supplements the memorandum in opposition dated November 16, 1997, which was filed with the Department on November 17, 1997" (Reich to Gover, 12/12/1998). Their final comments consisted primarily of the following items:

a. Revised Memorandum in Opposition, signed by Richard Reich, Attorney for Quinault Indian Nation, dated December 12, 1998: "Before the Bureau of Indian Affairs, United States Department of the Interior. In the Matter of the Proposed Determination for Federal Acknowledgment of the Cowlitz Indian Tribe. Quinault Nation's Revised Memorandum in Opposition to Proposed Determination" which was signed by Richard Reich, Attorney for Quinault Indian Nation and dated December 12, 1998. (Quinault Revised Memorandum 1998);

b. Revised Nicklason Report: "Nicklason Research Associates Historical Report Concerning

¹²See List of Sources for contents of this submission.

¹³See List of Sources for contents of this submission.

Proposed Finding Cowlitz Indian Tribe December 1998" (Nicklason 1998),¹⁴ which was accompanied by two explanatory letters (Leutbecker to Gover 12/12/1998; Leutbecker to Fleming 12/15/1998, enclosing page 178 of the report submitted December 12, 1998);

c. Exhibits to the Nicklason Report: Five boxes providing documentation for the citations in the report comprised the exhibits.¹⁵

5. *Petitioner's Second Response to Third Party Comments*. The BIA received this material (CIT Final Submission 1999) on February 9, 1999.¹⁶ It was supplemented by a letter from an anthropologist who had studied the petitioner (Fitzpatrick to Fleming 2/5/1999), submitted by the CIT's counsel (Whittlesey to Fleming 2/11/1999).

D. Overview of Issues Raised by Quinault and CIT. Quinault summarized its objections to the AS-IA's proposed finding for Federal acknowledgment of the CIT by stating that: "... the proposed Cowlitz findings are not supported by the evidence, are based on misapplication of the acknowledgment regulations, and are tainted by bias" (Reich to Gover 12/12/1998, 1-2; Quinault Revised Memorandum 1998, 2; see also Quinault Memorandum 1997, 34). Quinault also asserted that, "[t]he proposed findings improperly consider the Cowlitz petition under the provisions of 25 CFR 83.8. Moreover, the record does not demonstrate that the Cowlitz petitioner satisfies the requirements of 25 CFR 83.7(a) - (c) and (e), whether or not modified by 83.8" (Quinault Revised Memorandum 1998, 48; Quinault Memorandum 1997, 34).

To reduce duplicative analysis and discussion, the technical report classified into analytical categories the specific issues raised by Quinault and CIT. Since Quinault's numbering of the issues in its 1997 and 1998 submissions was not consistent throughout, the technical report provides cross-references. The historical reports submitted by Quinault (Nicklason 1997, Nicklason 1998) and supporting documentation (Quinault Ex.) sometimes contained material which was not specifically referenced in Quinault's formal comments. The technical report discusses any of these materials which are substantive.

II. GENERAL ISSUES: PROCEDURES AND RESEARCHER BIAS.

The petitioner and the interested party repeatedly raised some issues which did not so much address the historical facts of the case as the fairness of the administrative procedures, the

¹⁴For an executive summary of the report's conclusions, see the introduction (Nicklason 1998, [i]-iv).

¹⁵For a survey of the record repositories reviewed, see the introduction (Nicklason 1998, iv-xii).

¹⁶For full title, see the List of Sources.

personal bias of individual researchers (not the arguments they made in the technical reports) and the veracity of assumptions made about 83.8, which reduces the burden of proof on petitioners proving continuous tribal existence if they show previous Federal acknowledgment.

A. Procedural Issues.

1. CIT Assertions Concerning Quinault's Status as an Interested Party in the Proposed Finding. The CIT asserts that by participating as a third party in the Federal acknowledgment process, Quinault is trying to protect its claims to be the sole successor in interest to Cowlitz lands on Quinault Reservation (CIT Final Submission 1999, 1). In discussing this decades-long argument, CIT aims both to undermine Quinault's credibility and to question Quinault's interested party status which gives them special standing during the administrative appeal process.

a. CIT Position. CIT stated that:

... the Quinault opposition is unrelated to the facts of Cowlitz tribal existence, but rather is rooted in a desire to preserve its tenuous hold on claims to be the exclusive governing body of the Quinault Indian Reservation -- a federal reserve which was set aside for eight tribes of which Quinault was only one. Cowlitz was another (CIT Final Submission 1999, 1).

It also allege that the:

[Quinault tribe] offered to Cowlitz tribal members some 16 months ago that the Quinault Tribe would not oppose the Cowlitz Petition if the Cowlitz Tribe would cede to Quinault all of its claims and entitlements at the Quinault Indian reservation. That the Cowlitz rejected this modern version of a Modest Proposal is apparent from the fact that this Final Submission is even necessary (CIT Final Submission 1999, 2).

b. BIA Analysis. This issue raised by CIT is not a valid objection to recognizing Quinault's interested party status, as the motivations of an interested party are relevant under 25 CFR Part 83 only insofar as they establish "a legal, factual or property interest in an acknowledgment determination" (25 CFR 83.1). If anything, CIT's statements would support the BIA's determination that the Quinault Nation is an interested party to this petition because the petitioner does acknowledge "claims and entitlements at the Quinault reservation," which have been litigated in the past. (See definition of interested party in the acknowledgment regulations at 83.1.). The comments of Quinault are evaluated according to whether or not their statements are supported by evidence not whether or not the statements are made by individuals or entities with a vested interest in the outcome.

2. Quinault Issues Concerning FOIA (Quinault Issues 18, 17, and 13). Quinault

administratively appealed and then litigated its original FOIA request for all of the Cowlitz documents. It is now appealing the District Court's decision to protect from disclosure the Cowlitz rolls and numerous documents with individuals' genealogical information.

a. Quinault's Assertions Concerning Delayed and Limited FOIA Response. Quinault asserted that it has been prejudiced by the BIA's failure to provide more than a fraction of the records which are not claimed to be exempt from disclosure (Quinault Memorandum 1997, 33 (issue 18)). The petitioner replied (CIT Response 1998, 18-19).

i. Quinault's Position. Quinault stated:

... it appears that the Bureau has failed to produce more than 20,000 pages of nonexempt records. See accompanying letter. The failure of the Bureau to make available to the Nation in a timely manner all of the records in its possession which are not claimed to be exempt from disclosure has significantly prejudiced the Quinault Nation's ability to effectively comment on the proposed findings (Quinault Memorandum 1997, 33).

A year later, Quinault referenced "approximately 12,000 pages of additional documents relating to the Cowlitz petition obtained from the Department in connection with *Quinault v. Gover*" (Quinault Memorandum 1998, 1) and stated that:

The revisions and supplemental materials contained herein are largely based on the approximately 12,000 pages of additional documents relating to the Cowlitz petition obtained from the Department in connection with *Quinault v. Gover*, additional research and analysis conducted by Nicklason Research Associates (NRA), and on an improved understanding of the proposed findings as the result of a meeting on the record held November 23, 1998 (Reich to Gover 12/12/1998).

ii. CIT Comment. Originally, while stating that the Quinault claim that "some 20,000 pages of Cowlitz material have not been produced" was beyond their knowledge, CIT added that, "if there were 30,000 pages of Cowlitz materials in the BAR files — as the Quinault assert — this is an impressive collection of information about the tribe and further evidences tribal existence and the external acknowledgment of that fact" (CIT Response 1998, 18-19).¹⁷

¹⁷ In 1999, CIT added: The lack of professionalism and discretion in the [Nicklason Research Associates] work product is underscored by examining the 12,000 pages of "new" materials which the Quinault attorney proclaims to have further undermined the Cowlitz case for acknowledgment. The best that can be said is that Ms. Killian has submitted thousands of pages previously produced by the Cowlitz Tribe, which pages bear marginal notations and page numbering affixed by the Cowlitz Petition Team; further, much of the other "new" materials consists of extensive runs of pages of data which surrounded relevant Cowlitz information presented by the Tribe in more succinct formats such as Dr. Verne Ray's Handbook of Cowlitz Indians (Cowlitz Appendices A-654-732).

CIT's comment also asserted that the 12,000 so-called new documents were already in the record or irrelevant: "Almost all of the 12,000 document 'treasure trove' consists of (1) copies of the Cowlitz materials submitted to BAR, (2) materials researched by BAR and furnished to Nicklason Research Associates and (3) materials otherwise irrelevant to any issue discussed by the Quinault attorneys" (CIT Final Submission 1999, 5-6).

iii. BIA Analysis: All of the materials due to the Quinault under the FOIA, which are not protected by FOIA exemptions the Privacy Act, have been released, and the Quinault have been given an opportunity to comment on them . The BIA agrees with Cowlitz that much of this material available under FOIA has been provided at least two three times. Quinault's numbers of 20,000 and 12,000 seem to be based on early high estimates of the size of the Cowlitz file and do not take into consideration the duplication that occurred when the BIA reproduced the record a second time during the litigation. However, some documents have not been made available to Quinault because their release is prohibited by statutes that protect individual privacy. Documents are withheld under provisions of the Freedom of Information Act (FOIA) which allow discretionary withholding of documents the release of which would discourage the free exchange of ideas among decision-makers (see below).

b. Withholding of Documents Protected by the Privacy Act. The Quinault state that "The . . . Nation Has Been Prejudiced by the Bureau of Indian Affairs' Refusal to Provide Copies of Membership Lists and Genealogical Information." (Quinault Revised Memorandum 1998, 47 (issue 17); Quinault Memorandum 1997, 33 (issue 17); Reich to Gover 11/17/1997, 2-4). The petitioner replied (CIT Response 1998, 18).

i. Quinault's Position. Quinault stated that, "The Bureau's refusal to make available copies of membership lists and genealogical information has prevented the Quinault Nation from critically evaluating and effectively commenting on the Genealogical Technical Report and related proposed findings" (Quinault Memorandum 1997, 33). They are requesting the release of the petitioner's rolls because they believe that without rolls, they could not analyze the 1973 membership changes which they believed were a central issue in the decision. Quinault Attorney Richard Reich questioned the accuracy of the GTR's treatment of the 1973 changes in membership and the enforcement of the 1/16th Cowlitz blood rule in the constitution in 1974. He stated: "Significantly, the Quinault Nation has been prevented from conducting an independent evaluation of the tribal heritage of petitioner's membership and changes in membership that may have occurred because of the Bureau's refusal to release membership lists and genealogical information even though this information is central to many of the proposed findings" (Quinault Revised Memorandum 1998, 8n10).

ii. CIT Comment. CIT noted that Quinault access to these materials was in litigation, which had

been "initially resolved adversely to Quinault claims" (CIT Response 1998, 18).

iii. BIA Analysis. These issues are currently in litigation on an appeal brought by Quinault, after materials they sought were denied to them in court (Quinault vs. Gover.) The best statement of the Government's most current position is found in the briefing submitted September 11, 1998. Although the Bureau has some discretion concerning information that may be released under FOIA, the Privacy Act circumscribes by law release of much of the information, including highly personal data such as ancestry, addresses, birth dates, marital statuses, adoption statuses, and blood degrees, that the Quinault response discusses. The Department's 1998 brief in support of summary judgment stated:

The information that the Quinault Nation seeks is of the most personal and intimate nature. In general, a genealogical record describes the essence of who are the listed individuals: who are their parents, children, and spouses, how much of a certain ethnicity runs in their blood, who they have chosen to associate with, and what choices like divorce, marriage, re-marriage, or childbearing they have made. They are the facts of an individual's life that show where and how he or she came to be. Together, these records create the road map that allows another individual to research the personal family history and intimate details of the private lives of the listed individuals. Among other things, these documents reveal marital status, illegitimacy, ethnicity, age, incest, and child adoption (Quinault v. Gover, Federal Defendants' Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Federal Defendants' Cross-Motion for Summary Judgment - 7-8, Sept. 11, 1998).

The district court agreed that Quinault had no right to obtain the documents which were withheld.

c. Role of BIA vis-a-vis Interested Parties.

i. CIT Position. CIT asserted that Quinault questions do not displace the [Government's] role in determining the reasonable validity of the facts (CIT Final Submission 1999, 40 (issue VIII)). This assertion by the petitioner pertained to the controversy resulting from Quinault's desire to access the material that had been withheld in the FOIA response. Petitioner stated that "[t]he Quinault suggestion that it has been unlawfully hampered in its attempts to attack the Cowlitz Petition by not having access to federally-protected information is simply without merit" (CIT Response 1998, 40).

ii. BIA Analysis. The government addressed this point during the FOIA litigation:

... the role of interested parties is to submit information and arguments for the Department to evaluate to reach an informed decision. On the other hand, it is not an interested party's right to review every scrap of information submitted by a

petitioner in an effort to produce some kind of "dissenting-determination." Rightly or wrongly, the Department is given the duty and responsibility by Congress to analyze and weigh the evidence presented and reach a decision. Interested parties do not have that duty. Hence, they do not need the same raw information, such as membership lists or genealogies, to play their role in the process" (*Quinault v. Gover*, Federal Defendants' Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Federal Defendants' Cross-Motion for Summary Judgment. - 18, September 11, 1998).

The intent of providing the proposed finding for public comment is not so that the public can do all of the government's analysis over again, but so that it has enough information before it to make knowledgeable criticisms. The Government's position during litigation was that the acknowledgment reports and summaries, which were detailed and discuss how evidence was weighted, allowed the public to comment meaningfully on the findings and the decision.¹⁸

d. Tapes of Anthropological Interviews.

i. Quinault's Position. Quinault alleges that the BIA failed to provide copies of BIA Cultural Anthropologist Mark Schoepfle's interview tapes. Quinault asserted that it has been prejudiced by BIA's failure to provide copies of interview tapes (Quinault Memorandum 1997, 22 (issue 13). The petitioner replied (CIT Response 1998, 14). The Quinault complain that their difficulties responding adequately on the issue of researcher bias has been compounded by the fact that the BIA has not provided tapes of interviews in a timely manner (Quinault Memorandum 1997, 22). Specifically, the Quinault argue that "[o]n November 14, 1997, the Bureau for the first time provided the Quinault Nation with redacted copies of the tapes of seven interviews for which no transcripts were prepared." At the same time, they also complained that "the Bureau has not provided tapes of the other interviews, including those cited in this Affidavit despite a specific request by the Quinault Nation for a complete set of interview tapes in July 1997, and a Bureau response in August 1997, agreeing to do so as soon as the tapes could be redacted" (Quinault Affidavit of Prejudice 1997, 2-3n1).

ii. CIT Comment. CIT commented that the issue was in litigation, adding that the Quinault argument was "specious" (CIT Response 1998, 14).

iii. BIA Analysis. Time has now cured this particular complaint; Quinault did receive redacted copies of all tapes and all transcripts in time to incorporate them into their 1998 comments.

¹⁸"With respect to technical reports, a gross analysis of membership is provided. The reports do not discuss the ancestry of specific individuals" (*Quinault v. Gover*, Fed. Defendants' Memorandum of Points . . . -22, September 11, 1998).

However, the Quinault have had either redacted written transcriptions or copies of all interview tapes since shortly after November 13, 1997.

Quinault received as part of the original April 2, 1996, FOIA response, redacted transcriptions of all but eight of the interviews used by the BIA in evaluating the Cowlitz case.

Quinault made a specific request for copies of the actual tapes on July 28, 1997. On November 13, 1997, redacted copies of the eight untranscribed tapes were sent to Quinault. The Quinault then had redacted copies of all Dr. Schoepfle's field interviews in either transcribed written form or on audio tape. Subsequent shipments of redacted copies of the already transcribed tapes were sent December 5, 1997, December 16, 1997, December 23, 1997, December 27, 1997, and finally February 10, 1998. Therefore, the Quinault had redacted copies of all audio tapes made by the BIA anthropologist soon after February 10, 1998, when BIA made the last shipment.

According to the court stipulation, the period for additional third-party comments was extended to December 14, 1998, which gave Quinault more than ten months to analyze the interview materials in their entirety.

3. Quinault's Adequacy of Time for Research.

a. Quinault's Position. Quinault asserted that the BIA did not grant sufficient extensions of time in this case, when more liberal extensions had been granted in other cases (Reich to Gover 11/17/1997).

b. BIA Analysis. this concern was addressed why by court stipulation the third-party comment period was reopened September 29, 1998, and closed December 14, 1998, it was followed by an additional 60-day period for the petitioner to respond to the third party comments, which closed February 12, 1999 (see section I.A.2.a. of this report, above). The preparation of the final determination began February 19, 1999, by stipulation of the court.

The Quinault had the standard 180 days of comment period, a three month extension, and a court stipulated reopening of the comment period for 75 days. This is equal to more than 11 months during an overall 19-month period. The Quinault did not raise this concern again in their 1998 response.

B. Methodological Issues. Quinault asserted that the proposed finding which found that the Cowlitz constitute a distinct community is tainted by actual bias (Quinault Revised Memorandum 1998, 33-34 (issue 12); Quinault Memorandum 1997, 21-22 (issue 12); Reich to Gover 11/17/1997, 1-2; Quinault Affidavit of Prejudice 1997). The petitioner replied (CIT Response 1998, 14).

1. Quinault's Assertions Concerning Alleged Bias of BIA Anthropologist.

a. Quinault's Position. Quinault alleged that certain statements in interviews show bias in favor of acknowledgment on the part of one of the BIA researchers. Quinault quoted a phrase spoken by Dr. Mark Schoepfle, BIA cultural anthropologist, in a field interview. Quinault rephrased his words: "working with the petitioner to 'strengthen the petition' . . . [to make] 'a strong case against the written evidence' which Dr. Schoepfle believed did not support the petitioner's claims" (Quinault Affidavit of Prejudice 1997, 2).

Quinault asserted that this alleged bias is critical because it would affect "weight given information from his interviews." In 1998, Quinault reiterated this position, stating that the proposed finding's "conclusions are not based on probative evidence in the record. Rather, this characterization of the membership change is based on the work of the Bureau's anthropologist which as set forth in the Affidavit of Prejudice is tainted by actual bias" (Quinault Revised Memorandum 1998, 36). Quinault stated more extensively that:

The analysis of modern community is based [on] petitioner's claims of significant social relationships between its members and significant social interaction broadly among the membership under 25 CFR 83.7(b)(1)(ii). SUCPF at 23. The conclusion that there is "weak," but sufficient social interaction to support a finding of community is based in large part on "extensive direct interviewing" of the petitioner's members by the BIA anthropologist. SUCPF at 25; see also, SSUCPF at 31. In light of the personal bias expressed by the BIA anthropologist, Dr. Schoepfle's conclusions drawn from his work cannot be considered reliable evidence of what the findings concede is "weak" social community (Quinault Revised Memorandum 1998, 33; see also Quinault Memorandum 1997, 21-22).

b. BIA Analysis. BIA's goal is to formulate as accurate and complete an evaluation as possible. As quoted by Quinault, in this particular field interview, held July 25, 1995, Schoepfle's actual words as shown in a transcript of the tape produced by him were:

"The whole consideration will . . . will square things off against the written evidence. That's why I have had to interview thoroughly and ask questions repeatedly." [14.09. I must make a strong case against the written evidence.] (Quinault Affidavit of Prejudice 1997, 3).

Quinault has extracted these few words and phrases to remove them from their context.

The Anthropological Technical Report (ATR) and Dr. Schoepfle's interview transcripts demonstrate that he explained in considerable detail the purpose of the research to the petitioner and to the individuals he interviewed during the field trip. The purpose of the field research was to use ethnographic methodology to characterize as fully as possible the modern Cowlitz community and political organization, primarily the mandatory criteria 25 CFR 83.7(b) and (c), respectively, topics poorly documented in most petitions.

In all cases, the informant(s) were free to answer the questions from evaluators any way he or she considered appropriate. The researchers then phrased follow-up questions to elicit further detail on what the informant had already mentioned. Such follow-up questions were often in conversational form. Only after the interviewer determined that the informant had completed his or her answer (i.e. had run out of things to say) did the interviewer ask particular questions about what another member had mentioned.

In the procedural context, the BIA researchers do try to base the recommendations on the most complete set of data possible. The fact that the field worker pushes individuals for more data, does not mean that the answers will be viewed as evidence for or against acknowledgment. In other cases, the anthropologist's efforts to collect data have resulted only in collecting data which does not support acknowledgment, e.g. declarations by individuals that they do not know other members or interact with them, that they only recently learned they had Indian ancestry, or that they have never voted or attended an annual meeting. Actually, an example used in the Quinault affidavit to document bias illustrates that the interviewer (RES) attempted to obtain more detail on what the individual being interviewed meant by certain colloquial terms denoting various aspects of social interaction. The italicized remarks were intended and taken as encouragement to describe what this person saw as the social organization of the Cowlitz from his own standpoint, not a reflection of bias by the interviewer.

RES this is entirely background. Would you feel more comfortable if we didn't talk about it?

SA No, because of this controversy that seems to be developing in the tribe, (21,23) with Jerry Bouchard and that crew. What their agenda is, I don't know. But they are attempting to develop a following where they can move in and take over the tribe, seems like to me. That's my perception. And it's kind of frightening to me, because the shit hasn't hit the fan yet. Wait until the government gives us eight million dollars, or whatever it is, or we're totally recognized.

....

RES We're here to strengthen the petition. That's what we're here for. This is our golden opportunity. They don't get much better. We're all here at the same place, working in the same area, thinking about the same things. But so, you're saying that the elders are dying off, and you're concerned that they won't see the day things turn out well. . . .

Characterizing the petitioner fully is crucial to accurate decision making. Interviews make it possible for the petitioner to provide evidence documenting their petition, and to insure that their position is as fully explained as possible. The fact that the burden to provide this information is on the petitioner.

Because of time limitations for a petition's evaluation, ethnographic information on the modern

community is collected primarily through interviews. These interviews tend to reflect the speaker's knowledge and judgment. Such information is important to the body of evidence used in evaluating the petition because it provides information that explains existing documentation and other information that may be important in evaluating the petition.

After Dr. Mark Schoepfle took a job with another Interior agency in 1998, a second cultural anthropologist, Holly Reckord, was assigned to work on the case, and as a part of that assignment, undertook ten days of fieldwork in western Washington. She held interviews with some of the same Cowlitz members who had previously talked with Schoepfle. She also interviewed some individuals he did not. In practice, BIA researchers rarely have the opportunity to revisit a research site. However, when new researchers have been assigned to a case in progress, they usually undertake new fieldwork to familiarize themselves with the case. The existence of a second field session done by a different anthropologist, the evaluation of the existing material for purposes of the final determination by a second anthropologist, and the peer review within BAR that occurs on recommended decisions, minimize the effect of any person's alleged bias.

2. Quinault's Assertions Concerning Misrepresentation of Documentary Evidence.

a. Quinault's Position. Quinault criticizes the anthropologist's interpretation of the data, stating that the "ATR [Anthropology Technical Report] either glosses over or misrepresents documentary evidence that is contrary to its thesis in a biased effort to make the strongest possible case for petitioner in the face of contrary evidence" (Quinault Affidavit of Prejudice 1997, 4).

b. BIA Analysis. An extended discussion of the separate evidentiary issues raised by Quinault will be addressed in context in the body of this report, sections III, IV, and V.

3. Quinault's Assertions that the 1973 CIT Membership Changes Are Treated Differently in the Genealogical and Anthropological Technical Reports to the Proposed Finding (Quinault Revised Memorandum 1998, 36; Quinault 1997, 5-6; Quinault Affidavit of Prejudice 1997, 5-7).

a. Quinault's Position. Quinault argued that in discussing the 1973 exclusion from CTI/CIT membership eligibility of persons "enrolled in other Indian tribes and those with less than 1/16 blood quantum" (Quinault Affidavit of Prejudice 1997, 5 [emphasis added]), the ATR asserted "that these changes 'affected only a small number of people.' ATR at 8" (Quinault Affidavit of Prejudice 1997, 5).¹⁹ The Quinault 1997 Affidavit of Prejudice states concerning the dual

¹⁹This passage was from the Summary of the Evidence for the ATR. The full paragraph reads:

Also in 1973, the Tribal Council passed resolutions, approved by the General Council to exclude from the membership individuals who (1) were enrolled with other Indian tribes, and (2) had a

enrollment restriction and the blood quantum restriction:

Citing the Genealogical Technical Report, also adopted by Assistant Secretary Deer, the ATR contends that Yakima enrolled Cowlitz were a "very small proportion" of the Cowlitz general membership prior to 1973 and therefore the dual enrollment restriction simply made the membership boundaries of the petitioner more explicit by removing "more marginal families."²⁰ ATR at 97. Also citing the Genealogical Technical Report, the ATR contends that the blood quantum restriction affected only a "few" individuals resulting in the elimination of "peripheral members."²¹ ATR at 105 (Quinault Affidavit of Prejudice 1997, 5). [footnotes added]

Quinault compared this to the GTR, stating that it called the removals "dramatic"²² and involving

blood quantum of less than 1/16 Cowlitz Indian. Federal testimony about the first decision in 1974 showed that it divided the general membership, both within some family lines, and between family lines. While the decisions affected only a small number of people directly, interview information from 1989 and 1995 shows that these divisions still remain unreconciled, and have encouraged some extended family groups to remain active in the Tribal Council to protect their membership status (CIT PF 1997 ATR, 8). [emphasis added]

²⁰The actual passage read: "The Genealogical Technical Report shows that the Yakima-enrolled Cowlitz were a very small proportion of the Cowlitz general membership from the beginning of an official organization in 1911 to 1973. Thus, the dual enrollment restriction simply made more definitive the boundaries of the petitioner by removing more marginal families" (CIT PF 1997 ATR, 97). [emphasis added]

²¹The actual passage read: "Again, the Genealogical Report shows that the quantum restriction affected few members directly, made more explicit the boundaries of the petitioner's group, and eliminated peripheral members. In this case the peripheral members were primarily those metis descendants who had married non-Indians or non-metis for several generations. However, it did affect the descendants of a few families who had been active politically. One example concerns the descendants of James Sareault, . . ." (CIT PF 1997 ATR, 105). [emphasis added]

²²"Another aspect of the "metis" issue in analyzing the petitioner's membership through time is that until the constitutional changes in 1974, many Cowlitz metis families that had continued to live in Lewis and Cowlitz Counties, Washington, remained consistently active in the Cowlitz tribal organization, even when their genealogical tie to the tribe came through a remote ancestress and all subsequent marriages in their family lines had been to non-Indians. When the requirement for 1/16 Cowlitz blood quantum was adopted in 1974 and subsequently enforced in practice, the structure of Cowlitz membership changed significantly (see discussion below). Several locally resident Lewis County, Washington, and Cowlitz County, Washington, family lines that had heretofore been active in the affairs of the Cowlitz organization were no longer eligible for voting membership. The post-1974 Cowlitz membership lists differ dramatically from the 1968 and prior lists not only because of the exclusion of the "Yakima Cowlitz" families by forbidding dual enrollment, but also because of the removal of many metis family lines from voting membership (CIT PF 1997, GTR 13). [emphasis added]

"many families" who had previously "unquestionably"²³ been active in the petitioner (Quinault Affidavit of Prejudice 1997, 5). [footnotes added] Quinault subsequently reiterated that:

... the statement that only relatively few individuals who had been active were affected is directly contradicted by the Genealogical Technical Report

... Significantly, where the Anthropological Technical Report offers the opinion that only a "few" persons who had been active in Cowlitz activities were affected, it cites the Genealogical Technical Report. This is a gross mischaracterization of the opinions of the Bureau's genealogist who concluded that many previously active families were removed from membership and who characterized the change in membership as "major," "significant,"²⁴ and "dramatic" (Quinault Revised Memorandum 1998, 36). [footnotes added]

b. BIA Analysis. The 1973/74 actual situation was complex, but the GTR and ATR discussions of membership changes in those years made specific distinctions which may have been difficult for readers to understand. These distinctions were discussed at the formal meeting. The discussion below highlights some of the important distinctions that need to be made to fully understand the membership changes and clarifies the language used in the PF technical reports. The GTR generally analyzed the significance such changes had on tribal descent, asking whether the petitioner descended from the same group of ancestors in similar proportions before and after the enrollment limitations had been put into effect. The ATR studied the significance the changes had for the social and political community of the petitioner. Adding confusion, the Quinault arguments also tended to confuse what the two reports said about the effects the two changes -- one relating to dual enrollment, the other to blood quantum -- had on two separate segments of the pre-1973 membership. These segments were the Yakima descendants for whom dual enrollment was the central issue and the metis descendants for whom the 1/16th blood

²³"When the '1/16 Cowlitz' blood quantum rule was adopted in the 1974 constitution and subsequently enforced, many locally resident families who had heretofore been active in the Cowlitz Tribe of Indians organization no longer qualified for voting membership" (CIT PF 1997, GTR 84). [emphasis added]

"Unquestionably, many of the persons in the 'Yakima Cowlitz' group were enrolled in the Cowlitz Tribe of Indians during the period 1950-1973, holding membership cards (Legal Services Office of the Colville Confederated Tribes to Schlick, June 13, 1974) and participating actively" (CIT PF 1997, GTR 92-93). [emphasis added]

²⁴The major fluctuation in the size and composition of the petitioner is the contrast between the CIT's pre-1973 and post-1974 membership rolls. At the June 2, 1973, annual meeting, the CIT membership voted to exclude from receipt of judgment fund awards those persons who had up to that time been CIT members, but who fell into the following categories: (1) persons previously allotted land or receiving funds from other tribes; (2) persons currently enrolled elsewhere (these applied primarily to the "Yakima Cowlitz"); and (3) Cowlitz descendants with less than 1/16 blood quantum (because of provisions of Public Law 9358). These provisions were incorporated into the 1974 constitution, as discussed above, resulting in a significant change in the enrolled membership" (CIT PF 1997, GTR 39-40). [emphasis added]

requirement was most important.

For purposes of preparing both the proposed finding and the final determination, the BIA has had no access to the membership lists of the Yakima Cowlitz organization. However, on the basis of statements by members of this organization during the 1970's, its membership is more than double that of the petitioner. This number is considerably larger than that of the individuals unaccounted for in the current membership who appeared on the various claims lists prepared by the CTO and the CTI between 1914 and 1969. The GTR pointed out that many so-called "Yakima Cowlitz" have no documentable Cowlitz ancestry (CIT PF 1997, GTR 93), and had never really been part of the Cowlitz. Although some had participated actively in Cowlitz (GTR 92-93), dropping them from the so-called membership list had no impact on the genealogical continuity of the Cowlitz. For example, the specific family lines affected by that requirement were large, comprising numerous individuals. However, only a few persons from these family lines, not the entire groups of descendants of these family lines, had been active in Cowlitz tribal matters. A better phraseology would have been, "a few politically active descendants of the affected family lines."

Additionally, Quinault pulled specific words used in the GTR out of context, even though it quoted and cited the statements as a whole accurately (Quinault Memorandum 1997, 5; citing GTR 13, 39-40, 84). In one passage found on page 84 of the GTR, the word "significant" did not apply only, or even primarily, to the topic of 1973/74 membership changes: rather, it occurred in a discussion of how descent from pre-treaty lineage configurations might impact three areas, specifically:

- (1) understanding the structure of the Cowlitz tribe as it existed in 1855 at the date being used for previous unambiguous Federal acknowledgment for this proposed finding;
- (2) clarifying the issue of "descendancy" from the Cowlitz tribe as it may impact the distribution of ICC judgment award funds to persons descended from the Cowlitz Tribe "as it was constituted in 1863"; and
- (3) defining the effective meaning of the petitioner's own constitutional requirement of 1/16 "Cowlitz" ancestry to qualify for voting membership (CIT PF 1997, GTR 84).

In the context of 1973/1974, this part of the GTR was considering neither the specific membership changes nor their impact, but attempting to define the concept that the petitioner had applied in order to put the changes into effect.

i. Dual Enrollment. The full ATR statement in which the phrase "marginal families" appears is on page 97. It clearly shows that the BIA anthropologist was, at this point, discussing the impact of the dual-enrollment restriction on Yakima-enrolled Cowlitz families, rather than discussing

blood quantum issues, as implied by the Quinault 1997 Affidavit. It stated: "The GTR shows that the Yakima-enrolled Cowlitz were a very small proportion of the Cowlitz general membership from the beginning of an official organization in 1911 to 1973. Thus, the dual enrollment restriction simply made more definitive the boundaries . . ." (CIT PF 1997, ATR 97). To accurately reflect the GTR in discussing the Yakima Cowlitz issue, the anthropologist should have written "a small proportion of the active membership" of the CIT, rather than a small proportion of the "general" membership. The ATR statement was made in the context of an analysis of the impact of the dual enrollment prohibition decision as causing dissension "between the families of certain subgroups, such as the Lower Cowlitz Iyalls and Wannassays, against other members" and "within some family lines" (CIT PF 1997 ATR, 97). This discussion in the ATR was not meant as a statistical analysis, but focused on how the membership eligibility changes affected the overall character of the petitioner's core of active members.

The GTR stressed that the Yakima Cowlitz who were separated from the petitioner membership after the 1973/74 membership changes²⁵ appeared to be, on the basis of evidence available, descended from only two major families:

Within the limits of the material available to the BIA researcher, it appears that some persons whose names appeared on the 1974 Yakima Cowlitz petition descended from families which in the 19th and early 20th centuries were clearly among the historical Cowlitz population, but which are now enrolled at Yakima (Iyall, Castama, Satanas, Eyle, etc.). . . The majority, however, appear to belong to two other family lines: Katell descendants and Umtuchs²⁶ descendants (CIT PF 1997, GTR 91). [footnote added]

The GTR then supports the ATR, in finding that although the 1973/74 membership rule changes concerning dual enrollment directly affected only a few people (such as Emma Mespli) who had been active in the CTO or CTI up to that date, other members who continued to be active in the CIT after 1973/74 were indirectly affected, in the sense that they had Yakima-enrolled relatives who were impacted by the changes (for example, the Wannassay and Wilson families). Thus, the ATR's findings that the 1973/1974 dual enrollment rule affected a group which comprised only a small proportion of the active Cowlitz membership, while most of those excluded had been peripheral to the Cowlitz organization, is supported by a body of evidence provided also in the History Technical Report (HTR) and Genealogy Technical Report (GTR.) See the more detailed

²⁵"Since 1974, the relationship between the petitioner and the 'Yakima Cowlitz' organization has been acrimonious. For discussion, see the Historical Technical Report and Anthropological Technical Report to this proposed finding" (CIT PF 1997, GTR 93).

²⁶One "large component of the 'Yakima Cowlitz'" . . . "consists of families claiming descent from Chief Umtux of the Lewis River band. These individuals, descended through the Umtuchs and Charley families, have been enrolled at Yakima for many years" (CIT PF 1997, GTR 92).

discussion in sections V. and VI., below.

ii. Blood Quantum Requirements. The Quinault Affidavit presents the GTR's description of the "1973 changes in membership as 'dramatic' and 'significant' involving 'many families' who had previously 'unquestionably' been active in the petitioner"(Quinault Affidavit of Prejudice 1997, 5). The Affidavit then quotes the GTR to support its position:

When the requirement for 1/16 Cowlitz blood quantum was adopted in 1974 and subsequently enforced in practice, the structure of Cowlitz membership changed significantly (see discussion below). Several locally resident Lewis County, Washington, and Cowlitz County, Washington, family lines that had heretofore been active in the affairs of the Cowlitz organization were no longer eligible for voting membership. *The post-1974 Cowlitz membership lists differ dramatically from the 1968 and prior lists not only because of the exclusion of the "Yakima Cowlitz" families by forbidding dual enrollment, but also because of the removal of many metis family lines from voting membership* (Quinault Affidavit of Prejudice 1997, 6; citing CIT PF 1997, GTR 14). [emphasis in Affidavit].

The language of the PF requires clarification. The GTR did not mean to imply that "many metis family lines" applied to all of the descendants of any particular ancestress and that they were all excluded from voting membership. After 1973/74, the CIT membership continued to contain descendants of all the major Cowlitz metis family lines. To further clarify, within the basic Cowlitz ancestral metis family lines (as a genealogical category), a number of metis extended families, or sublines, but not entire descendancy lines, no longer met the 1/16 Cowlitz blood quantum requirement. Only a few of these "members" who were removed from voting eligibility in 1973/74 had been active in tribal affairs (as a political and social category). Many names had appeared only once or twice on claims lists prepared in anticipation of a descendancy-based distribution of the ICC judgment award (see below). By contrast, in the case of families that had been part of the tribe socially, several of these persons removed from voting membership in 1973/74, and their descendants, still hold Cowlitz "Red Card" or non-voting membership, and continue to maintain connections to the tribe socially (see also section VII).

"Several locally resident families" does not equate directly to "many families," a description used by the GTR in another context.²⁷ The Affidavit also fails to quote the sentence immediately

²⁷Quinault removed part of the ATR discussions out of the context in which they were written. At no point in discussing the impact of the 1/16 blood quantum requirement did the BIA anthropologist write that "only relatively few individuals who had been active were affected . . ." (Quinault Revised Memorandum 1999, 36). Rather, the anthropologist referred to "descendants of a few families who had been active politically" (CIT PF 1997 ATR, 105). The specific family lines affected by that requirement (for example the Senn subline of the Plamondon family and the Moravec subline of the Plamondon family) were large, comprising numerous individuals, the GTR focus. However, only a few persons from these family lines, not the entire groups of descendants of these family

preceding the quote. The GTR had been discussing the impact of the 1973/74 removal from the "green card" membership list of some specific Cowlitz metis families who, although genealogically several generations removed from the Cowlitz ancestress, had because of their geographical location in the Cowlitz River region, retained political ties to the Cowlitz tribe:

Another aspect of the "metis" issue in analyzing the petitioner's membership through time is that until the constitutional changes in 1974, many Cowlitz metis families **that had continued to live in Lewis and Cowlitz Counties, Washington**, remained consistently active in the Cowlitz tribal organization, even when their genealogical tie to the tribe came through a remote ancestress and all subsequent marriages in their family lines had been to non-Indians (CIT PF 1997, GTR 15).

The point the GTR was making was that unlike many of the other distantly descended metis families who had moved to other regions in Washington, or out of state, these specific family lines had not broken their political ties to the Cowlitz tribe by the early 1970's.²⁸ Therefore, the blanket extension of the 1/16 blood quantum requirement to them, as well as to the truly peripheral Cowlitz metis families, generated injured feelings among a significant proportion of the membership. For purposes of the preparation of the technical reports for the proposed finding, this phenomenon was particularly significant in the case of the Sareault family line and the consequent inaccessibility of the CTO and CTI documents kept by James E. Sareault after the expiration of his terms as president and vice-president.

iii. Summation. These 1973/74 membership changes did not affect the basic character of the petitioner or make it a totally different group. They merely defined the standards for membership eligibility. Most of the persons excluded had never been active in the CTO or CTI, but had filled out forms to have their names included for claims purposes (see discussion in Section VI). While the ATR discussed the social and political implications of these changes, the GTR

lines, had been active in Cowlitz tribal matters, the ATR focus. A better phraseology would have been, "a few politically active descendants of the affected family lines."

²⁸An example would be Mary Senn, who was CTO secretary in the 1920's and 1930's, and whose grandchildren were excluded in 1973/74 under the 1/16 Cowlitz blood quantum provision. Other of the families whose genealogical distance was equal had in fact distanced themselves socially. The removal of these few specific family lines that had remained right around Cowlitz Prairie and/or had continued to maintain social ties with the tribal core has continued to have repercussions for the CIT. The excluded families who had been active resented the blanket application of the 1/16 blood quantum, while many other people who remained inside the membership eligibility boundaries also resented it because they knew these people well.

In other words, these passages were talking about the exceptions to the rule. There was no indication that the exclusion of the large number of persons who were on the 1966/69 CIT list only for purpose of participation in the pending claim caused internal dissension within the petitioner, although the affected individuals complained.

focused on the impact of the new eligibility provisions on the overall genealogical character of the group, and on the size of the unofficial prior membership lists that it had maintained. Both the dual enrollment provision and the 1/16 blood quantum requirement did impact a few people who had been active in organizational activities and who had either, or both, close social and kinship ties to people who remained inside the CIT. The ATR and GTR agreed that while numerous individuals, including a few active individuals, most notably James Sareault and Emma Mespli, were removed from the petitioner's membership lists after 1973, the changes had little effect on the overall nature and organization of the petitioner.

4. Quinault's Assertions Concerning Selection of Interviewees.

a. Quinault's Position. Quinault criticized the selection of those interviewed by the BIA anthropologist Dr. Schoepfle, arguing that the views of leaders (those most involved) were overrepresented, and that those interviewed were not objective:

Dr. Schoepfle's work is also flawed [because t]he individuals which he selected for interviews are mostly, if not exclusively, "leaders" and other individuals active in the Cowlitz efforts to obtain recognition. No effort was made to select "average" Cowlitz members. Given the self-interest of Dr. Schoepfle's informants and the fact that the individuals selected for interview were undoubtedly aware that the Department had twice advised the Cowlitz in "obvious deficiency letters" that their petition materials lacked sufficient evidence of "community," uncorroborated statements by Dr. Schoepfle's interviewees should be viewed with healthy scepticism. Moreover, Dr. Schoepfle's "sample" was not representative of the "average" Cowlitz member, it is impossible to generalize regarding the broader Cowlitz membership from the information gleaned by Dr. Schoepfle from "leaders" even if it is credited at face value (Quinault Revised Memorandum 1998, 34.)²⁹

b. CIT Comment. CIT commented that when, "one has neither the law nor the facts, it is time to attack the messenger. Such an ad hominem attack is the Quinault response" (CIT Response 1998, 14).

c. BIA Analysis. This criticism from Quinault is based on the premise that the sample was unrepresentative and that Cowlitz interviews are biased because the individuals are aware of the stakes.

The BIA researchers have only limited time in the field. It is standard practice for them to

²⁹This issue was not raised in the Quinault Affidavit of Prejudice 1997.

interview those people, whether petitioner members, officers, elders, or others, even non-members, who are most knowledgeable about the petitioner's activities. The BIA anthropologist never aimed to interview the "average" Cowlitz. Dr. Schoepfle collected and utilized qualitative data through direct observation in open-ended field interviews, often using knowledgeable or "key informants," sometimes not. This allowed him to validate information on a wide range of issues in a short period of time. Although the sample as such may be unrepresentative of the entire tribe, it does not preclude its usefulness for these purposes. The use of "key informants" is standard anthropological methodology.

It would be difficult for all of these individuals to fabricate a unified misrepresentation to Dr. Schoepfle or other experienced field researchers and create the impression of wide-spread social interaction where none exists, even if they wanted to. Dr. Schoepfle and Holly Reckord after him, found that while the petitioner's members whom they interviewed disagreed on many issues central to their organization, their descriptions of activities, meetings, and undertakings of their group were useful to understand the modern social and political organization of the petitioner. For example, in descriptions of the major arguments or the progression of events surrounding the Bouchard/Barnett power struggle, individuals have at hand certain sets of facts. These personal sets overlap in part with the sets of other individuals. No single individual knew or remembered everything that occurred. They only related what they saw and remember during their interviews. The interviews rarely contradicted one another, and they were corroborated by written materials such as meeting minutes, correspondence and newsletters. As a whole, all of these sources tended to extend the description of events beyond what a single individual may remember. When contradictions did arise or the interviewer detected inconsistencies within an interview, the researcher asked others questions to determine as much as possible what had happened.

5. CIT's Arguments Concerning the Qualifications of Quinault Researchers.

a. CIT Position. The CIT presented allegations concerning inadequate qualifications of Quinault researchers (CIT Final Submission 1999, 3-6 (issue I); CIT Response 1998, 2-4), particularly in regard to their competence to testify as expert witnesses in "any competent jurisdiction" (CIT Final Submission 1999, 2), arguing that by taking contract research which "clearly was not independent but rather worked to satisfy the assignment outlined by the Quinault Tribe, the Quinaults then attempt to construct an argument of legal counsel to further justify the opposition articulated before any of the research or analysis was even begun" (CIT Final Submission 1999, 2).

CIT indicated that one of the researchers, Mr. Mark R. Leutbecker, had "assignments" from the BAR (CIT Response 1998, 4n2) on prior acknowledgment cases.

b. BIA Analysis. It is the BIA's position that acknowledgment decisions are based on the evidence produced. Analysis and interpretations of this evidence are not accepted or rejected by BIA experts without full evaluation. There is no requirement that petitioners hire "experts" in

any particular field or in "acknowledgment" although some have. In a few cases, petitioners have produced proficient research for petitions or responses without utilizing paid consultants. (The Official Guidelines to the Federal Acknowledgment Regulations 25 CFR 83, September, 1997.)

The BIA is not aware of any "assignments" that Mr. Mark Leutbecker has had on behalf of BAR. He has worked as a consultant on other Federal acknowledgment cases on behalf of petitioners or third parties. He has not consulted for the BIA on this issue.

III. PREVIOUS UNAMBIGUOUS FEDERAL ACKNOWLEDGMENT.

The majority of the issues below were raised by Quinault and CIT in the context of unambiguous previous Federal acknowledgment of the Cowlitz Indians under 25 CFR Part 83. Since many of the arguments presented addressed both existence of historical facts and also the interpretation of those facts, the discussion of the facts has been grouped here, arranged in chronological order.

Many of the issues raised by CIT did not pertain directly to the acknowledgment criteria under 83.7 as modified by 83.8. Rather, they focused on questions pertaining to rights of Cowlitz allottees on the Quinault Reservation. This report takes no position on matters pertaining to the use and government of the Quinault Reservation. CIT legal arguments pertaining to a later possible date of unambiguous previous Federal acknowledgment have been addressed only in so far as they impact the acknowledgment criteria.

A. Quinault's General Challenge to 25 CFR 83.8's Modifications to 25 CFR 83.7.

1. *Quinault's Position.* Quinault states:

The Bureau's improper application of 25 CFR 83.8 to the Cowlitz petitioner is further evidenced by the Bureau's explanation in connection with the adoption of the 1994 regulations that while the burden of evidence is reduced for previously acknowledged groups under 25 CFR 83.8, "none of the changes made in. . . the final regulations will result in the acknowledgment of petitioners which would not have been acknowledged under the previously effective acknowledgment regulations." 59 FR 9380. The Bureau's proposed findings in favor acknowledgment [*sic*] of the Cowlitz are inconsistent with this explanation (Quinault Revised Memorandum 1998, 9; see also Quinault Memorandum 1997, 5-6).

Quinault supported the above statement as follows:

Under the former regulations the petitioner would have been explicitly required to demonstrate continuity of historic community. It would have been required to demonstrate that the Cowlitz Tribal Organization, constituted [*sic*] a distinct community. Even though the petitioner prepared its petition under the former regulations, there is no evidence that Cowlitz Tribal Organization existed as a distinct tribal community or that identified leaders exercised the kind of political influence and authority required for acknowledgment. Thus the petitioner could not be acknowledged under the former regulations (Quinault Revised Memorandum 1998, 9; see also Quinault Memorandum 1997, 6).

[G]iven the manner in which the proposed findings seek to bootstrap prior federal acknowledgment of the petitioner on the development of a single merged tribal community that included the Lower Cowlitz proof of a historic merged community is essential in this case, notwithstanding the provisions of 25 CFR 83.8 (Quinault Revised Memorandum 1998, 9n11; see also Quinault Memorandum 1997, 6n4).

2. *BIA Analysis.* Clearly, continuous existence is required even under 83.8, the previous acknowledgment provisions of the revised regulations. However, petitioners with previous recognition are entitled to a reduced burden of documentation under the revised regulations. The preamble to the regulations states:

For petitioners which were genuinely acknowledged previously as tribes, the revisions recognize that evidence concerning their continued existence may be entitled to greater weight (Preamble to 25 CFR 83 2/25/1994 Fed. Reg. 9282).

Thus, the fact that leaders of a tribal entity have been continuously identified in the record by authoritative sources is evidence which is entitled to greater weight than similar evidence for a petitioner without a history of relations with the Federal government. Under the provisions of 83.8, the named leaders must have exerted political authority. The requirement of continued existence under 83.7 remains under 83.8; the evidence, however, is weighed somewhat differently.

In this case, by comparing various identifications of Cowlitz leaders by knowledgeable outside observers and assessing the evidence of their activities, the proposed finding concluded that the various leaders associated with the Cowlitz tribe, including its component subgroups and its various formal organizations, had continued to exert political authority or influence on a continuous basis. These leaders had been consistently identified as Cowlitz, Lower Cowlitz, or Upper Cowlitz since the treaty-era (1855). No chronological breaks in the transfer of authority from one identified set of leaders to the next occurred, and clear continuity characterized the major transitions such as the appointment of new chiefs by the BIA in the 1870's, the establishment of the CTO in 1910-1914, and subsequent reorganizations. At the crucial juncture

of the establishment of the CTO, it was clear that the BIA-appointed leaders of both the Lower Cowlitz and Upper Cowlitz bands participated in the establishment of the new organizational structure.

The regulations specifically provide at 83.8 (d)(2) that for petitioners with unambiguous previous Federal acknowledgment, the evaluation of the evidence need discuss the requirement of under the provisions of 83.8 historical community (as contrasted with continuous political authority or influence). See the specific discussions in section V. below.

B. Defining the Issue: Eligibility for Unambiguous Previous Federal Acknowledgment under 83.8.

1. *Quinault's Position.* Specifically, Quinault puts forth several lines of reasoning, which argue that the petitioner does not meet the requirements of 83.8, and (Quinault Revised Memorandum 1998, 16-17 (issue 4), 3-12 (issue 2); Quinault Memorandum 1997, 10-11 (issue 4)³⁰), specifically to its earlier assertion that, "the Cowlitz petitioner does not meet the requirements of 83.8(d) because it is neither the same group as previously acknowledged nor a portion of the previously acknowledged group" (Quinault Revised Memorandum 1998, 17; Quinault Memorandum 1997, 11).

2. *CIT Comment.* The petitioner replied (CIT Response 1998, 4-6), also raising several new issues on this topic (CIT Final Submission 1999, 6-38).

3. *BIA Analysis.* The BIA's analysis will be presented under specific subtopics, below.

C. Interpretations of the 25 CFR Part 83 Regulations.

1. *Theoretical Discussion: Applicability of Prior Unambiguous Federal Acknowledgment of a Portion of an Amalgamated Group to the Group as a Whole.*

a. Definition of Eligibility to Proceed under 83.8.

i. *Quinault's Position.* Quinault stated:

. . . 25 CFR 83.8, is only applicable to petitioners that are able to demonstrate that they are the "same tribal entity that was previously acknowledged or . . . a portion that has evolved from

³⁰It should be noted that Quinault's issue 4 contained two separate items from an analytical standpoint, which have been separated for the purposes of discussion. As this portion of Quinault's issue 4 was a subcategory of Quinault's issue 2, the items are here considered together.

that entity.” See, 25 CFR 83.8(d)(1). By its terms 83.8 does not apply to amalgamated groups formed through the merger of previously acknowledged groups and groups which were not previously acknowledged. To qualify for treatment under 83.8 the petitioner must either be the previously acknowledged entity or a part of that entity. Petitioner is neither (Quinault Revised Memorandum 1998, 4; see also Quinault Revised Memorandum 1998, 17; Quinault Memorandum 1997, 2-3). [punctuation sic]

ii. BIA Analysis. The first issue concerns the PF’s treatment of the Upper and Lower Cowlitz amalgamation. The PF found that the Lower Cowlitz had been acknowledged during treaty negotiations (1855) and subsequently amalgamated with the Upper Cowlitz to form the modern petitioner. The Quinault argue that an amalgamation of a previously acknowledged tribe such as the Lower Cowlitz and another tribe which had never had a Federal relationship (which was Quinault’s description of the Upper Cowlitz) is not “the same tribal entity” or “a portion that has evolved” from the tribe that was formerly acknowledged. Therefore, Quinault reasons, the petitioner was not eligible to proceed under 83.8.

The second issue concerns the PF’s treatment of a social sub-grouping labeled “Cowlitz Metis.” The Quinault erroneously argue that the PF treats this subgroup as a separate tribe, when the term merely refers to mixed blood Cowlitz, who were members of the Lower Cowlitz. This misinterpretation of the PF on the part of the Quinault led to numerous misinterpretations in the analysis they submitted as comment.

Quinault’s specific arguments have been mooted for purposes of the final determination by (1) the conclusion in this report that the Upper Cowlitz, as well as the Lower Cowlitz, had previous unambiguous Federal acknowledgment which extended at least to 1880 (see below) and (2) the confirmation of the position of the proposed finding that the Cowlitz metis did not constitute a separate band, but were a social subgroup of the Lower Cowlitz (see below).

b. Requirements for Previous Unambiguous Federal Acknowledgment for Amalgamated Tribes.

i. Quinault’s Position. Quinault stated that in order for an amalgamated group to proceed under 83.8, each of the groups entering into the amalgamation must have prior Federal acknowledgment:

... while the regulations permit recognition of groups that combined and have functioned as a single autonomous political entity, each of the groups combining to form the amalgamated tribe, must be a historical Indian tribes [sic]. See, 25 CFR 83.7 (e) (Quinault Memorandum 1997, 3-4), [footnote added]

Under this point, Quinault stated as a factual premise that at the Chehalis River Treaty

negotiations in 1855, the United States treated only with the Lower Cowlitz, and there was no evidence that the Upper Cowlitz (Tait-tin-a-pams/Klickitats) were present (Quinault Revised Memorandum 12, 1998, 3; Quinault Memorandum 1997, 2).

ii. CIT Comment. The CIT comment restated CIT's understanding of the Quinault argument under this topic.

Quinault's argument is that the modern tribe is descended from a combination of three tribal groups — Lower Cowlitz, Upper Cowlitz and "Cowlitz metis" — which did not come together until long after 1855, rendering the Chehalis River Treaty Council meaningless. The Quinault opposition then says that the actual tribal formation came sometime during the 20th Century, after which the tribal identification and interaction with the United States is tenuous (CIT Final Submission 1999, 6).

The CIT responded by defending and explaining the PF.

iii. BIA Analysis. The provision in criterion 83.7(e) cited by Quinault is unrelated to prior unambiguous Federal acknowledgment of amalgamated tribes; rather, it defines the issue of descent from the historical tribe.³¹ Even if the Upper Cowlitz had not been found to have previous unambiguous Federal acknowledgment, this fact would not have signified that the Upper Cowlitz band was not a historical Indian tribe within the meaning of criterion 83.7(e).³²

Quinault's theoretical interpretation of the regulations, that the CIT is not eligible to proceed under 83.8 because the Upper Cowlitz, one component of the Cowlitz amalgamation, was not previously acknowledged, has been made irrelevant by the new finding that both the Lower Cowlitz and the Upper Cowlitz (Taitinapam or Cowlitz Klickitats) had unambiguous Federal acknowledgment as late as 1880.³³

³¹By definition, the Cowlitz metis descended from the Cowlitz Indians, and thus from the historical Cowlitz tribe. For the issue of the association into the Lower Cowlitz tribe prior to 1855 of the descendants of certain non-Cowlitz women (Quinault Memorandum 1997, 4), see section IV. of this report.

³²Quinault appears to be adding to add to the regulations a requirement that they do not contain. A tribe can be "historical" without ever having been federally acknowledged. This is certainly the case with those tribes which came to terms with various colonial authorities before the establishment of the United States as an independent, autonomous political entity. Prior acknowledgment decisions have not included prior Federal acknowledgment as part of the definition of "historical" under criterion 83.7(e). Several tribes have proceeded successfully through the 25 CFR Part 83 process without having been federally acknowledged in the past (Narragansett, Gayhead Wampanoag, Mohegan) would have been precluded.

³³However, Quinault's interpretation of the regulations that argues that an amalgamated tribe would not be able to proceed under 83.8 if one of these historical tribes comprising the amalgamated tribe had not had a Federal

iv. BIA Evaluation of the Historical Documentation for the Period from 1855-1880. For the proposed finding, the BIA used the date of the 1855 Chehalis River treaty negotiations as the date of latest unambiguous Federal acknowledgment as a matter of convenience, stating specifically that this did not preclude a later date (CIT PF 1997, Summ. Crit. 3). In themselves, Quinault's documentary submissions concerning the 1878 and 1880 Office of Indian Affairs (OIA) enumerations show that the Indian Office realized that both groups still did, as of 1878, exist, and that they had headmen with whom the OIA communicated when they were required to research and produce status reports. This data resubmitted by Quinault (it was in the record for the proposed finding but not analyzed for purposes of determining a latest date of previous unambiguous Federal acknowledgment) accords with the BIA's conclusion, reached in this report and based on an extension of the analysis done for the proposed finding, that unambiguous prior acknowledgment of both the Lower Cowlitz and Upper Cowlitz extended at least until 1880.

In addition to resubmission of the 1878 and 1880 material, the documentation submitted by Quinault contained some new material that was not in the record at the time of the proposed finding dealing with OIA contacts with the Lower Cowlitz and Upper Cowlitz bands between 1856 and 1880. The BIA's evaluation of the documentation for this period from the perspective of unambiguous previous Federal acknowledgment follows.

v. Agents' Reports, 1856-1870. On October 10, 1856, OIA Agent Sidney S. Ford Sr. submitted a lengthy report concerning the previous year which indicated that on May 15, 1856, he had been notified that from that date, his district would include the Cowlitz Indians (Quinault Ex. 2:1856-36; Ford to Simmons 10/10/1856, 9). Ford included a "Census of the Indians in the Chehalis and Coast District and now under my charge" (NARS M-5, Reel 16). The reference in Ford's report to the "Cowlitz Indians and Tai-tinipans," indicated that at this time, both the Lower and Upper Cowlitz were under the jurisdiction of the Government.

1.	Kwin-ae-altis and Kwille-hates	493
2.	Lower Chehalis	217
3.	Upper Chehalis	216
4.	Cowlitz Indians and Tai-tinipans	<u>240</u> - 1,166

(NARS M-5, Reel 16).

In subsequent letters dated November 16, 1856, and November 26, 1856, Ford also referenced the Cowlitz Indians (NARS M-5, Reel 16; Quinault Ex. 2:1856-43). The February 13, 1857, summary by Stevens of activities for the prior year confirmed Ford's statement that the Cowlitz Indians were within his jurisdiction (Quinault Ex. 3:1857-2; NARS M-234, Reel 907; Stevens to Manypenny 2/13/1857, 8).

relationship should not be viewed as a valid interpretation of the regulations, merely because the FD does not reach a conclusion on this argument because of the facts.

In a November 9, 1857, letter from A.J. Cain, Special Agent, to J. W. Nesmith, Superintendent of Indian Affairs, Oregon and Washington Territories, from Vancouver, Washington, the agent described a meeting with the Cowlitz Indians on Monday, November 2, at a time set by the chief, Kish-Kock, the chief who had been chief spokesman of the Cowlitz at the 1855 treaty negotiations (Cain to Nesmith 11/9/1857; NARS M-5, Reel 16; also submitted as Quinault Ex. 3:1857-8). In 1857, the population of "the Cowlitz tribe or band of Indians, as near as an aggregate estimate could be made by the Chief and head men," was between 350 and 400, including women and children.³⁴ While distinguishing between the Lower Cowlitz and Upper Cowlitz, the agent nevertheless described them as a unit as he came to recommend that they be paid compensation for all the claims they had submitted other than those for horses who had just happened to die during the course of the war:

A small portion of this band (less than 100) are Cowlitz Indians proper, and are scattered along the Cowlitz, from Cowlitz landing to its mouth (30 miles) and subsist principally by Salmon fishing: the other portion are either part Clickitat or intermarried with that tribe, and range at the foot of the mountains near the head of the river and rely on game principally for their subsistence. All these Indians have been assisted in gaining a subsistence by being employed by the whites . . . (NARS M-5, Reel 16, Cain to Nesmith 11/9/1857, 6).

In particular, Cain recommended that the Cowlitz be compensated:

in consideration of their necessities and the approach of winter and their good conduct during the war: they having rendered efficient aid in keeping up the communication between the Sound and Columbia river by navigating the Cowlitz river with Canoes; - and performed about 200 days work in the building of Fort Cowlitz for the protection of the citizens for which they never received any compensation. This being done in addition to the payment for the guns would

³⁴The agent noted that many had died within the last two years and predicted, "But few years will elapse ere the whole tribe will be extinct" (NARS M-5, Reel 16, Cain to Nesmith 11/9/1857, 5). This number was, nonetheless, substantially larger than Stevens' pre-war estimate, given below:

Tribes with whom Treaties have not been made	
Lower Chehalis	217
Chehalis, Cowlitz & Columbia River	
Upper Chehalis	216
Cowlitz & Taitinapams	240
Lower Chinook	112
Upper Chenooks	330
Klikitats	400

(Quinault Ex. 2:1856-6, Stevens to Manypenny 5/5/1856; typescript from RG 279, ICC Docket 218, Box 865, Folder #25; manuscript copy Quinault Ex. 2:1856-7; NARS M-5, Reel 2).

ensure good feeling and have a happy moral effect upon many Indians this side as well as the other side of the Cascade mountains, who are familiar with the circumstances connected with the loss of these guns (Cain to Nesmith 11/9/1857, 6).

The majority of the Quinault submissions for the 1860's through the end of the 19th century (Quinault Ex. 3, Quinault Ex. 4), such as the published COIA reports and the investigation which resulted from the complaints of Congressman Orange Jacobs (NARS M-234, Reel 915), were already in the record at the time of the proposed finding. While a few provided some limited evidence of additional contacts between the Federal Government and the Lower Cowlitz and Upper Cowlitz Indians, these contacts were not different in nature from the data previously evaluated by the BIA.³⁵ Quinault's interpretations of these documents were found in the Nicklason Research Associates reports (Nicklason 1997, Nicklason 1998) and the formal comments.³⁶ These interpretations are discussed below.

One item of significant interest (Quinault Ex. 4:1870-1), in that it showed Arwin Stockum functioning in a leadership capacity before his 1878 OIA appointment, were instructions from Samuel Ross, Superintendent, sent on March 10, 1870, to Benjamin S. Pardee, Chief Clerk, saying that he should:

³⁵Some of the Quinault submissions, such as those pertaining to a claim by Cascade Indians in Skamania County, Washington (Quinault Ex. 4:1909-6 - 1909-9, 1909-14 - 1909-21) did not appear pertinent to the petition. One possible connection was that some of the persons associated with this claim, e.g. Frank Estabrook (Quinault Ex. 4:1909-10, 2; RG75, Yakima 23414-19-311) had intermarried with Cowlitz Indians allotted on Yakima, although the document itself does not provide this information. The Nicklason Research Associates report asserted that it was "of importance that in all of the correspondence concerning this matter, no mention was made that these Stevenson area Cascades were considered to be part of a 'Cowlitz' social/political group" (Nicklason 1998, 68). Since in fact they were not Cowlitz, had no identifiable Cowlitz ancestry, and never appeared on any Cowlitz lists, the matter was not of any importance at all.

³⁶"A late August 1860 statement from Washington Superintendent Edward Geary again grouped the Cowlitz and Tatinapan [*sic*] but listed them separately and reported a now familiar combined population figure of 240. [1860-5, p. 5]" (Nicklason 1998, 33).

Draft legislation, written by Superintendent Geary, to regulate operations of the Indian Service in Oregon and Washington territories was discussed in a February 1861 letter to the Indian Office in Washington, D.C. In a letter to Commissioner of Indian Affairs A. B. Greenwood, dated February 27, 1861, Superintendent Geary commented on his draft legislation noting that the proposed act placed one agent at a new Squaxin Agency who would be in charge of the "... Nesqually, Puyallup, Squaxin and a Skokomish Reservations [*sic*], and also the Upper Chehalis, Cowlitz and Tatinapanis not treated with" Section 7 of the proposed legislation also referred to the Cowlitz and Taitnapams as separate entities [1861-1, p. 2, 9] (Nicklason 1998, 33-34).

The NRA report continues a detailed discussion of the contacts between the OIA and the Cowlitz and Taitnapan (Upper Cowlitz) Indians in the 1860's (Nicklason 1998, 34-38).

secure the services of a Competent guide and go with him to the Cowlitz Country and to the Indians living at different points on the River and investigate the charges of murder made by Chief Atwain against the Klick-i-tat Indian, She-an-a-can now Confined in jail in this city.

If necessary examine witnesses in Portland. You will discharge guide at Monticello, and take Steamer for that City (NARS M-5, Roll 6).

This indicates that Stockum's 1878 appointment was not to be a government chosen figurehead, but was a confirmation of his actual status in the tribe.

On April 16, 1870, Ross instructed Pardee to go to the Cowlitz River and "ascertain the Character of the difficulty reported to exist between the Klickitat and Cowlitz Indians" (Quinault Ex. 1870-2; NARS M-5, Reel 6). There was, however, no indication in these records that these difficulties were between the Lower Cowlitz and the Upper Cowlitz.

2. Discussion of Quinault's Specific Points: Appropriateness of the Proposed Finding's Determination that the CIT had Unambiguous Previous Federal Acknowledgment.

a. "Extension" of Previous Unambiguous Federal Acknowledgment to the Cowlitz Metis.

i. Inclusion of the Cowlitz Metis under the 1855 Federal Acknowledgment of the Lower Cowlitz.

a. Quinault's Position. Quinault stated that, "[t]he 1855 Acknowledgment of the Lower Cowlitz Cannot Be Extended to the Upper Cowlitz or Metis, Nor Can It be Extended to the Cowlitz Petitioner Whose Membership is Composed of Descendants of the Three Groups" (Quinault Revised Memorandum 1998, 3). Quinault also stated that there is, "no evidence. . . that either the Cowlitz Indians represented at the Treaty Council or the federal government [*sic*] viewed the metis as part of the Cowlitz Tribe or Band in 1855, or at any other time in the Nineteenth Century (Quinault Revised Memorandum 1998, 6).

Under this point, Quinault stated as a factual premise that at the Chehalis River Treaty negotiations in 1855, the United States treated only with the Lower Cowlitz, and there was no evidence that the Cowlitz métis [defined by the Nicklason Research Associates reports as a group separate from the Lower Cowlitz (Nicklason 1997, 52; Nicklason 1998, ii)] were present (Quinault Revised Memorandum 12, 1998, 3; Quinault Memorandum 1997, 2; Nicklason 1997, 51-52).

b. CIT Comment. In regard to the status of the metis in 1855, CIT stated: "Although the Cowlitz Metis and their children were not wholebloods, they nonetheless were active participating members of the tribe and were never excluded by virtue of their non-Indian blood" (CIT Response 1998, 5).

c. BIA Analysis. The BIA has presumed that in the above passages, Quinault was using the term "metis" to signify the "Cowlitz Metis," the only group of metis³⁷ discussed in detail in the CIT proposed finding. The term "Cowlitz metis" as used in the PF referred to the mixed blood members of the Lower Cowlitz Tribe and their descendants. The PF neither stated nor implied that the Cowlitz metis were ever a separate tribe, entity, or band that had amalgamated with the Lower Cowlitz.

Quinault's historical summation of the treaty negotiations, while in accord with the presentation in the proposed finding (CIT PF 1997, Summ. Crit. 4, 13), is incomplete. While there is no documentation that any metis members of the Lower Cowlitz tribe were present at the Chehalis River Treaty Council (Nicklason 1998, 19), there is equally no documentation that the Lower Cowlitz group present at the Chehalis River Treaty Council in 1855 did not include several of the older metis, although they would not have had sufficient seniority to act as spokesmen.³⁸ The evidence is silent concerning the presence of Cowlitz metis at the Treaty Council.

There is no evidence that the Lower Cowlitz were not representing their mixed blood members. Indeed, earlier in the 1850's, a few years before the Treaty Council, Government agents apparently classified the mixed-blood children of Cowlitz women as Cowlitz Indians. As the Nicklason Research Associates report noted, "on February 3, 1851, Acting Sub-agent R. Shortep provided Oregon Superintendent Anson Dart with a census of the Indians within his district. As to the Cowlitz, the sub-agent reported they numbered about fifty including an undetermined number of half-breeds. [1851-1, p.2]" (Nicklason 1998, 11). This reference at least indicates the inclusion of metis individuals in the Cowlitz population counted by Superintendent Dart. Who they were and whether they were at the Treaty Council is unknown.

ii. Relation of the Cowlitz Metis to the Lower Cowlitz Tribe.

a. Quinault's Position. Citing BIA technical reports, Quinault argues that the Cowlitz metis were not part of the Lower Cowlitz tribe in either 1855 or in subsequent years:

... extension of the 1855 recognition of the Lower Cowlitz Tribe to the metis is precluded by the complete lack of evidence that either the Indians or the federal government considered the metis to be a part of the Lower Cowlitz Tribe

³⁷The word "metis" is a general term for mixed blood Indians who descend primarily from Indian tribes and French-Canadians (they may have other ancestry too.)

³⁸The oldest Cowlitz metis, the children of Simon Plamondon and Veronica, were born in the late 1820's and early 1830's. Only one child of this marriage, Simon Plamondon Jr., was male. He was born, according to his own affidavit, March 20, 1830 (CIT Pet. 1987, Ex. A-83). In 1855, he was not yet married. At the time of the treaty, the majority of the first-generation Cowlitz metis were still children or young teenagers (see Cowlitz GTKY File, BAR).

(Quinault Revised Memorandum 1998, 5).

Quinault restated this aspect of its argument elsewhere, with elaboration (Quinault Revised Memorandum 1998, 13, 15; see also Quinault Memorandum 1997, 7-8, 9), placing particular emphasis on data from a document created 23 years after the treaty negotiations. The historical report submitted by Quinault added: "Of equal importance is the fact that the 1878 census did not contain the name of Simon Plomondon, Jr., while his relative Atwin, was enumerated on that census" (Nicklason 1997, 54;³⁹ Quinault Revised Memorandum 1998, 5). More generally, Quinault emphasized that the 1878 census contained no metis families:

... the 1878 censuses of the Upper and Lower Cowlitz prepared by Milroy with the assistance of the Cowlitz Chiefs do not list any metis as heads of households, even though metis individuals like Simon Plamondon, Jr. were close relatives. . . (Quinault Revised Memorandum 1998, 6; see also Nicklason 1997, 54).⁴⁰

Quinault also characterized the statements of the BIA historian in the formal technical assistance meeting:

... the BAR historian has since confirmed that there is no evidence indicating that government officials viewed the metis population as part of the Lower Cowlitz before 1900. See, Transcript of November 23, 1998 Meeting on the Record at 58. The BAR historian also acknowledged that there is no evidence which she has seen that Lower Cowlitz leaders exercised political influence or authority over the metis prior to 1900. *Id.* at 27 (Quinault Revised Memorandum 1998, 6).

b. CIT Comment. CIT responded to this argument by trying to clarify the definition of metis Cowlitz: "the Cowlitz Tribe sees it appropriate to clarify the facts surrounding the Cowlitz metis [*sic*] and to correct the continued attempt of the Quinault Tribe to mischaracterize the metis

³⁹The report is now addressing only the aspect of Quinault's arguments drawn from the 1878 censuses that impact the issue of previous unambiguous Federal acknowledgment. Quinault elsewhere used this data to argue a showing that there was no historical community (criterion 83.7(b)). While a showing of historical community is not necessary for petitioners proceeding under 83.8, it should nevertheless be noted that the omission of Simon Plamondon Jr. from the 1878 census is not adequate evidence that he did not interact with his uncle, Atwin Stockum, since other evidence, both earlier and later than 1878, shows that he did, in fact associate with his uncle, a close relative.

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status and who those people actually were" (CIT Final Submission 1999, 6-7) CIT also asserted that, "... the metis [*sic*] people were Cowlitz Indians of mixed blood — not some other tribe seeking to join the Cowlitz to form a new tribe (CIT Final Submission 1999, 7).

c. BIA Analysis. Quinault mischaracterized the proposed finding in this passage. The Department did not propose to "extend" previous unambiguous Federal acknowledgment "to the metis" (Quinault Revised Memorandum 1998, 6). Rather, the Department permitted the petitioner as a whole to proceed under the provisions of 25 CFR 83.8 on the basis that the previous unambiguous Federal acknowledgment of the Lower Cowlitz was sufficient to permit the petitioner as a whole (Lower Cowlitz and Upper Cowlitz) to be processed under 83.8.

The proposed finding never described the Cowlitz metis as a separate tribe or band which merged with the Lower Cowlitz and Upper Cowlitz. Quinault misinterprets the proposed finding throughout on this point.⁴¹ Rather, the proposed finding defined the Cowlitz metis as mixed blood Cowlitz Indians who formed a social sub-grouping of the Lower Cowlitz Indians, as Quinault itself quoted in a footnote on the same page (Quinault Revised Memorandum 1998, 7n8; citing CIT PF 1997, Summ. Crit. 22).

A Cowlitz woman who married a French-Canadian man in the 1840's or 1850's did not lose tribal membership as a consequence.⁴² Her children were not automatically alienated from the Cowlitz

⁴¹Both Nicklason Research Associates reports (Nicklason 1997, Nicklason 1998) persistently misinterpreted the proposed finding to the effect that the "Cowlitz metis" were in some way a separate band. "There is no evidence that a separate 'Métis' Indian band or a 'Cowlitz-Métis' band ... ever existed at any time between 1855-1903. ... the record fails to describe a 'Métis' Indian band, it also does not describe a 'Métis' band consolidating with a non-Indian group. Indeed, evidence in the record during the early years shows that non-Indians in the area, who were not 'Bostons,' viewed themselves as Canadians or French and non-Métis" (Nicklason 1997, 52). Quinault's formal comments (Quinault Revised Memorandum 1998, Quinault Memorandum 1997) base their argument on this misinterpretation of the proposed finding. BIA concurs that the Cowlitz metis were not a separate band.

⁴²No valid analogy exists between the membership customs of Indian tribes during this early period and later 19th century Federal legislation which declared that American-born women lost US citizenship by marriage to an alien and that foreign-born women gained US citizenship by marriage to a citizen. Such legislation was not retroactive. A specific act passed by Congress in 1888 declared that Indian women who married citizens would obtain citizenship by such a marriage (U.S. Statutes 1888). Commissioner of Indian Affairs D.M. Browning subsequently interpreted this act to mean that, because an Indian woman marrying a citizen "separates herself from her tribe," her children could not "be deemed members of the tribe to which the mother belonged ..." (Browning 9/14/1894, 65-66). See the general discussion (Duwamish PF, HTR 24, 41). *Halbert v. U.S.* pointed out that "there is no incompatibility between tribal membership and United States citizenship" in cases where an Indian woman gained citizenship through marriage to a citizen (*Halbert v. U.S.*, Quinault Ex. 7:1931-8, 8) and further stated specifically:

As to marriages occurring before June 7, 1897, (as the marriages here did) between a white man

tribe by her marriage to a non-Indian, any more than they would have been if she married an Indian from another tribe -- a customary marriage pattern in the western Washington region. The on-going interactions among Cowlitz-descended metis and between them and both Lower Cowlitz and Upper Cowlitz full-blood individuals throughout the second half of the 19th century indicated that tribal affiliation remained intact for many among the Cowlitz metis population and that the Lower Cowlitz mothers and their metis children remained part of the treaty tribe of 1855.

In analyzing the 1870 contacts between the OIA and the Cowlitz (Nicklason 1998, 38-39), the Quinault historical report described the October 18, 1870, census supplement of the non-treaty tribes (Quinault Ex.1870-5), including:

the Cowlitz "Tribe" and the Klickitat "Tribe." Atwaine was listed as the "Chief" of both "tribes" whose combined population totaled 317 -- 90 men, 105 women, and 122 children. [*Ibid.*, p. 205] None of the children on this census were described as mixed bloods, "metis" or "Cowlitz metis." (Nicklason 1998, 39).

The report's comment was misleading in ascribing significance to the absence of certain descriptions for the children on this census. None of the children on this census, whether Indian or metis, were described at all, but only enumerated.

The proposed finding also never said or argued that the Cowlitz metis were a separate entity recognized by the 1855 treaty or by any other Federal action and later merged with the Upper Cowlitz and Lower Cowlitz to form the CTO. The proposed finding concluded that the Lower Cowlitz tribe, which then and in subsequent years counted among its members certain Cowlitz metis, was recognized by treaty.⁴³

The two 1878 enumerations answer one specific question: did the OIA enumerate the Cowlitz metis as Cowlitz Indians in 1878? Yes it did. They do not answer the broader question: were

and an Indian woman, who was Indian by blood rather than adoption, -- and who on June 7, 1897, or at the time of her death, was recognized by the tribe, -- the children have the same right to share in the division or distribution of the property of the tribe of the mother as any other member of the tribe, but this is in virtue of the Act of June 7, 1897 (*Halbert v. U.S.*, Quinault Ex. 7:1931-8, 8).

Actual tribal membership customs were not uniform. Some tribes reckoned descent through maternal lines; others through paternal lines; others bilaterally. Indians in western Washington often had an option for membership in several tribes and might shift back and forth during their lifetimes.

⁴³Many Indian tribes included mixed blood members during treaty negotiations. Others did not. There was no uniform government-imposed policy. In some cases, there are government records which specifically indicate that metis were excluded (for example, the 1863 Chippewa treaty), but no such documentation exists for the 1855 Chehalis River treaty negotiations. Each situation must be analyzed individually.

the Cowlitz metis considered to be Cowlitz Indians or to be part of the federally acknowledged Lower Cowlitz tribe at that date, either by the Cowlitz full-bloods, by external observers, or by the Federal Government? Some insight can be gained by comparing the data to the 1880 Federal census, although it does not provide a definitive answer, since in Lewis County the Cowlitz metis were enumerated as white, while in Cowlitz County members of the same families were enumerated as Indian.⁴⁴ (The 1870 Federal census of these counties had been somewhat more precise, using "I/W" as a designation for the Cowlitz metis.) Several of the Cowlitz metis families were also enumerated on the special Indian Population schedules of the 1900 Federal census in both Lewis County and Cowlitz County (see Cowlitz GTKY File, BAR).⁴⁵

The BIA staff member did not state that there was "a complete lack of evidence that either the Indians or the federal government considered the metis to be a part of the Lower Cowlitz Tribe" (Quinault Revised Memorandum 1998, 5). The question as posed by the Quinault attorney did not pertain either to the treaty negotiations or to views held by "the Indians." The much more narrow question and reply, follow:

MR REICH: One last question. Is there evidence that Federal officials viewed the metis population before 1900 as being part of the Lower Cowlitz, **one way or the other?**

MS. DEMARCE: Not that I have seen in the record. Again, it might be necessary to go more deeply into the archives to answer that question (Cowlitz On-the-Record Meeting, November 23, 1998, Official Transcript, 58). [emphasis added]

There is no document in the record which addressed the views of Federal officials identifying the existence of a metis group as in any way distinct from, or within, the Cowlitz tribe. The response

⁴⁴Simon Plamondon Jr. and his wife, both metis, were enumerated as white (NARS T-9, 1880 U.S. Census, Lewis County, Washington, 405r, #243/243). However, their son, Daniel A. Plamondon, was enumerated as Indian (NARS T-9, 1880 U.S. Census, Cowlitz County, Washington, 185, #83/86). John Baptiste Plamondon and his wife were enumerated as Indian (NARS T-9, 1880 U.S. Census, Cowlitz County, Washington, 189, #166/179), but Joseph St. Germain's wife, nee Mary Ann Plamondon, was, like her husband, counted as white (NARS T-9, 1880 U.S. Census, Lewis County, Washington, 391r, #244/243). Simon Gill and his wife were white (NARS T-9, 1880 U.S. Census, Lewis County, Washington, 406, #245/245), but their son, John Gill, was Indian (NARS T-9, 1880 U.S. Census, Cowlitz County, Washington, 1874, #131/137). David Cottonware [Cottonnoire] and family were Indian (NARS T-9, 1880 U.S. Census, Cowlitz County, Washington, 1848, #71/74), while his brother Edward Cottonnoire, wife, and adopted daughter were white (NARS T-9, 1880 U.S. Census, Lewis County, Washington, 406, #247/247).

⁴⁵In 1900, the Cowlitz metis families enumerated on the regular population schedules were either "W" or "B", even when first-degree relatives were on the special Indian schedules.

This Federal census material was reviewed for the proposed finding (CIT PF 1997, GTR 42-51), along with pertinent census data for several other Washington counties (CIT PF 1997, GTR 51-58).

must be read also in the context of the extensive discussion of the issue in the technical report to the proposed finding which includes evidence that the metis were included in Federal census and other relevant documents along with the Lower Cowlitz.

iii. Significance of Inclusion of Cowlitz Metis on Claims Rolls by Roblin and McChesney.

a. Quinault's Position. Quinault stated:

The fact that McChesney and Roblin later included Cowlitz métis descendants in claims rolls does not evidence federal recognition of the Cowlitz Métis as an Indian group . . . (Quinault Revised Memorandum 1998, 16-17, Quinault Memorandum 1997, 18).

b. CIT Comment. CIT responded:

The Quinault discussion on this point is confusing in that it appears to assume the existence of a McChesney report of which the Cowlitz have no knowledge.⁴⁶ The Quinault text quotes Roblin's account of a past conversation with the then-deceased McChesney about old membership lists of Cowlitz Indians. However, this account does not reference or otherwise identify any other communication of McChesney which would constitute a report on the Cowlitz Tribe and, frankly, we know of no such further work (CIT Response 1998, 9). [footnote added]

c. BIA Analysis. Quinault is apparently referring to certain lists which included Cowlitz metis as "claims rolls" and then argues that they should not be evidence of unambiguous federal acknowledgment. First, these lists, discussed below, are not claims rolls (in the sense of being tribal judgment award rolls prepared by the OIA or BIA).⁴⁷ The BIA is not aware of an extant specific McChesney "claims roll" with Cowlitz métis descendants listed. In 1910 McChesney wrote a letter concerning one individual claim brought by Atwin Stockum and Simon Plamondon, Jr., a copy of which was included in the CIT petition (McChesney to COIA, 4/20/1910; CIT Pet. A-114).⁴⁸ In 1915 or 1916, McChesney forwarded to the COIA at least one

⁴⁶The 1910 McChesney letter was analyzed both in the proposed finding (CIT PF 1997, HTR 108-109) and in the Nicklason Research Associates report (Nicklason 1998, 70-71), both of which were available to CIT. Additionally, the Cowlitz included two copies of it in their petition (CIT Pet. 1987, Ex. A-114 - A-115 and CIT Pet. 1987, Ex. A-951 - A-954). Quinault resubmitted this document (Quinault Ex. 1910-4).

⁴⁷The BIA has never prepared any descendancy roll in connection with the ICC award, and had not prepared any Cowlitz roll at any time before the ICC award, a fact clearly documented by frequent statements in the documentation submitted by Quinault.

⁴⁸The BIA analysis has assumed that this 1910 letter was the otherwise unidentified "McChesney report" referenced by Quinault. It does not seem possible that Quinault was referencing McChesney's extensive 1906

of the lists prepared by Cowlitz claims representatives Peter Kalama and Frank Iyall (see discussion below in Section V.). A later letter written by Roblin referred to these:

The present representatives of this tribe are active in the work of the Northwestern Federation of American Indians, and they have prepared lists of members, one of which was forwarded to your Office, I am informed, by the late Dr. McChesney. Supervisor ([Roblin to COIA 1/31/1919]; CIT Pet. Ex. A-959).

For the proposed finding, the petitioner did not submit, and the BIA researcher did not locate these lists, which McChesney had sent to the COIA (CIT PF 1997, GTR 34-35).⁴⁹ Quinault submitted the lists, which date to 1915-1916, and associated documents as part of its comment on the proposed finding. Any 1910 lists, if they exist, have not been submitted or located. The 1915-1916 Iyall and Kalama lists do not constitute a "claims roll" compiled by McChesney, nor did the transmittal by McChesney indicate that he "included Cowlitz metis descendants in claims rolls" (Quinault Revised Memorandum 1998, 16-17; Quinault Memorandum 1997, 18), any more than Roblin's listing of the unenrolled Indians of western Washington (Roblin 1919a) constituted a "claims roll" within the ordinary meaning of the term (see detailed discussion below under Section V.).

There may be other difficulties in the terminology used by Quinault at this point ("Federal recognition"), since the focus of the Quinault discussion was whether the Cowlitz metis (as a group which Quinault defined as separate from the Lower Cowlitz Indians) could be considered to have met separately criterion 83.7(a) as modified by criterion 83.8(d)(1) (Quinault Revised Memorandum 1998, 16). However, by using the terminology of "recognition" rather than that of identification by external agencies, Quinault at least implied an intent to have its analysis considered in this context of recognition or Federal acknowledgment under 83.8, rather than identification under 83.7(a). The two concepts pertain to different sections of the regulations and should not be confused with one another.

Second, the proposed finding did not, and the final determination does not, conclude that the BIA considered the McChesney letter (McChesney to COIA 4/20/1910), the Roblin Report (Roblin to COIA 1/31/1919) or the Roblin Roll (Roblin 1919a) to constitute unambiguous previous Federal acknowledgment of any portion of the petitioner. This fact is further evident since the proposed finding used the 1855 treaty date and did not further analyze possible later dates of prior unambiguous Federal acknowledgment of the Cowlitz.

report on the Chinook, which did not include data on the Cowlitz. McChesney's 1915 transmittal of the Iyall and/or Kalama lists was not accompanied by a report, but only a short letter (see discussion below, section V of this report).

⁴⁹This corrects the GTR, which in the absence of the documents, suggested that the list mentioned by Roblin in 1919 might have been compiled in connection with McChesney's investigation in 1910.

See a more extensive review of Quinault's interpretation of the development of the Cowlitz metis under section V.B of this report. For a more extensive review of Quinault's allegations that the PF misinterpreted the McChesney letter and Roblin report, see section V.H of this report.

b. Allegation that the Proposed Finding Contradicted § 83.8(d)(1).

i. Quinault's Position. Quinault stated:

The Department's proposal to extend previous federal acknowledgment to the metis based on the 1855 Treaty Council between the United States and the Lower Cowlitz, without any evidence that the metis were considered part of the Lower Cowlitz in 1855, or at any other time in the Nineteenth Century, is in direct contradiction to the requirement of 25 CFR §83(d)(1) [*sic*] (Quinault Revised Memorandum 1998, 6-7).⁵⁰

ii. CIT Comment. CIT stated that:

Although the Quinault opposition ostensibly is built on several issues, it actually boils down to the contention that the Cowlitz Tribe in its current form was formed long after BAR's accepted date of last unambiguous prior federal recognition, with the suggestion that the "new" tribe has no historical predecessor from which it can trace and no unambiguous prior recognition from which to trace (CIT Response 1998, 6).

iii. BIA Analysis: The Quinault argument that the proposed finding contradicted the regulations was based on its misunderstanding of the proposed finding in connection with the relationship of the Lower Cowlitz to the Cowlitz metis. It is discussed in more detail below in the section on the metis. However, there is evidence that the Cowlitz metis were considered part of the Lower Cowlitz in 1855.

4. Acknowledgment of the Cowlitz after 1855.

a. Federal Acknowledgment of the Lower Cowlitz after 1855.

i. Quinault's Position. Quinault did not deny that the Federal Government continued to acknowledge the Lower Cowlitz at least through the Milroy census of 1878 and the appointment of Atwin Stockum as chief by the OIA the same year. The Nicklason Research Associates report

⁵⁰Paragraph 83.8(d)(1) reads "The group meets the requirements of the criterion in 83.7 (a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity."

submitted as part of the Quinault comments contained substantial documentation of Government contacts with the Lower Cowlitz through 1880, but it also asserted that at some time during the period from 1880 through 1910, this acknowledgment *de facto* ceased (Nicklason 1998, 58-59).

ii. CIT Comment. CIT made no direct discussion of the Treaty of Olympia as it pertained to the Lower Cowlitz.⁵¹ The CIT response on this issue asserted that until 1880 Agent Milroy was dealing with the Cowlitz and the Klickitat as bands and that both were under the supervision of the agency. The petitioner quoted him as saying:

As at the time said Circular was received, 598 of the Indians belonging to this agency and under my supervision belonged to 8 different bands who had never resided upon reservations and were scattered over a region 130 by 150 miles in extent. And so at least half of the 1135 Indians belonging to the five reservations then under the supervision of this Agency, spent a large portion of their time off the reservations, working among & for the whites, fishing, hunting, gathering berries &c. (Milroy 1880a, Ex. 3422-3436) (CIT Response 1998, 13).

iii. BIA Analysis. Federal acknowledgment of the Lower Cowlitz extended at least through the 1878 appointment of Atwin Stockum as chief and the 1878-1880 censuses of the Lower Cowlitz taken by a Federal Indian agent which included the Cowlitz metis. The vague statements cited by CIT to the effect that various unnamed Indians are under the OIA's supervision are not accepted as evidence of prior unambiguous Federal acknowledgment of the Cowlitz. (See sections (b) and (c) below).

b. Limitation of Previous Unambiguous Federal Acknowledgment to the Lower Cowlitz.

i. Quinault's Position. Quinault further stated:

Under 25 CFR 83.1 and 83.8, previous federal acknowledgment based on the aborted 1855 Chehalis River treaty negotiations can only extend to the Lower

⁵¹CIT elsewhere discusses the 1855 Treaty of Olympia as part of the history of allotments on the Quinault Reservation, but makes no specific allegations concerning its pertinence to the issue of previous unambiguous Federal acknowledgment for CIT (CIT Final Submission 1999, 21-22 (issue IV.II.B)). CIT argued that there were four "adjudicated principles" to be considered "pursuant to the provisions of the Treaty of Olympia" which established the Quinault Reservation (CIT Final Submission 1999, 16), arguing that, "the tribes listed in the foregoing paragraph which were not signatory to the Treaty of Olympia are now fully affiliated with the signatory tribes as a matter of law, an affiliation which has been confirmed by every federal court which has looked at the issue" (CIT Final Submission 1999, 16-17).

CIT's arguments on this issue did not pertain directly to the Federal acknowledgment criteria, since they were directed to the issue of rights on the Quinault Reservation rather than to the issue of prior Federal acknowledgment of the Cowlitz tribe. They have therefore not been analyzed in this report and this report takes no position on them.

Cowlitz. The proposed findings at 4 acknowledge, “the Department cannot accord acknowledgment to petitioners claiming previous federal acknowledgment without a showing that the group is the same one as recognized in the past.” The petitioner is an alleged amalgamation of three separate populations, only one of which was the subject of prior federal acknowledgment is manifestly not the same group that was recognized in the past. Accordingly, the petitioner is not eligible for consideration under 25 CFR 83.8 (Quinault Revised Memorandum 1998, 3-4).

ii. CIT Comment. CIT stated:

... even if the metis people somehow did constitute a separate tribe, their joining the Cowlitz — with prior federal recognition by virtue of the 1855 treaty council, as well as other subsequent events discussed later — meant only that they were ascending to the prior recognition of the group they were joining (CIT Final Submission 1999, 7-8). [emphasis in original]

iii. BIA Analysis. The proposed finding did not conclude that the Lower Cowlitz Indians alone were the subject of prior unambiguous Federal acknowledgment. Rather, the proposed finding stated that the March 2, 1855, date of the end of the Chehalis River treaty negotiations was being used as a date of convenience for purposes of preparation of the proposed finding and did not constitute a finding that Federal acknowledgment of the Cowlitz Indians ceased as of that date (CIT PF 1997, Summ. Crit. 3). The proposed finding did not discuss a separate date of prior unambiguous Federal acknowledgment for the Upper Cowlitz even though the proposed finding evaluated the amalgamated entity under the prior Federal acknowledgment provisions of the regulations.

Examination of the evidence undertaken for the preparation of the final determination has indicated that both the Lower Cowlitz and Upper Cowlitz were federally acknowledged as of 1880, and confirms that the metis were not a separate group (see the discussion above and the extensive discussion which follows). Therefore, it is unnecessary to address the now theoretical argument raised by Quinault that an amalgamated group cannot proceed under § 83.8 unless each of its subgroups had prior Federal acknowledgment.

c. Federal Acknowledgment of the Upper Cowlitz after 1855.

i. Quinault’s Position. Quinault stated:

Under the regulations previous acknowledgment of the Lower Cowlitz as a result of the 1855 Treaty Council cannot extend to the Upper Cowlitz or Cowlitz Klickitat who were clearly identified and viewed as a separate group from the Lower Cowlitz by the federal government at the time of the treaty negotiations (Quinault Revised Memorandum 1998, 5).

ii. CIT Comment. The CIT argued that the reference by a Cowlitz chief, identified as Kish-kok, at the 1855 Chehalis River Treaty Council to the prospect that, "his people would have to 'come down with the mountain people as far as the Satsop,'" suggested "the representation at Cosmopolis of Cowlitz Indians from other than the lower portion of the Cowlitz" (CIT Response 1998, 5).

CIT also argued that: "In the years 1878-80, the Bureau of Indian Affairs dealt directly with the Cowlitz Indian Tribe. These actions were initiated by the Commissioner of Indian Affairs with instructions to R. H. Milroy, Agent of the Puyallup-Consolidated Agency of Western Washington" (CIT Response 1998, 8).

iii. BIA Analysis: CIT's presentation concerning Chief Kish-kok's statement overstated the case for Upper Cowlitz representation in 1855. While Kish-kok resided on the middle reaches of the Cowlitz River rather than near its mouth, there is no specific historical record which shows him as having exercised any direct authority over the Upper Cowlitz (Tai tin a pans) in 1855, while Paul Kane's 1847 portrait of him with a flattened head indicates that he was himself Lower Cowlitz (Salish) rather than Upper Cowlitz.⁵² Nevertheless, some relationship seems to have existed between the Upper Cowlitz and Kish-kok. As the Nicklason Research Associates report submitted by Quinault noted, just a year before, the Upper Cowlitz had complained to Sub-agent William Tappan that Kish-kok had failed to give them any aid (Nicklason 1998, 15).

In different contexts, both Quinault (Nicklason 1998, 42; citing to Quinault Ex. 1878-2, 2) and CIT (CIT Response 1998, 9-10) quoted Milroy's report to COIA Hayt on January 7, 1878, which first described the Lower Cowlitz and then separately characterized the Klickitat as "detached from their Tribe and settled on the Upper Cowlitz" and in a state of "deadly hostility" with the Lower Cowlitz. This quotation was, however, part of a historical retrospective rather than a description of the situation at the time of the letter (Milroy to COIA 1/7/1878), and is not as dependable as contemporary 1878 documentation.

The Indian agent in 1878 indicated that the Upper Cowlitz and Lower Cowlitz were in comparable statuses: "The Cowlitz Indians and said band of Klickatats are non-treaty Indians in this region of country . . ." (Milroy to COIA 1/7/1878, 3).⁵³ The 1878 and 1880 censuses of the Upper Cowlitz band taken by a Federal Indian agent, indicated that Federal acknowledgment of the Upper Cowlitz extended at least to 1880. During the same general time period, the request of

⁵²Paul Kane, Canadian artist and explorer, wrote in 1847. "We landed at the Cowlitz farm, which belongs to the Hudson's Bay Company . . . Here I remained until the 5th of April, and took the likeness of Kiscox, the chief of the Cowlitz Indians, a small tribe of about 200. They flatten their heads and speak a language very similar to the Chinooks" (Cowlitz Pet. Narr. 1987, 6). See also Taylor and Hoaglin 1960, 9-10.

⁵³Although the Government negotiated with the Cowlitz, an act which constitutes previous recognition, the Cowlitz refused to sign.

local settlers that the BIA appoint Captain Peter as chief of the Upper Cowlitz (Pumphrey to Milroy 12/25/1877; NARS M-234 Roll 219, 103). The fact that subsequent Federal documents name Captain Peter as chief indicates that the Federal government may have acted on the settlers' request, or acted on their own, to acknowledge his leadership in the same general period.

Since the Upper Cowlitz were also a federally acknowledged entity, Quinault's argument that the CIT was ineligible to proceed under 83.8 because the 1855 treaty negotiation acknowledgment of the Lower Cowlitz could not be extended to the Upper Cowlitz under the regulations becomes inapplicable. Quinault's separate argument that the Upper Cowlitz and Lower Cowlitz cannot be considered as falling under the regulatory provisions for tribes that have amalgamated is considered below.

The CIT comment was not directly pertinent to the issue of Federal acknowledgment of the Upper Cowlitz, as it referred only to a "Cowlitz Indian Tribe," without distinguishing between the two bands at that date.

d. Executive Order of 1873.

i. CIT Position. CIT presents this Executive Order of 1873 as part of the history of allotments on the Quinault Reservation (CIT Final Submission 1999, 22-23 (issue IV.II.C), also arguing its interpretation in *Halbert v. United States* (CIT Final Submission 1999, 26).

When the Quinault Indian Reservation was created by the Executive Order of November 4, 1873, President Grant stated that he intended "to provide for other Indians in that locality" by withdrawing lands from the public domain "for the use of the Quinault, Quillehute, Quit, and other tribes of fish-eating Indians on the Pacific Coast." . . . A total 220,000 acres was set aside for the Reservation (CIT Final Submission 1999, 22).

The Cowlitz Tribe was among the tribes specifically identified by federal officials as requiring special accommodation through an enlarged reservation during consideration of reservation expansion between 1863 and 1873 (CIT Final Submission 1999, 23; citing to *Halbert v. United States, supra*, 283 U.S. at 757).

ii. BIA Analysis. This FD has concluded that the Federal acknowledgment of both the Upper Cowlitz and Lower Cowlitz extended at least through 1880 at which time the Federal government treated the Cowlitz Tribe administratively as one entity made up of two bands. The Government's acknowledgment of a Cowlitz tribe between 1863 and 1873 provides interim support for this conclusion. As raised by CIT, the meaning of the 1873 Executive Order pertains

to rights on the Quinault Reservation which since then have been litigated.⁵⁴ This Executive Order does not need to be addressed here, as the conclusion that there was Federal acknowledgment to 1880 is based on other information. Therefore, the Executive Order has not been addressed in this report as unambiguous prior Federal recognition.

e. Federal Acknowledgment of an Amalgamated Cowlitz Tribe after 1855.

i. Quinault's Position. Quinault stated: "There Are No Federal Actions After 1855 Constituting Unambiguous Previous Federal Acknowledgment of the Amalgamated Cowlitz Petitioner" (Quinault Revised Memorandum 1998, 10).

ii. CIT Position. The CIT responded that "There was Unambiguous Prior Federal Recognition of Cowlitz in 1878-80," (CIT Final Submission 1999, 8-15 (issue III)). After summarizing some of the documents in the historical record (CIT Final Submission 1999, 9-13; see sections V.A and V.B of this report for more detail), CIT states: "The labors of Agent Milroy in the years 1878-80 confirm direct and unambiguous relations between the BIA and the Cowlitz Tribe" (CIT Final Submission 1999, 13).

iii. BIA Analysis. The CIT comments do not show unambiguous prior Federal acknowledgment of an amalgamated Cowlitz tribe in 1878-1880, although administratively the two acknowledged bands were dealt with together. When both parts of the amalgamated entity have unambiguous prior Federal acknowledgment, there is no requirement under the regulations that the amalgamated entity as a single body also have separate unambiguous prior Federal

⁵⁴ In his letter of February 4, 1929, Assistant Secretary Finney, DOI, noted that the District Court in Halbert appeared to have placed "great reliance":

upon the Executive Order of November 4, 1873. This authorized the enrollment and allotment of all fish-eating Indians on the Pacific coast from the south side of Neah Bay Reservation to the mouth of the Columbia River. Were it not for the act of March 4, 1911, *supra*, there would not be any authority to exclude the Cowlitz and Chehalis who resided in the vicinity of Shoalwater Bay from allotments on the Quinault Reservation. However, they were clearly excluded by the language of the act of 1911. These instructions, which the Solicitor decided should be followed, restricted entrance into the Quinault Tribe to that by adoption only. The parents of the plaintiffs in the present suits were voted in by the tribe but tribal approval was rescinded before the Department took action to either approve or deny them such rights under Section 463 U. S. R. S. (Finney to Attorney General 2/4/1929, 4). [emphasis added]

But see, U.S. Sup. Ct. 1931 Docket file 443-444 paraphrasing Roblin's testimony:

[T]hat he does not concede that the Government has recognized, in allotting all those tribes on the Quinault reservation, the tribes gathered at the Cosmopolis meeting; nor that they have been allotted without being adopted, with the possible exception of Cowlitz; that a great many of the other tribes were allotted before he came in there without the necessity of being adopted.

acknowledgment.

D. Statements in Regard to a Post-1880 Latest Date of Unambiguous Previous Federal Acknowledgment for the CIT.

Both CIT and Quinault presented numerous arguments. These are summarized briefly below (CIT Final Submission 1999, 15-32 (issue IV)).

In the introduction to its Issue IV (CIT Final Submission 1999, 15-17), CIT stated:

This discussion is prepared for the purposes of demonstrating the facts and law applicable to the Cowlitz Indian Tribe as they establish two essential elements which are aggressively challenged in the Quinault tribe's final filing: (1) that there has been unambiguous prior federal acknowledgment of the Tribe which must be taken into account by BAR in making a final assessment of the Cowlitz Petition and (2) that the Cowlitz Tribe qualifies for federal recognition under the facts and existing federal law (Quinault Final Submission 1999, 15-16). [emphasis in original]

CIT argued that "unequivocal federal recognition of the Cowlitz Tribe has been expressed and manifested through federal services delivered to the Tribe as a direct product of its status as a tribe of the Quinault Reservation with adjudicated and administratively-recognized rights at the reservation" (CIT Final Submission 1999, 16).

The BIA analysis will be presented under the individual topics following.

1. Evidentiary Significance of Various Types of Allotments. The following material does not all pertain to the issue of unambiguous previous Federal acknowledgment. Quinault conflated the issues of Federal acknowledgment and of continuance of tribal relations. Maintaining tribal relations differs from maintaining Federal acknowledgment. Tribes may exist and continue to maintain tribal relations without being federally acknowledged.⁵⁵

a. Allegation that the Summary under the Criteria Made Confusing Misstatements Regarding Indian Homesteads and Public Domain Allotments.

i. Quinault's Position. Quinault stated:

The proposed findings note that between 1880 and 1940s individual Cowlitz

⁵⁵To avoid duplication, all aspects of the allotment issue are analyzed together, even though this introduces some disjunction into the organization of the technical report.

obtained Public Domain Allotments and Homesteads in the Cowlitz valley. SUCPF at 17. They then assert that the issuance of allotments on the public domain under §4 of the General Allotment Act is evidence of maintenance of tribal relations leaving the impression that there is evidence in support of Cowlitz tribal relations based on Cowlitz Valley §4 allotments. SUCPF at 17. This discussion is misleading (Quinault Revised Memorandum 1998, 25; see also Quinault Memorandum 1997, 17, which says "wholly misleading").

Quinault further stated:

The HTR [Historical technical Report] notes that there were some §4 public domain allotments to "Cowlitz Indians" within the jurisdiction of the Yakima Agency which are referenced in Appendix III of the Genealogical Technical Report. However, the petitioner submitted no evidence relative to these off-reservation allotments. *Id.*, Appendix III to the GTR appears to list 8 off-reservation allotments under the jurisdiction of the Yakima agency. Of these 8 allotments only 2 are listed as being to individuals identified on the allotment list from which they are abstracted as 'Cowlitz,' one is listed as a 'Cowlitz-Klickitat,' one as a 'Wishum,' and four as 'Klickitat.' The issuance of a small number of public domain allotments to persons identified as 'Cowlitz' west of the Cascades outside of the Upper and Cowlitz groups' historic territory is hardly strong evidence of federal recognition of a functioning Cowlitz tribal political entity, particularly when considered in light of the Indian homestead patents issued in the Cowlitz River Valley based on lack of tribal relations. The apparent reference to these §4 allotments in the summary and the suggestion that they are good evidence for the maintenance of tribal relations without any mention of the conclusions in the HTR regarding the Cowlitz Valley Homesteads is troubling. It appears to reflect a pattern throughout the summary and Findings of drawing inferences favorable to the Cowlitz petitioner that lack evidentiary support, often in the face of contrary evidence which is either wholly ignored or glossed over" (Quinault Revised Memorandum 1998, 26-27).

ii. BIA Analysis. Discussion of the above passages in this technical report for the final determination has been complicated by Quinault's failure to reference the precise statements in the decision-making document, the Summary under the Criteria, which it found "troubling." However, it appears that Quinault is taking evidence that was mentioned under criterion 83.7(a) and discussing it as if the proposed finding cited it as usable evidence for another criterion, in this case for criterion 83.7(c).

The Summary Under the Criteria states:

Throughout the 1880's and 1890's, Chemawa Indian school and Puyallup Agency

land records referred to the Cowlitz Indians, as did Yakima allotment records between 1898 and 1914. Cushman Indian school correspondence in 1911 referred to the Cowlitz around Toledo, Olequa, and Randall, as members of the Cowlitz Tribe eligible for allotment at Quinault, and recommended that they be enrolled and allotted there. Also, from the 1880's through the 1940's approximately 40 individual Cowlitz Indians (including Lower Cowlitz, Upper Cowlitz, and Cowlitz metis) obtained Indian homesteads and public domain land allotments in the Cowlitz River valley which were held in trust by the BIA. Under Section four of the General Allotment Act, public domain allotments were to have been limited to Indians maintaining tribal relations with a recognized tribe. (CIT PF 1997, Summ Crit. 17).

Quinault considered this material out of context. In the Summary Under the Criteria, the AS-IA considers whether a petitioner meets each of the seven mandatory criteria, one at a time. At the point raised here by Quinault as "misleading" (CIT PF 1997, Summ Crit. 17), the proposed finding was analyzing the evidence for criterion 83.7(a) as modified by 83.9(d)(1), external identification as an Indian entity. The paragraph quoted above was simply describing the kinds of identifications of Cowlitz Indians during a particular period, the 1880's and 1890's. It was not part of an evaluation of unambiguous previous Federal acknowledgment, of the maintenance of tribal relations, or of community, each of which was discussed elsewhere in the Summary Under the Criteria. Evidence acceptable for demonstrating one criterion may not be acceptable for demonstrating other criteria. The discussion under criterion 83.7(a) mentioned that, "[u]nder Section four of the General Allotment Act, public domain allotments were to have been limited to Indians maintaining tribal relations with a recognized tribe" (CIT PF 1997, Summ. Crit. 17), but took no position as to whether such a limitation was enforced in this particular case. This correspondence in 1911 was not used to determine a last date of unambiguous Federal acknowledgment because the number of such public domain allotments to the Cowlitz was too limited to draw such a conclusion. The issuance of these public domain allotments is corroborating evidence of tribal relations.

The BIA analysis of Quinault's allegations that the discussion in the proposed finding was misleading has been additionally complicated by ambiguity as to whether the sentence:

The issuance of a small number of public domain allotments to persons identified as 'Cowlitz' west of the Cascades outside of the Upper and Cowlitz groups' historic territory is hardly strong evidence of federal recognition of a functioning Cowlitz tribal political entity, particularly when considered in light of the Indian homestead patents issued in the Cowlitz River Valley based on lack of tribal relations (Quinault Revised Memorandum 1998, 26-27)

was meant by Quinault to be read as an argument concerning previous unambiguous Federal acknowledgment in the strict sense (as to whether these allotments provided evidence of Federal

recognition of a tribal entity at the date they were issued) or whether Quinault's comments were directed at the question of whether or not there was a continuing, if possibly not federally recognized, tribal entity at the dates of their issuance (1892 - 1910 at the extreme range) (CIT PF 1997, GTR 112, Appendix III).⁵⁶ The proposed finding did not mention this data in its determination that the CIT was eligible to proceed under 83.8 (CIT PF 1997, Summ. Crit. 3-4). Quinault argues that the issuance of Indian Homesteads is evidence that there are no tribal relations. See discussion in 1(c) below.

The HTR discussed the public domain allotments under Yakima jurisdiction (CIT PF 1997, HTR 90-93) and noted that this material had not been submitted by the petitioner (CIT PF 1997, HTR 93). Section 83.10(a) permits the BIA researchers to conduct research if necessary to verify and evaluate the petition as was done here.

b. CIT's Assertions Concerning the Dawes Act (General Allotment Act of 1887) as Amended.

i. CIT Position. CIT presents their discussion on the Dawes Act as part of the history of allotments on the Quinault Reservation, including specific allegations concerning the significance of provisions under this Act for Federal acknowledgment of the Cowlitz Tribe between 1904 and 1934 (CIT Final Submission 1999, 18-21 (issue IV.II.A)).

CIT states concerning the General Allotment Act of February 8, 1887, as amended by the Acts of February 28, 1891, and June 25, 1910: "Section 1 allotments are made to members of tribes and more than 10 percent of allotments at the Quinault Reservation went to Cowlitz members during the BIA's efforts to comply with the Halbert ruling" (CIT Response 1998, 12). [emphasis in original] This act, according to CIT, says that "the allottee must have been a member of a tribe or band and (2) the tribe or band must have been an existing Indian political entity with rights at the reservation at the time of allotment" (CIT Final Submission 1999, 18). CIT cited numerous cases of this kind and also referred to prior use of the provisions of this Act in BIA evaluations.⁵⁷ CIT summarized by stating: "As the following discussion points out, the courts found that members of the Cowlitz Tribe were legally entitled to Dawes Act allotments at the Quinault Reservation and the issuance of those allotments confirmed that the Cowlitz Tribe had lawful status as a recognized Indian tribe" (CIT Final Submission 1999, 21).

ii. BIA Analysis. This determination uses 1880 as the date of last unambiguous Federal

⁵⁶The question of whether some of these allottees were here called "Klickitat" is not wholly relevant, since Mary LaQuash, Kiamtus, and Cutemas are otherwise identifiable as Cowlitz (Taitnapam) Indians (see Cowlitz GTKY File, BAR).

⁵⁷Specifically, CIT quotes the "written work of BAR's Senior Anthropologist Dr. George Roth in his recent working document entitled 'California Acknowledgment Working Paper - 9/23/96 Draft'" (CIT Final Submission 1999, 19).

recognition. As discussed above, 3(e), there is no need to determine a last, or later, date of Federal recognition. Since CIT's arguments under this heading pertained not to the issue of whether the CIT was entitled to proceed under the provisions of 83.8 *per se*, but rather to a possible later date of unambiguous prior Federal acknowledgment than that utilized by the BIA for purposes of this decision, they have not been extensively analyzed in this report. This report does not take a position on the legal proposition espoused in CIT point 2 above.

c. Indian Homesteads Granted to Cowlitz Indians in the Cowlitz River Valley. Quinault asserted that the Cowlitz "public domain allotments" are not evidence of maintenance of tribal relations (Quinault Revised Memorandum 1998, 25-27 (issue 6); Quinault Memorandum 1997, 17-18 (issue 6)). The petitioner replied (CIT Response 1998, 8-9; CIT Final Submission 1999, 38-39).

i. Quinault's Position. Quinault stated:

The Historical Technical report makes clear at pp. 89-91 that the Cowlitz "allotments" located in the Cowlitz River Valley which are referenced in the Petition were issued under the Indian Homestead Acts and consequently are not good evidence for maintenance of tribal relations for the reason that only Indians who had severed tribal relations were eligible for allotment under the 1875 Indian Homestead Act. If anything, these Cowlitz Valley Indian Homestead[s] are good evidence that the United States understood that the Cowlitz no longer maintained tribal relations (Quinault Revised Memorandum 1998, 25; see also Quinault Memorandum 1997, 17-18).

The Quinault Revised Memorandum at pages 26-27 referenced several specific examples to support their argument.⁵⁸

⁵⁸Concerning Indian homesteads, Quinault stated:

For example, Sam Eyely, who lived near Toledo, Washington, applied for an Indian homestead at the Olympia Land Office under the act of March 30, 1875. In the sworn declaration that accompanied his application Eyely stated that he was an Indian "formerly of the Cowlitz tribe" who had abandoned tribal relations and had pursued the "habits of civilized life." A second sworn declaration, signed by William Hays and Andrew Chambers of Thurston County also accompanied the application stating that they knew Eyely well and that he had severed his tribal relations. September 26, 1891, NSE 1891-1. Similarly, on February 5, 1891, in the Indian Homestead case of the Thomas Satanas, Robert Davis and Batise Kiona (of Randle, Washington), personally swore that they were "... well acquainted with Thomas Satanas (Indian) and Know that he is of the Cowlitz Tribe that said Tribe has dissolved its Tribal Relations." Batise Kiona signed the statement with his mark. April 10, 1899. NSE 1899-1. Additional examples are discussed in the NRA Report (Quinault Revised Memorandum 1998, 26). [grammar, spacing, and punctuation *sic*]

ii. CIT Comment. CIT asserted that tribal members did not necessarily surrender tribal affiliation by taking land under the Indian Homestead Act (CIT Final Submission 1999, 38-39 (issue VII)), which it cited as the "Appropriations Act of March 3, 1875, 18 Stat. 402, 420 (repealed 1976), formally codified at 43 U.S.C. Section 189 (1970)" (CIT Response 1998, 8n4).

The Quinault argument is that the Indian Homestead Act required those receiving allotments under that law to surrender their tribal affiliation as a condition to secure the land allotment. That does appear to be the statutory law, but there is a question as to whether the factual effect was consistent with that provision (CIT Final Submission 1998, 38-39).

CIT further asserted that it was:

... clear that some Cowlitz Indians did receive such allotments. . . Exhibit 2 identifies a number of Cowlitz full-bloods who secured their allotments, but certainly continued their tribal affiliations and relationships. . . signing a paper handed to them by federal agents did not cause them to leave their tribe. All they knew is that the paper secured for them the return of some of their lands which had been taken only a few years earlier. The Federal promise the Cowlitz understood was that some land would be returned, and signing the paper (perhaps with nothing more than an 'X') written in English had little meaning to the Cowlitz Indians barely removed (if at all) from their aboriginal existence (CIT Final Submission 1999, 39). [emphasis in original]

Further, CIT stated:

... Moreover, the execution of the documents by tribal members did not effect a dissolution of the tribe itself, even if those members had abandoned their tribal relationships (which, of course, they did not). A dissolution of tribal ties by some Indians does not cause a dissolution of the tribe itself, and the Quinault suggestion to the contrary is simply devoid of historical fact or reasoned historical analysis (CIT Final Submission 1999, 39). [emphasis in original]

iii. BIA Analysis. CIT submitted a list of the Indian homesteads in its petition (CIT Pet. Narr. 1987, 33; for map see CIT Pet. Narr. 1987, 181). The HTR analyzed their significance, including the issue of abandonment of tribal relations under the 1875 and 1884 acts (CIT PF 1997, HTR 89-91; see also CIT Response 1998, Land Records).

The Quinault analysis did not address the context in which these particular Indian homesteads were issued. Similar declarations exist for enrolled Nisqually (e.g. William Peterwow), Chehalis, and other Indians from currently federally acknowledged tribes which state that the applicants had severed tribal relations, although they subsequently continued to be carried on BIA reservation census rolls.

The Quinault argument that the signing of the necessary papers for obtaining an Indian homestead necessarily meant that an individual had renounced tribal relations has to be evaluated in context. The signing may have signified simply an intent of the particular individual to obtain land, while still retaining the option of enrolling with a federally acknowledged tribe, as in Quinault's discussion of Iyall Wahawa's move to Yakima (Nicklason 1998, 53-54). As cited above, Sam Eyle signed such papers, but he also moved to the Yakima reservation and obtained an allotment there; his oldest son served as head of the Yakima tribe in the 1920's.

Such written relinquishments do not have the effect of terminating the existence of the tribal entity which the individual member purported to leave. A question remains as to whether the promised relinquishment is actually carried out. In many of the Cowlitz cases, the individuals continued to maintain tribal relations. Others did not. While the relinquishments by individual members did not "effect a dissolution of the tribe itself," it is clear that some of the Cowlitz, particularly those who removed to Yakima and enrolled there, did indeed "abandon" their tribal relationship with the Cowlitz.⁵⁹ However, many people, including those with allotments and those without them, remained connected, and their descendants currently belong to the Cowlitz petitioner.

d. Allotments to Cowlitz Indians Made Directly on the Yakima Reservation.

i. Quinault's Position. Quinault addressed this issue under its issue 10 (Quinault Revised Memorandum 1998, 31), which related to *Halbert v. United States*.

Similarly, allotments of "Cowlitz" on the Yakama Reservation do not constitute good evidence that a Cowlitz tribal political entity existed. See, HTR at 96-99. As set forth in the Historical Technical Report, allotments at Yakama were based on claims of either membership or descent from one of the 14 original tribes for whom the Yakama Reservation was established under the Treaty with the Yakamas, 23 Stat. 951.⁶⁰ (Quinault Revised Memorandum 1998, 31.) [footnote in

⁵⁹For instance a letter from the Acting COIA to the Secretary of the Interior re: Ayell Wa-ha-wa patent application. Re: Homestead entry 3641, May 4, 1880; Final certificate No. 2172 issued September 20, 1890, under Act of March 5, 1875; patent issued November 20, 1890, under the Act of January 18, 1881, containing a 20-year trust clause:

It appears from the petition that the Indian is fully competent to care for his own affairs; that he has adopted the habits and customs of white men, and as the members of his family are all allotted on the Yakima Indian Reservation, he wants to remove thereto as the climate there is more suitable to his health (Quinault Ex. 4:1907-3; RG 48, 5-1, Cushman Patents).

⁶⁰In the absence of contrary evidence it is reasonable to infer that the Yakama Public Domain Allotments issued to "Cowlitz Indians" were also issued based on claims of membership or descent from one of the Yakama groups with which the Cowlitz had historically intermarried" (Quinault Revised Memorandum 1998, 31n19).

original]

ii. BIA Analysis. The proposed finding mentioned the Yakima reservation allotments only under criterion 83.7(a), stating that, “[t]hroughout the 1880’s and 1890’s, Chemawa Indian school and Puyallup Agency land records referred to the Cowlitz Indians, as did Yakima allotment records between 1898 and 1914” (CIT PF 1997, Summ. Crit. 16). It did not evaluate allotments on Yakima as evidence for either prior unambiguous Federal acknowledgment of the Cowlitz or under criteria 83.7(b) or (c), but merely as one form of existing external identification under criterion 83.7(a). Quinault did not challenge the use of this evidence in the context of criterion 83.7(a). However, allotments at Yakima and on the public domain were to go to tribal members and thus is corroborating evidence under criteria 83.7(b) or (c) that allottees were maintaining tribal relations with an identified tribe.

Quinault also misstated the cited passage from the HTR pertaining to Yakima,⁶¹ which read:

In 1950, writing to the COIA, Darrell Fleming of the Yakima Indian Agency provided a succinct summary of the allotment procedure on the Yakima Reservation:

Those allottees who received allotments before the year 1910 were for the most part descendants of the 14 Original Tribes,⁶² but those who received allotments after 1910 and their descendants presented a real problem to the enrollment committee in determining their degree of blood and the tribes and bands from which they were descended (CIT PF 1997, HTR 97-98). [footnote in original] [emphasis added]

Quinault omitted discussion of the remainder of Fleming’s summary, which noted that after 1910, in order to prevent the reservation from being thrown open to white settlement, the Yakima enrollment committee:

... sent delegates to the neighboring tribes, especially on the west side of the Cascade Mountains, who invited their relatives and friends to come upon the Yakima Reservation to obtain allotments. Indians from other tribes who had no

⁶¹In general, except for the discussion of the 1973-1974 membership changes, the CIT petition provided only minimal information concerning historical Cowlitz interrelationships with Yakima. For the proposed finding, BIA researchers obtained enough data to permit evaluation under the criteria.

⁶²The major exception consisted of the Cascade Indians from along the Columbia River, who in 1892 were classed as part of the Yakima Tribes and given allotments on the basis of a claims action (Fleming to COIA 2/28/1950, 2).

established reservation and who could not obtain allotments on their own reservation because there was no longer any land remaining to be allotted, came upon the Yakima Reservation and made application for allotments. . . . (Fleming to COIA 2/28/1950, 2; quoted more extensively at CIT PF 1997, HTR 98).

The Nicklason Research Associates report section on which the formal Quinault comment was apparently based did not discuss these Yakima Reservation allotments from the perspective of unambiguous previous Federal acknowledgment as argued by Quinault, but presented arguments pertaining to the issues of historical community and a continuously existing tribal entity. NRA understood that allotments went to tribal members and stated that the Cowlitz allotted on Yakima were showing that, "[t]hese Cascade-Cowlitz descendants therefore identified with the Cascade Tribe, and not with a 'Cowlitz Tribe'" (Nicklason 1998, 69) and also that this applied to those "Indians of mixed Cascade-Cowlitz descent who previously had lived in the Cowlitz Valley region" (Nicklason 1998, 69). As can be clearly seen from Fleming's summary to the COIA, this position that the Cowlitz allotted on Yakima were actually Cascades was not necessarily the case. During the same time period, as evidenced by the partial series of Yakima enrollment committee actions from 1910 through 1912 (Quinault Ex. 5:1910-67, November 9, 1910; Quinault Ex. 5:1911-5, May 16, 1911; Quinault Ex. 1911-31, November 28, 1911; Quinault Ex. 5:1912-45, November 19, 1912) and Yakima allotment affidavits (Quinault Ex. 5:1911-3B, 1911-6, 1911-11, 1911-26; 1912-20, 1912-30, 2012-32, 1912-39), submitted by Quinault, unallotted members of other federally recognized tribes in western Washington applied for Yakima allotments and, if their application were accepted, they would relinquish their prior enrollment and would transfer to Yakima. These relinquishments did not signify a cessation of tribal relations for the Chehalis, the Nisqually, the Puyallup, or the other tribes of origin of these Yakima allotment applicants. Nor did they signify cessation of tribal relations for the Cowlitz. Written relinquishments do not have the effect of terminating the existence of the tribal entity which the individual member purported to leave as implied by Quinault.

The HTR provided a list of some Cowlitz and Yakima Cowlitz families known to have been allotted on Yakima (CIT PF 1997, HTR 99). The list of names in the NRA report varied somewhat (Nicklason 1998, 68), and included some, such as Jack (or Jake) Knighten, who were not Cowlitz. That report stated that, "[w]hile getting land may have been one motivation, of significance is the fact that all of these individuals, intimately acquainted with the Cowlitz region, and who should have been aware of a 'Cowlitz Tribe,' identified themselves with the Cascade Tribe at Yakima" (Nicklason 1998, 69). The BIA compared the Nicklason Research Associates' report with the names of the applicants in the Yakima documents and was unable to identify any actual Cascade ancestry for a number of these Cowlitz Valley area applicants who claimed it in their affidavits in 1910, 1911, and 1912 (Harry Phillip, James Suterlick, Charles LeClaire, Thomas Satanas, George Cheholtz, Lizzie (Rabbie) Cheholtz, Edward Lozier, Susan Whitefoot, etc. (see Cowlitz GTKY File, BAR). The question of whether these individuals misstated their ancestry on the applications in order to obtain allotments is not immediately relevant to the questions to be answered by this technical report. It implies, however, that they were

making statements which they believed would result in successful applications for Yakima allotments rather than providing any basis for an analysis of historical community or tribal relations of the Cowlitz.

Applications for allotment at Yakima from 1910-1912 were from Indians of both reservation and non-reservation tribes. They provide no direct evidence concerning the issue of previous unambiguous Federal acknowledgment of the Cowlitz. However, the provisions of allotments on Yakima to Cowlitz is supporting evidence for purposes of the evaluation under criteria 83.7(b) or (c).

e. 1911 Allotment Act. CIT presented a legal retrospective on the topic of pre-Halbert allotments on the Quinault Reservation. Although in theory presented as part of its discussion of previous unambiguous Federal acknowledgment of the Cowlitz tribe, many of the arguments pertained more directly to the topic of land rights on the Quinault Reservation which are not addressed in this technical report.

i. CIT Position, "The 1911 Allotment Act Constituted Congressional Recognition of the Cowlitz" (CIT Final Submission 1999, 37-38 (issue VI); CIT Response 1998, 12). CIT discussion of this issue under its issue IV.II.D is also incorporated here (CIT Final Submission 1999, 23-24).

CIT says that allotments were being made on Quinault by 1907 pursuant to the provisions of the General Allotment Act and that the "tribes which were affiliated on the Reservation by the Executive Order" were having "difficulty in obtaining allotments" (CIT Final Submission 1999, 23). It quoted the Allotment Act of March 4, 1911, as directing "the Secretary of the Interior to make Dawes Act allotments on Quinault Reservation -- 'to all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who are affiliated with the Quinault and Quileute tribes in the treaty. . .'" (CIT Final Submission 1999, 23).

CIT interpreted the 1911 Allotment Act at some length (CIT Final Submission 1999, 24), stating elsewhere (and retrospectively) that "the Cowlitz Tribe was specifically found by the Supreme Court in the Halbert litigation to have been one of the tribes specifically legislated by the 1911 Allotment Act as entitled to Dawes Act allotments at Quinault Reservation" (CIT Final Submission 1999, 37).

CIT asserts that "the BIA itself affirmatively opposed a further allotment act in 1913 naming the Cowlitz Tribe as entitled to those allotments with the formal assertion that the tribe was already covered by the 1911 Act and no further legislation was necessary" (CIT Final Submission 1999, 37; followed by a long direct quotation from *Halbert v. United States* cited as 238 U.S. at 759-60).

CIT summarizes its argument on this topic as follows:

It is beyond question that in 1911 the Cowlitz Tribe was unambiguously recognized by Congress — a recognition formally confirmed by the Department of the Interior in 1913. Given the adjudication in 1931 by the Supreme Court confirming the 1913 formal policy articulated for Congress by the Department of the Interior through the BIA, it is clear that the 1911 Allotment Act recognized the Cowlitz Tribe and affirmatively legislated the right of its membership to receive allotments under the Dawes Act (CIT Final Submission 1999, 38).

ii. BIA Analysis. The Halbert case and this act do not establish unambiguous Federal acknowledgment. The situation is not as clear as asserted by CIT, which did not submit any of the underlying documentation that resulted in the passage of the 1911 Act. CIT bases most of its assertions on later legal interpretations of the meaning of the 1911 provisions. However, the presence of many of the Cowlitz who were alive in 1911 on the 1919 Roblin Roll suggests that the Cowlitz Indians were not then Federally recognized as a tribe, although some individual Cowlitz may have taken allotments on other reservations as allowed.

From the historical perspective, the issue being discussed in 1913 was the question of whether the Cowlitz tribe was one of the unnamed "tribes of Indians . . . affiliated with the Quinault and Quileute tribes in the [1855] treaty" and thus its members had a right to allotments on Quinault under the 1911 Act - not whether there was a federally acknowledged Cowlitz tribe in existence in 1911 that held tribal rights on Quinault. This date, thus, has not been used for purposes of prior Federal recognition under § 83.8. There is no indication in the limited evidence in the record for this case that the discussion from 1911 through 1913 ever addressed the nature of the then-current Cowlitz tribal entity, but rather merely pointed out that the Cowlitz had not been named in the treaty:

In view of the fact that the Clallams and Cowlitz bands apparently were not affiliated with the Quinault and Quileute Indians in the treaty referred to, and seem not to be entitled to allotments on the Quinault Reservation except as individual Indians may be enrolled thereon, . . . (Second Assistant COIA Haucke to Cushman Superintendent H.H. Johnson 1/4/1912, indicating that while the Cowlitz had never affiliated with Quinault, they could still be allotted there as individuals; Quinault Ex. 5:1912-2, [2-3]).

The Act of March 4, 1911 (35 Stat. L., 1345), authorizes allotments on the Quinault Reservation to all members of the Hoh, Quileute, Ozette and other tribes of Indians in Washington who were affiliated with the Quinault and Quileute tribes in the Treaty of July 1, 1855 and January 26, 1846. The Cowlitz Indians, however, were not party to such treaty by signatures of their chief or head men; and so far as can be ascertained, these Indians were apparently provided for at the time a reservation was created for the Chehalis Indians, although it seems that they refused to remove to the Chehalis Reservation.

If it should be clearly proven that the Cowlitz Indians were not affiliated with the Quinaielt and Quileute Indians in the treaty of July 1, 1855 and January 26, 1856, they would not be entitled, as a tribe or band, to allotment on the Quinaielt Reservation. Individual members of the Cowlitz band would still have the right to present their applications to the tribal council on the Quinaielt Reservation for enrollment thereon. If enrolled, and the enrollment should be approved by the Department, they would then be entitled to take allotments on the Quinaielt Reservation the same as other Indians now having rights thereon (Haucke to Hudson, Holt & Harmon 1/9/1912; Quinault Ex. 5:1912-4, RG75, Gen. Ser. 55826-09-260).

The follow-up to this general policy as of 1912 was exemplified by a BIA letter to Eugene Cloquet of Carrolton, Washington, recommending that he submit an application for enrollment on Quinault if he wanted an allotment there (Haucke to Cloquet, 3/22/1917; Quinault Ex. 5:1912-18). The most extensive discussion of the policy is found in Haucke's March 26, 1912, letter to H.H. Johnson, Superintendent, Cushman Indian School:

The Office does not believe, however, that the children of the various bands for whom reservations were established and allotted, born since allotments were made on the reservation, . . . can be considered as being entitled to allotments on the Quinaielt reservation under authority of Executive Order dated November 4, 1873; or that straggling bands or individual Indians, and their children, who have never lived on any reservation, are entitled to allotments on the Quinaielt reservation merely upon application therefor; without the intention of going to the reservation and making permanent homes thereon (Haucke to Johnson 3/26/1912; Quinault Ex. 5:1912-21, 2-3).⁶³

The various unattached or individual Indians not parties to any treaty may, however, as outlined in Office letter of instructions approved by the Department, submit their individual applications through you to the Quinaielt tribe for enrollment therewith; . . . (Haucke to Johnson 3/26/1912; Quinault Ex. 5:1912-21, 5-6).

This position taken by the BIA resulted in the very extensive series of applications for adoptions on Quinault and the hearings that resulted therefrom, with the summary Roblin reports thereon, covering the years from 1911 through 1918 (NARS M-1344) and extensively cross-referenced in the files for the 1919 Roblin report on unenrolled Indians of western Washington (NARS M-

⁶³It is not clear why, under the discussion of the Treaty of Medicine Creek, Haucke stated that the Chehalis and Cowlitz had been considered more closely affiliated with the Puyallup (Haucke to Johnson 3/26/1912, 5), as there is no evidence of that in either set of treaty negotiations.

13-43).

On February 4, 1929, in connection with the District Court's decision in *Halbert v. U.S.*, the Assistant Secretary, Department of the Interior, wrote an extensive letter to the U.S. Attorney General (Finney to Attorney General 2/4/1929; Quinault Ex. 7:1929-1). Finney wrote:

Pages 3, 4, 5 and 6 of the memorandum decision contains citations of cases, treaties, and acts of Congress which are supposed to bear upon the cases under discussion which were for allotments on the Quinaielt Indian Reservation, Washington. Without going into detail or analyzing any of the cases cited, which appear to have been cited principally for psychological reasons, it may be said that some of them are not in favor of the plaintiffs, some are not controlling, and some are not in point (Finney to Attorney General 2/4/1929, [1]).

Pages 3-6 of this letter contained analysis of the March 4, 1911 Act (36 Stat. L., 1345). Finney commented:

The court held on page 26 of the decision that these remnants of bands and tribes were entitled to allotments at Quinaielt providing they were fish-eating Indians of the Pacific coast, and referred to the recommendation of the Superintendent of Indian Affairs for Washington, apparently giving it the same effect as an act passed by Congress.

On pages 27 and 28 the court appears to engage in some surmise when he says: "The words 'fish-eating Indians of the Pacific Coast' were probably omitted from the act of March 4, 1911, because of the contention that the Cowlitz and Upper Chehalis while 'fish-eating Indians' not being directly upon the coast were therefore not 'fish-eating Indians of the Pacific Coast'" (Finney 2/4/1929, [5]-6). [emphasis in original]

At the bottom of page 30 the court concludes that it is more reasonable to hold that the word "treaty" in the act was used in the broader sense including the written treaty and the negotiations in the preceding February. Such construction might be placed upon the act of March 4, 1911, were it not for the fact that the act says "treaty of July 1, 1855." . . . Viewing the definition of treaty in the restricted sense as intended by the act of 1911, none of the plaintiffs are entitled to any rights upon the Quinaielt Indian Reservation, Washington. (Finney 2/4/1929, 7).

The Supreme Court stated that:

In 1913 a bill was introduced in Congress to amend the Act of 1911 by specifically including the Cowlitz and some other fish-eating tribes in southwestern Washington not before named in the act; and in a letter responding

to an inquiry about the need for the bill the Indian Bureau said: "It is believed that the Indians referred to in the pending bill may be allotted on the Quinaielt Reservation and that further legislation is unnecessary." The Solicitor for the Department of the Interior so construed the treaty, executive order and Act of 1911 in an opinion rendered to the Secretary of the Interior, and that opinion was accepted as a guide in making further allotments (*Halbert et al. vs. United States* 5; Quinault Ex. 7:1931-8).

The Supreme Court held that the Cowlitz tribe was one of the tribes of Indians affiliated with the Quinault and Quileute tribes in the 1855 treaty within the meaning of the 1911 Act. The court decisions in Halbert did not hold that the Cowlitz was a Federally recognized tribe in 1911 or in 1928, indeed Roblin's testimony is that they were not. (U.S. Sup. Ct. 1931, Docket file 443). Therefore, Halbert does not establish unambiguous Federal recognition.

2. *Significance of the Supreme Court Decision in Halbert v. United States in Regard to Federal Recognition of a Cowlitz Tribe in 1931.*

a. Quinault's Position. Quinault stated that the Supreme Court decision in *Halbert v. United States* and issuance of allotments to "Cowlitz" on the Quinault and Yakama Reservation do not constitute Federal recognition of a Cowlitz tribe (Quinault Revised Memorandum 1998, 30-31 (issue 10); Quinault Memorandum 1997, 20 (issue 10)). The petitioner replied (CIT Response 1998, 12; CIT Final Submission 1999, 25-27 (issue IV.II.E)).

Quinault stated:

The issues before the Supreme Court in *Halbert* relate to the eligibility of individual Indians of Cowlitz, Chinook, and Chehalis ancestry to receive allotments on the Quinault Reservation under the 1911 Quinault Allotment Act. In light of the Department's recent proposed decision regarding the Chinook petitioner, reference in the decision to members of the Chinook and Cowlitz Tribes is not evidence of federal recognition (Quinault Revised Memorandum 1998, 30-31).

Quinault cited a statement from BAR's peer review notes taken by Dr. Virginia DeMarce concerning the CIT PF, that "the Quinault allotments were specifically not because the Cowlitz were a recognized tribe" (Quinault Revised Memorandum 1998, 31.)

b. CIT's Position (CIT Final Submission 1999, 24-27). "It is beyond question that in 1931 the Cowlitz Tribe was unambiguously recognized as an Indian Tribe with federally-protected rights by the United States Supreme Court in the *Halbert* Litigation" (CIT Final Submission 1999, 27).

The Quinault Tribe proposes to rewrite the Supreme Court's findings in the case

of Halbert v. United States, *supra*. . . . the court specifically found that Cowlitz was one of the tribes for which the Reservation had been set aside and that members of the Cowlitz Indian Tribe were legally entitled to allotments within the Reservation (Cowlitz Response 1998, 12). [emphasis in original]

In Halbert, the Supreme Court found that individual Indians who were members of the Chinook, Cowlitz and Chehalis Tribes had a right to Dawes Act allotments at the Quinault Reservation because, as a matter of law, those tribes were affiliated with the signatory tribes to the Treaty of Olympia (CIT Final Submission 1999, 25). [emphasis in original]

And with that, the Supreme Court answered that ultimate question in favor of the Cowlitz Indian Tribe and the entitlement of its members to Dawes Act section 1 allotments:

Our conclusion on the first question presented is that the Chehalis, Chinook and Cowlitz Tribes are among those whose members are entitled to take allotments within the Quinault Reservation, if without allotments elsewhere. *** [Emphasis supplied.] (283 U.S. at 760.)

It is beyond question that in 1931 the Cowlitz Tribe was unambiguously recognized as an Indian Tribe with federally-protected rights by the United States Supreme Court in the Halbert Litigation (CIT Final Submission 1999, 27).

c. BIA Analysis. Quinault submitted a copy of the Supreme Court decision in Halbert (Quinault Ex. 7:1931-8). The district court and Ninth Circuit decisions were obtained through additional research to respond to these arguments, as was Roblin's testimony as inserted in the record before the Supreme Court. This discussion must be prefaced with a disclaimer. The discussion of Halbert is raised here by CIT and Quinault as part as a long-running litigation concerning the implementation of the Quinault Allotment Act of 1911. The BIA researchers do not believe that it would be appropriate to analyze many of these arguments for the following reasons. A date of previous recognition of 1880 has already allowed the Cowlitz petitioner to proceed through the 25 CFR Part 83 process under 83.8 which allows for a reduced burden of proof. This reduced burden also makes it unnecessary to analyze the meaning of the Halbert case and its implementation because other evidence is available which relates to the Cowlitz case under the criteria. Second, this technical report is not a legal brief. Therefore, the following discussion is meant merely to lay out what arguments were made by the commenters and the petitioner, the documentation submitted, and to correct some misstatements concerning BIA policies.

The Supreme Court defined the questions to be resolved as follows:

The plaintiffs are all of Indian blood and descent, but none is a full-blood Indian.

Some are members of the Chehalis, Chinook and Cowlitz tribes, and the question is presented whether these tribes are among those whose members are entitled to allotments from lands within the Quinaielt Reservation. Many do not personally reside on the reservation, and we are asked to decide whether this defeats their claims. Some are the issue, either children or grandchildren, of a marriage between an Indian woman and a white man, and whether this is an obstacle to allowing their claims is a further question (*Halbert et al. vs. United States*; Quinault Ex. 7:1931-8).

The Supreme Court then affirmed that the district court applied the correct rules for determining eligibility for allotments.

The only plaintiffs in *Halbert* who asserted that they were Cowlitz were the Provoes. Plaintiff Mary Francis Provoe was alive at the time of the 1855 Treaty. U.S. Sup.Ct. 1931, Docket file at 367. The district court opinion stated that Roblin listed the Provoe family as belonging to the Cowlitz Tribe, and that Chief Mason of the Quinault said they were Cowlitz. U.S. Sup.Ct. 1931, Docket file at 366. The district court, however, specifically declined to rule whether the plaintiffs, children and grandchildren of Mary Francis (Chehalis) and David Provoe, (Cowlitz) were Upper Chehalis or Cowlitz. *Id.* at 367, 375. Although noting that the Cowlitz had a tribal organization (U.S. Sup.Ct. 1931, Docket file at 337), and the Chehalis did not (U.S. Sup.Ct. 1931, Docket file at 337, 362), the district court did not recognize a government-to-government relationship between the Cowlitz and United States.

The district court analysis of all plaintiffs in the case focused on whether they lived in Indian settlements and were associated and affiliated with other Indians, even though their tribe was scattered. In contrast, the Ninth Circuit required residence on a reservation to obtain an allotment and specifically declined to discuss "the rights of the appellees based upon their Indian blood or tribal relations." *Halbert*, 38 F.2d 795, 798 (9th Cir. 1930).

The Supreme Court ruled that the "Chehalis, Chinook and Cowlitz tribes are among those whose members are entitled to take allotments within the Quinault Reservation." *Halbert*, 283 U.S. at 760. The Court concluded that the district court applied the appropriate law in requiring membership for allotments on Quinault. The Supreme Court did not rule that there was a government-to-government relationship between the Cowlitz and the United States, nor did the Court rule that the Cowlitz were a tribe in 1911 or in 1931. The Court did not rule that any plaintiffs were members of the Cowlitz Tribe. Thus, the Supreme Court ruling does not establish a date of last unambiguous federal recognition.

The Supreme Court concluded:

... that the Chehalis, Chinook and Cowlitz tribes are among those whose members are entitled to take allotments within the Quinaielt Reservation, if

without allotments elsewhere. The Circuit Court of Appeals held otherwise in some of the suits and in this we think it erred (*Halbert et al. vs. United States* 5, Quinault Ex. 7:1931-8).

The only issue that could be related to the Federal acknowledgment criteria (25 CFR Part 83) is how these cases affected the actual on-the-ground implementation of the allotments and the actual governance of the Quinault Reservation, which will be discussed in the following section.

3. *Post-Halbert Land Allotment Activity on Quinault Reservation* (CIT Final Response 1999, 27 (issue IV.II.F); CIT Final Response 1999, 32-37 (issue V)).

a. CIT Position. CIT discussed Post-Halbert land allotments under two separate headings: under issue IV.II as "The Issuance of Allotments at Quinault to Cowlitz Members in the 1930s Constitutes Unambiguous Prior Federal Acknowledgment"⁶⁴ (CIT Final Submission 1999, 17) and under the section "Post-Halbert Land Allotment Activity Constituted Federal Recognition of Cowlitz" (CIT Final Submission 1999, 32-36 (issue V)).

Most of the discussion under issue IV.II was a history of allotment policy and allotting on Quinault, rather than pertaining directly to the topic header.⁶⁵ CIT asserted that the historical overview in section IV.II, "demonstrates the significance to Cowlitz status as a recognized tribe through Cowlitz allotment issuance under federal law, and establishes unambiguous federal recognition in the 1930s of Cowlitz as an Indian tribe" (CIT Final Submission 1999, 17). CIT

⁶⁴CIT Issue IV.II consists primarily of a historical retrospective running from 1887 through 1984 designed to show how CIT reached its conclusions concerning Federal acknowledgment (CIT Final Submission 1999, 17-27). Very little of the content pertained to the topic in the header, post Halbert (1931) activities. This is exemplified by the first sentence that appeared following the header: "An undisputed fact is that dozens of Cowlitz tribal members are allotted at the Quinault reservation and the federal issuance of allotments to those Cowlitz occurred between 1907 and 1934" (CIT Final Submission 1999, 17).

⁶⁵a. Allotments Under the Dawes Act (CIT Final Submission 1999, 18-20). See discussion above, in historical sequence.

b. Treaty of Olympia -- 1855 (CIT Final Submission 1999, 16, 21-22). See discussion above, in historical sequence.

c. Executive Order of 1873 (CIT Final Submission 1999, 22-23.) See discussion above, in historical sequence.

d. Land Allotment Laws and Practices (CIT Final Submission 1999, 23-24). This subsection of Issue IV.II contained a restatement of the provisions of the 1911 Allotment Act and is discussed there (see above).

e. The Halbert Litigation (CIT Final Submission 1999, 24-27). The discussion of the actual *Halbert v. United States* case contained in this section (CIT issue IV.II.E) has been included with that topic (see above).

This section of the CIT Final Submission also contained some history of the cessation of allotment on Quinault by about 1916 and the case *United States v. Payne*, 264 U.S. 446, 449 (1924) (CIT Final Submission 1999, 24-25). See above, in sequence.

states:

During the period following the Halbert decision until sometime in 1934, Reservation allotments were issued to dozens of Cowlitz pursuant to Section 1 of the General Allotment Act; the Cowlitz allottees were entitled to their trust patents by virtue of their membership in the Cowlitz Tribe and these patents were issued accordingly.

It is beyond question that the Cowlitz Tribe was unambiguously recognized by the Department of the Interior during 1931-34 through the issuance of Dawes Act Section 1 allotments to Cowlitz tribal members on the basis of their membership in the Cowlitz Tribe (CIT Final Submission 1999, 27).

Subsequent to that ruling, Cowlitz members were among the Indians given allotments within the Reservation pursuant to Section 1 of the General Allotment Act of February 8, 1887 (24 Stat. 388) and the Allotment Act of March 4, 1911 (36 Stat. 1345)" (CIT Response 1998, 12).

Subsequent to the Supreme Court ruling in Halbert v. United States, the BIA proceeded to allot land to members of tribes who were denominated as beneficiaries of the Executive Order of 1873. As both the General Allotment Act of 1887 and Dr. George Roth have made clear, only members of federally-recognized tribes could receive those allotments (CIT Final Submission 1999, 32).

b. BIA Analysis. The BIA researchers did not have before them materials which would have allowed a competent analysis as to whether or not these statements are accurate. The question that would need to be answered is whether the allotment applications and other materials show that individual Cowlitz were awarded allotments on Quinault because they were members of a contemporary Cowlitz entity.

Most of the data presented under CIT's issue V consisted of a list of 53 allottees on Quinault who were identified as Cowlitz, Chehalis-Cowlitz, Chinook-Cowlitz, or Quinaielt-Cowlitz (CIT Final Submission 1999, 33-37). Since these were genealogical ancestry categories rather than tribal affiliation categories, this list of individual allottees was not directly pertinent to the issue of unambiguous Federal acknowledgment of a Cowlitz tribe in the 1930's. Thus, the actual results of, or activities following, this litigation are not necessarily based on the existence of a contemporary Cowlitz tribe and thus did not show Federal acknowledgment of a Cowlitz tribal entity at that point.

Cowlitz based much of their argument on a 1995 draft report by BIA anthropologist George Roth concerning allotment policies in California. An evaluation of that draft report need not be made

here. However, the draft report does not provide that allotments go to members of "federally recognized tribes," but that allotments go to "tribal members." We do not now hold that obtaining an allotment is an act of unambiguous federal acknowledgment of the tribe in which the allottee claims membership, but rather that it is evidence which we would evaluate in the context of criterion (b) and (c) of the regulations. But, if such allotments were tied to a particular tribe, and there was a consistent practice for the agency doing the allotting, it could be evidence of prior Federal recognition. However, as was clear in the record of the Halbert decision, none of the courts involved ruled on a Federal relationship with the Cowlitz tribe. Further, the district court and Supreme Court's reliance on the individual Indians being affiliated with the Quinault, militates against using the allotments to Cowlitz Indians on Quinault as unambiguous Federal recognition. This conclusion is consistent with the agency's implementation of the Halbert decision, discussed in the previous paragraph.

4. *Post-Halbert Case Law* (CIT Final Submission 1999, 27-32 (issue IV.II.F)).

a. The "Boundary Dispute" Litigation, 1945 and 1951 (CIT Final Submission 1999, 28-30).

i. CIT Position. CIT presented two cases concerning whether or not the Quinault Nation has exclusive jurisdiction over the Quinault Reservation, citing to *Quinault Tribe of Indians v. United States*, 102 Ct.Cl. 822 (1945), Finding of Fact No. 3 (102 Ct.Cl. at 825), 102 C.Cls. at 835 (CIT Final Submission 1999, 28-29) and *Quinault Tribe of Indians v. United States*, 118 Ct.Cl. 220 (CIT Final Submission 1999, 29).

It is beyond question that in 1945 and 1951 the Cowlitz Tribe was unambiguously recognized as an Indian Tribe with federally-protected rights by the United States Claims Court in the Boundary Dispute Litigation (CIT Final Submission 1999, 30). [emphasis in original]

ii. BIA Analysis. These decisions only relate to which tribes had an interest in the Quinault Reservation which would entitle them to participate in a money judgment for lands taken in an adjustment of the reservation's boundary. The decisions rely on Halbert for their conclusion that the Cowlitz tribe had an interest in the reservation when it was established. The decision add nothing to Halbert.

b. The Wahkiakum Fishing Rights Litigation, 1981 (CIT Final Submission 1999, 30).

i. CIT Position. CIT cited *Wahkiakum Band of Chinook Indians v. Bateman, et al.*

It is beyond question that in 1981 the Cowlitz Tribe was unambiguously recognized as an Indian Tribe with federally-protected rights by the United States Court of Appeals for the Ninth Circuit in the Wahkiakum Litigation" (CIT Final Submission 1999, 30).

ii. BIA Analysis. Most of the discussion appears to apply to Chinook. At most, Cowlitz may have intended to argue that Cowlitz was included by implication in the cited decision (655 F.2d at 179-80). This case has no relevance to whether the CIT meets the criteria for Federal acknowledgment under 25 CFR Part 83.

c. Williams v. Clark, 1984 (CIT Final Submission 1999, 31-32).

i. CIT Position. CIT cites this as 742 F.2d 549 (9th Cir. 1984), referencing the Quileute and issues of jurisdiction on the Quinault Reservation.

It is beyond question that in 1984 the affiliated tribes — including Cowlitz — were unambiguously recognized as Indian tribes with federally-protected rights by the United States Court of Appeals for the Ninth Circuit in Williams v. Clark (CIT Final Submission 1999, 32). [emphasis in original]

ii. BIA Analysis. This statement clearly misrepresents the findings in this case which involved only the right of a Quileute tribal member under Section 4 of the Indian Reorganization Act to devise his allotment on the Quinault reservation.

5. *Quinault's Statements Concerning the Acknowledgment Status of the Cowlitz Tribe in 1975.*

a. Quinault's Position. Quinault quoted various 1975 statements made in connection with the Indian Claims Commission (ICC) award indicating that the Cowlitz were not a recognized tribe (Quinault Revised Memorandum, 1998, 24).

b. CIT Comment. The CIT did not respond directly to this point. An implied CIT comment may exist in its discussion of recent litigation (CIT Final Submission 1999, 30-32).

c. BIA Analysis. The proposed finding did not conclude that the CIT was a federally acknowledged tribe in 1975. In fact, the Government has refused to disburse the ICC Cowlitz judgment award to the petitioner as a tribal award because the Cowlitz were not recognized. The payment is now in escrow until the conclusion of this case. If the Cowlitz are acknowledged, the award will be distributed at least in part as a tribal payment. If the Cowlitz are not acknowledged, the award will probably be distributed per capita.

6. *Comparability with AS-IA's Analysis of Previous Unambiguous Federal Acknowledgment of the Snoqualmie Tribal Organization.*

a. Quinault's Position. Beyond the above quotations, the remainder of the Quinault comment compared the AS-IA's analysis of the issue of Federal acknowledgment of the Snoqualmie Tribal Organization (STO) between 1934 and 1953 and how the BIA distinguished STO from purely claims organizations (Quinault Revised Memorandum 1998, 10-11; citing STO FD Summ. Crit.

[no page numbers given]) to three specific mentions of Cowlitz Indians in BIA records' in 1878, 1893, and 1904 (Quinault Revised Memorandum 1998, 12).

b. BIA Analysis. The Quinault commented on documents which were not comparable. The AS-IA's analysis concerning the Snoqualmie Tribal Organization specifically analyzed, at length, the issue of Federal actions indicating acknowledgment of the Snoqualmie in the mid-20th century. The absence of similar kinds of documents for the Cowlitz from another historical period is not remarkable, and in fact policy, administrative, and even technological changes mean that the character of documents created by the BIA during the late 19th and early 20th centuries differ significantly from those created in the mid-1950's. Such comparisons would be comparing "apples and oranges," especially since this final determination has not concluded that the Cowlitz Tribe was recognized between 1934 and 1953. More extensive discussion of the nature of the Cowlitz Tribal organization (CTO), on the basis of the historical record, will be found below, in section V.

E. The Latest Date of Unambiguous Previous Federal Acknowledgment. The BIA evaluation has declined to make a comprehensive analysis of the submissions and arguments from the petitioner concerning litigation which the CIT argue would show that the Upper and Lower Cowlitz had been unambiguously recognized after 1878/80, and to the 1970's. It is unnecessary for the Department to address these arguments because prior Federal recognition has already been established to 1880, by using other means. Further, the Department has not interpreted those cases cited by CIT as recognizing the Cowlitz or their tribal status in the time period they suggest.

IV. COMMENTS CONCERNING INTERPRETATION OF THE 25 CFR PART 83 REGULATIONS.

This section of the report addresses specific arguments raised by the comments, specifically those submitted by the Quinault Nation concerning the evaluation of the evidence. Section V addresses the evidence in the record.

A. Insufficient Evidence and Evidentiary Standards. Quinault asserted that the BIA had reached conclusions unsupported by the evidence in the record and had failed to apply the proper evidentiary standards (Quinault Revised Memorandum 1998, 2-3 (issue 1); Quinault Memorandum 1997, 1-2 (issue 1)). The petitioner replied (CIT Response 1998, 2-4).

1. Quinault's Position. "The Bureau Has Failed to Apply the Proper Evidentiary Standards and Burden of Proof in Reviewing the Record" (Quinault Revised Memorandum 1998, 2; see also Quinault Memorandum 1997, 1). Quinault stated:

As evidenced by numerous examples discussed in this memorandum and the accompanying revised report prepared by Nicklason Research Associates (NRA), the proposed findings repeatedly state conclusions for which there is no supporting evidence or which are contrary to the weight of available evidence (Quinault Revised Memorandum 1998, 2; Quinault Memorandum 1997, 2).

Quinault also stated:

In ignoring and glossing over negative evidence the proposed findings misapply the applicable evidentiary standards . . . set forth in 25 CFR 83.6(c) which provides that a petitioner may not be acknowledged if the available evidence demonstrates that it fails to meet one or more of the criteria, or if there is insufficient evidence that it meets one or more criteria. A criterion is met "if the available evidence establishes a reasonable likelihood of the validity of facts relating to that criterion" (Quinault Revised Memorandum 1998, 2; see also Quinault Memorandum 1997, 2).

2. *CIT Comment.* The CIT primarily defended the research efforts of BIA staff assigned to the case and critiqued the credentials of the Quinault researchers (CIT Response 1998, 2-4). The CIT comment under this heading was not pertinent to the issues raised by Quinault, as it did not address the issue of evidentiary standards.

3. *BIA Analysis.* The 25 CFR Part 83 regulations do not utilize the concept of "negative evidence" as presented by Quinault. The BIA has used the term "negative evidence" in some previous findings to refer to actual evidence which disproves that a petitioner meets a criterion.⁶⁶ The issue for each of the mandatory criteria is whether or not there is enough evidence to show that the petitioner meets the criterion under the reasonable likelihood of the validity of the facts standard. Under criterion 83.7(a), "Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met" (83.7(a)). This provision reassures petitioners that past descriptions of their tribal character will not be used to deny acknowledgment if they have other evidence

⁶⁶For example, tracing the reputed Indian ancestors of one petitioner to ships' passenger lists of European immigrants has been viewed as "negative evidence" for criterion (e), in that it clearly contradicts the petitioner's claims. Or evidence that a petitioner's ancestors named Thomas lived in Virginia until a generation after their claimed tribe was removed to Oklahoma from Alabama, the petitioner's current locale, contradicts their claims to descend from a "Thomas" who removed from Alabama to Oklahoma in 1842 and died there in 1850. This is the sense in which the term "negative evidence" has been used by the Government in past decisions. A statement of opinion that a writer did not believe a group was tribal or Indians has not been used to deny a petitioner meets a criterion if other evidence shows that group does meet the criteria. These are exactly the kinds of documents Quinault calls "negative evidence," and uses in isolated instances, that is, not informed by the historical context, to try to disprove the general position put forth in the PF.

indicating that they have continued to exist as a tribe.

In this section of its comments which deals with burden of proof, Quinault neither listed the conclusions for which it asserted there was "no supporting evidence" nor those which it considered "contrary to the weight of available evidence" nor the specific points at which it believed that the proposed finding had misapplied the evidentiary standards. Neither did it refer to specific portions of the Nicklason Research Associates reports (Nicklason 1997, Nicklason 1998). It is therefore impossible to respond with specificity to this particular criticism. Section V. of this technical report will address, in chronological order, particular issues and questions at the points they were raised elsewhere in the Quinault Revised Memorandum.

The majority of the documents interpreted by Quinault as "negative evidence" as submitted in its exhibits (Quinault Ex.) were already in the record at the time of the proposed finding, as documented by their containing stamps indicating that Quinault obtained them from the BIA through its Cowlitz FOIA. These documents showed that from 1880-1940, the Cowlitz Indians were not a reservation tribe under Federal jurisdiction or under direct Federal supervision. While such documents are applicable to the issue of determining a latest date of unambiguous previous Federal acknowledgment (see section III), they were not assessed by the AS-IA as "negative evidence" as to the existence of an unrecognized but continuously existing tribal entity. The lack of mention of a group in any type of record is not "negative evidence" but only an absence of a specific type of evidence, which may be unimportant if other acceptable evidence identifying the group as an Indian entity exist.⁶⁷

B. Types of Evidence Acceptable as Demonstrating Tribal Existence. In the "*Previous Federal Acknowledgment*" section of the preamble to the 1994 regulations, the Department stated that "[t]he revisions. . . still maintain the same requirements regarding the character of the petitioner." Thus, continuous existence remains a requirement under the 83.8 provisions for previously acknowledged tribes. The preamble states:

... the revisions maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence. Thus, petitioners that were not recognized under the previous regulations would not be recognized by these revised regulations (59 Fed.Reg. 9280, 2/25/94).

However, the evidence required was streamlined because, as the preamble to the 1994

⁶⁷Quinault regularly conflates the evidence which would show the petitioner was previously recognized under 83.8 -- that is documents showing Federal officials dealing with a tribe -- and evidence which would show the petitioner was identified as an Indian entity under 83.7(a) -- which would include newspaper articles, diaries, travelers reports, and other kinds of documents. All those petitioners that have been recognized to date through the acknowledgment process could show documents to meet 83.7(a), but only a few can show evidence to meet 83.8.

regulations explained: "For petitioners which were genuinely acknowledged previously as tribes, the revisions recognize that evidence concerning their continued existence may be entitled to greater weight." (59 Fed.Reg. 9282, 2/25/94) The revised regulations did not abrogate the requirement of continuous existence, which the preamble to the regulations say will be handled by the tribe's meeting other criteria under the reduced burden of proof:

The revised language requires the previously acknowledged petitioner as it exists today to meet the criteria for community (criterion 83.7(b)) and political influence (criterion 83.7(c)). The demonstration of historical continuity of tribal existence, since last Federal acknowledgment until the present, must meet three requirements. First, the petitioner must demonstrate that it has been continuously identified by external sources as the same tribe as the tribe recognized previously. Second, continuity of political influence must be established by showing identification of leaders and/or a governing body exercising political influence on a substantially continuously basis from last acknowledgment until the present, if supported by demonstration of one form of evidence listed in §83.7(c) . . . third, ancestry from the historic tribe must be shown. (59 Fed. Reg. 9282, 2/25/94).

The Department did not remove the requirement of continuity of tribal existence. Rather, the fact that evidence submitted by previously acknowledged tribes is entitled to greater weight, means that the evidence submitted for criterion 83.7(a) and for criterion 83.7(c) carries the burden the petitioner has for demonstrating continuous existence, without the requirement that criterion 83.7(b) also be demonstrated between the latest date of unambiguous previous Federal acknowledgment and the modern period. The regulations provide specifically in 83.8(d)(2) that criterion 83.7(b) is met if the group is a distinct community at present, "it need not provide evidence to demonstrate existence as a community historically." In revising the regulations, the assumption was made that any difficulties a previously recognized group may have in meeting the requirement of continuous existence would be revealed by these two criteria, 83.7(a) and 83.7(c), as modified.

The regulations state at 83.8(d)(3):

The group meets the requirements of the criterion in 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in §83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in §83.7(c) (83.8(d)(3)).

Under the definitions, "political influence or authority" means "a tribal council, leadership,

internal process or other mechanism, which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group" (25 CFR 83.1).

Thus, the issue of continuity of tribal existence as defined by Quinault⁶⁸ relates obliquely to criterion 83.7(c) as modified by 83.8, in that the entity over which the identified leaders are shown to exert authority must be the same entity that was previously acknowledged and the same entity that is petitioning. Presumably, if this entity were not continuous from the point of last recognition to the modern day, it would not have leaders identified by knowledgeable sources on a substantially continuous basis and other evidence under 83.7(c).

What follows is an overview Quinault's criticisms of the use made by BIA evaluators of some of the evidence discussed in the PF technical reports. An attempt is made in this discussion to link Quinault's criticisms to specific criteria in the regulations at 83.7 (a)-(g), but this was not always possible. Some new analysis based on evidence submitted or collected and the field interviews by both Mark Schoepfle and Holly Reckord is also discussed. The treatment of the modern community is extended and clarified from that appearing in the Proposed Finding ATR.

1. *Holding of Annual Meetings.* Quinault stated that reports of annual meetings of the Cowlitz Tribal Organization (CTO) are not evidence of tribal existence (Quinault Revised Memorandum 1998, 29-30 (issue 8); Quinault Memorandum 1997, 19-20 (issue 8)). The petitioner replied (CIT Response 1998, 10-11).

a. Quinault's Position. Quinault stated:

The proposed findings state that newspaper articles from 1912 through 1939 reporting on annual meetings are evidence of the existence of a tribal entity, noting that the articles mention various leaders and significant business discussed. Review of the newspaper articles and available evidence indicates that the "significant business considered at the meetings" was largely, if not exclusively, related to Cowlitz claims for compensation consistent with descriptions of the "Cowlitz Tribe" during this time as a claims group" (Quinault Revised Memorandum 1998, 29; Quinault Memorandum 1997, 19-20; no citation to pages

⁶⁸The issue as posed by Quinault and analyzed under this heading does not fall directly under any one of the criteria for Federal acknowledgment as found in 25 CFR Part 83. While continuity of tribal existence is fundamental for acknowledgment, parts of the Quinault comments are primarily applicable to 83.7(a), parts to 83.7(b), and parts to 83.7(c), particularly as modified by 83.8. Specifically, Quinault has extracted parts of the evaluation of the evidence considered for criterion 83.7(a) in the Summary Under the Criteria and argued as if the AS-IA had been applying these parts to one of the other criteria.

in the PF⁶⁹). [footnote added]

Earlier in its comment, Quinault had asserted:

Throughout the period from 1912 through the mid-1930s the Cowlitz Tribal Organization appears to have held annual meetings. Following 1950, the reorganized Cowlitz Tribe of Indians resumed meeting. But, the reports of those meetings make clear that business conducted was limited largely, if not exclusively, to claims matters. *See*, NRA and HTR generally. Significantly, both the record of these meetings and the descriptions of the Cowlitz by group members and outside observers unambiguously demonstrate that the Cowlitz Tribal Organization and the later Cowlitz Tribe of Indians were voluntary claims organizations, nothing more or less (Quinault Revised Memorandum 1998, 25; see also Quinault Memorandum 1997, 17).

b. CIT Comment. The CIT described Quinault's statement of this issue as "disingenuous" (CIT Response 1998, 10), emphasizing that contemporary newspaper reports are valid types of documentation, referring to other types of documents such as the provision of information to ethnographers by Cowlitz informants between 1927 and 1931, and stating that the Quinault comments ignored evidence of other business that took place at the tribal meetings (CIT Response 1998, 10-11).

c. BIA Analysis. For a discussion of the general adequacy of evidence under criterion 83.7(c), see below, section IV.D. This analysis is limited to the degree to which the holding of annual meetings may be regarded as evidence for continuous tribal existence. The BIA has divided the above mixed argumentation concerning 83.7(a) and 83.7(c), which Quinault combined into a discussion of "tribal continuity," into the nature of evidence acceptable under each of the criteria, as follows.

i. Analysis of Pertinence of Quinault's Argumentation to Criterion 83.7(a). The regulations read at 83.8(d)(1):

⁶⁹The reference would appear to be to CIT PF 1997, Summ. Crit. 17-18, where the listing was of evidence considered for criterion 83.7(a). The nature of evidence valid for a petitioner to meet 83.7(a) is to some extent different from the nature of evidence necessary to show continuous existence and tribal entity under 83.7(b) and 83.7(c). The AS-IA has determined that:

Additionally, criterion 83.7(a) does not require that the identification as an Indian entity was factually accurate on the part of the observer, or that the observer was a specialist in anthropology or ethnography. There is no requirement that the observer's assertions be documented or verified by historical evidence (RMI FD 1996, Summ. Crit. 12).

The group meets the requirement of the criterion in §83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity (25 CFR 83.8(d)(1)). [emphasis added]

Quinault has presented some material, such as some newspaper accounts, which the proposed finding evaluated for criterion 83.7(a) and asserted that the BIA utilized it invalidly as evidence for criterion 83.7(c) when in fact the BIA did not use the evidence cited by Quinault for showing 83.7(c). Quinault's position that newspaper articles are not authoritative enough to be used as evidence under 83.7(c) is therefore misplaced. At the same time, newspapers are considered evidence for demonstrating 83.7(a) for previously acknowledged tribes because there is no additional requirement in 83.8(d) that identifications of an entity for purposes of criterion 83.7(a) be made by "knowledgeable" observers. Newspaper articles, as identification of a tribal entity by external observers, are considered evidence for 83.7(a), whether or not the petitioner is proceeding under 83.8.

On the basis of the overall evidence, the CTO and CTI as described in external identifications did, at a minimum, continue to represent at least a portion of the Lower Cowlitz and Upper Cowlitz Indians who had previous unambiguous Federal acknowledgment. The reports, both by the lawyers and by BIA agents, of the signing of the earliest claims by the two surviving chiefs of these bands, Atwin Stockum and Captain Peter, along with their association with the surviving older Indians identified as Cowlitz throughout the latter 19th century, are adequate to show under 83.8(d)(1) that the tribe holding meetings in the 1920's and 1930's was the same tribal entity that was previously recognized.

ii. Analysis of Pertinence of Quinault's Argumentation to Criterion 83.7(c). Under 83.8, the correspondence of the BIA with the elected officers of CTO and CTI, definitely identified the existence of a continuous sequence of named leaders for the Cowlitz tribe. The accuracy of this identification by external sources was corroborated by the holding of annual meetings by the CTO and CTI with reports of their elections, etc., and the BIA superintendents and agents constitute knowledgeable outside observers within the meaning of the regulations.

While the argumentation is not entirely clear, it appears that the focus of Quinault's argument is that the CTO and CTI had named leaders, but they were not leaders of a tribe, only leaders of a claims organization. The reasoning in the reports (Nicklason 1997, Nicklason 1998) was very circular -- for example, Quinault maintained that since the CTO was by definition only a claims organization, it was just a convenience for the BIA to contact John Ike, as its head, about probate, school, census, and other business concerning the Cowlitz Indians who lived in his vicinity

(Nicklason 1997, 149-150),⁷⁰ arguing that the data did not show the existence of political influence or authority. However, these aspects of Quinault's comments went beyond the evidentiary value of annual meetings. For more extensive discussion of the nature of political activity and influence in the CTO and CTI, see section V. of this report.

2. *Comparison with Duwamish Proposed Finding.*

a. Quinault's Position. Quinault stated: "The description of the Duwamish annual meetings and activities found to be indicative of a voluntary claims organization precisely matches descriptions of the Cowlitz Tribal Organization set forth in the record for most of the 20th Century" (Quinault Revised Memorandum 1998, 30; Quinault Memorandum 1997, 29).

b. BIA Analysis. As contrasted with the Cowlitz, a major component of the analysis in the Duwamish proposed finding was that there was no documented continuity between the leadership of the Duwamish settlements of the later 19th century, the Duwamish organization formed in 1915, and the Duwamish organization formed in 1925. Additionally, the proposed finding concluded that the membership of the 1915 Duwamish organization was "substantially different from the membership of the organization formed in 1925" (Duwamish PF, Federal Register Notice), whereas the same family lines have continued to be members of the various formal Cowlitz organizations since the earliest lists available.

In this context of a historical development quite different from that of the Cowlitz petitioner, the Duwamish minutes were evidence that the Duwamish Tribal Organization formed in 1925 showed that it was a limited purpose organization that had little direct impact on the lives of its members. The PF Summary under the Criteria stated:

The Duwamish Tribal Organization formed in 1925 did not function as a multi-faceted political entity. Instead, it limited itself to pursuing claims against the United States for its dues-paying members. The organization's annual meetings generally consisted of a presentation by the chairman or chairwoman, a report by the group's claims attorney, and motions only to elect officers, accept new members, or endorse attorney contracts. No evidence indicates that members were involved actively in making decisions for the group or resolving disputes among themselves. A decision to intervene in an important fishing rights case was made by a single individual, the chairman, and no members participated in

⁷⁰... During the 1920's, 1930's and 1940's many documents in the record contain documents show correspondence primarily between the superintendent and others concerning individual Indians. There is no indication that these documents as a group indicate any agency relationship with a tribal entity, or that the nature of the correspondence was of concern to the group as a whole. . . . While BAR claims some of these documents show a relationship with a tribal leader, John Ike, but there is no evidence of Ike's influence on members of the group in response to those few agency letters" (Nicklason 1997, 149-150).

completing paperwork which would have allowed members to exercise fishing rights temporarily. Minutes of its annual meetings indicate that this organization played a very limited role in the lives of its members. In addition, there was no evidence for the existence of informal leadership or the exercise of political influence within the group outside of the formal organization. Because the petitioner has not maintained political influence or authority over its members, it has not met the requirements of criterion (c) (Duwamish PF, Summ. Crit. 14).

Under the regulations, the CIT only have to demonstrate they meet criterion 83.7(b) during the modern period because they are being evaluated as a previously acknowledged tribe. Therefore, the PF did not evaluate the Cowlitz under 83.7(b) "throughout most of the 20th century." To the extent the Quinault may mean to compare the evidence of Cowlitz community at the present to the above historical description of Duwamish. (See next paragraphs.)

More specifically, in the context of criterion 83.7(c), the Duwamish proposed finding concluded that the Duwamish petitioner differed in several respects from the modern day CIT, which may be characterized by numerous arguments, major sub-groupings which take political stances, vote-taking, and other ways of making decisions on behalf of the tribe. In addition to the formal CIT organization, the Cowlitz show evidence of informal leadership, particularly when individuals set agendas on issues of interest to themselves and make them tribal issues. Members have initiated actions to which the leadership of the formal groups responded. Long-running disagreements of wide interest to the tribal members include membership issues, litigation, subsistence, historical preservation, graves protection, religious orientation as it relates to the petitioner's activities, the use of tribal property, administration of elections, control of the petitioner's office, attorney contracts, and accepting the judgment as a tribe or as a per capita payment, child welfare, a community garden, and Administration for Native American grants.

Members of CIT are not content merely to come to meetings in order to hear reports. They actively accumulate knowledge and information about tribal activities, and lobby for their positions behind the scenes. There is evidence in the BIA field interviews of such maneuvering. Members often seek information on their own and in groups (even traveling to Quinault to meet with that tribe's leadership) and then use this gathered information to inform their political positions in meetings.

The tribal minutes do tend to play down such disagreements. Evidence that arguments were not documented is that interviews indicate that after 1950, some elderly individuals and others stopped going to meetings because they found the many arguments upsetting. A memorandum from an Indian agent who had attended a Cowlitz Quarterly meeting March 13, 1965, when the topic of the claims attorney was controversial, described the meeting: "the usual arguments

among tribal members over Mr. McLeod flared up as at previous meetings."⁷¹ By the 1970's factionalism resulted in the establishment of an organization called the Sovereign Cowlitz, an alternative tribal organization, which temporarily broke from the main tribe over the tribe's position to accept the judgment payment, rather than actual land. Therefore, in the Cowlitz case, evidence other than the meeting minutes themselves, draw a picture of tribal meetings which were somewhat more raucous than the official meeting minutes indicated.

The Cowlitz minutes themselves tended to record outcomes rather than the entire course of an argument. The fact that the minutes did not accurately reflect participation in meeting discussions is further supported by making a comparison between the oral testimony of people involved in the 1990's leadership struggle between Jerry Bouchard and John Barnett and the minutes made during this period. The oral interviews tell how people became enraged, cried and the police were called. The minutes contain few details about the heated emotional arguments that apparently characterized the meetings.

The Quinault tend to evaluate each type of evidence, including the minutes, as if it stands in a historical vacuum. They ignore the context surrounding the creation of the document and relevant evidence that may exist. Comparing the nature of the Cowlitz minutes to the Duwamish minutes without looking at the complete record of evidence concerning each group's political behavior leads to false comparisons. It also leads to false interpretation of the evidence in the record. For example, the BIA has received minutes from a number of petitioners and has found that minutes are often formal documents and are often not intended to be a transcription of what was said and what occurred at a meeting. Generally, they are used only to document the actions taken at a meeting and limited background which would justify those actions. Argumentation that does not support the final position taken at the meeting is often left out of minutes. The Cowlitz minutes are of this character.

The BIA researchers do not assume that where no evidence exists in the minutes, a cross-section of members participated in discussions and decision-making, whether in the General Council Meeting or in the Council meetings. However, other evidence may draw a fuller picture of tribal meetings than the minutes do. Oral history, letters, memoranda of the BIA agents present, or videotapes or similar documents may reveal that widespread participation and discussion occurred which were not recorded in the minutes. The Cowlitz petitioner submitted a variety of other evidence and the field interviews also provided evidence which supplemented the official minutes.

In the case of the Duwamish, no other evidence was in the record that indicated full participation during decision making. In contrast, in the case of the Cowlitz, not only do the minutes reveal

⁷¹Monday, March 22, 1965, Report to Superintendent from Tribal Operations Officer re: Cowlitz Quarterly Meeting.

that the Cowlitz dealt with a wide range of topics and issues, but also other documentary and oral interview evidence indicates that participation was wide spread in meetings and that people discussed tribal issues outside of meetings, even lobbying for specific positions with other members. Furthermore, the organization of the Cowlitz tribe, which had a number of leaders and active subgroups consisting of members with particular perspectives they wanted to advance, further indicates that members were actively involved in tribal issues and decision making.

Finally, a tribe may pursue claims and discuss claims issues at their meetings. The mere mention of claims does not mean that a tribe is a claims organization and unrecognizable. Most recognized tribes have at some time developed claims cases. The problem under the regulations arises if a petitioner is only a claims organization.

3. Using Subgroup Activity as evidence under the Regulations.

a. Quinault's Position. Quinault stated that, "... evidence of 'subgroup' subsistence activities organized by the leaders of 'subgroups' is not probative evidence of the existence of a larger Cowlitz community, encompassing the 'subgroups'" (Quinault Revised Memorandum 1998, 32; Quinault Memorandum 1997, 21). More generally, Quinault asserted that:

the proposed findings seek to bolster what is conceded to be "limited evidence for the continuation of structured political activity and influence under §83(d)(3)" referring to substantial evidence of informal leadership within subgroups. SUCPF at 38. Section 83.8(d)(3) establishes a reduced evidentiary burden for previously acknowledged groups. The effort to use evidence of subgroup leadership to supplement the 'limited evidence' of substantially continuous leadership exercising political authority necessary to meet the reduced burden of 25 CFR §83.8(d)(3) misapplies the acknowledgment criteria. Nowhere do the regulations authorize the substitution of subgroup leadership for a demonstration of substantially continuous leadership exercising political influence over the group as a whole (Quinault Revised Memorandum 1998, 43-44).

b. BIA Analysis. This comment from Quinault deals with the demonstration of 83.8(d)(3) which reads:

(3) the group meets the requirements of the criterion in 83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and /or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in 83.7(c).

Quinault's comment is referring to the second half of this requirement, "together with demonstration of one form of evidence listed in 83.7(c), stating their opinion that subgroup activity may not qualify as a form of evidence listed in 83.7(c).

In response to the specific criticism of evidence of subgroups to demonstrate 83.7(c), other acknowledgment findings have utilized the existence of leadership in subgroups, for example the Mohegan women's church-sponsored sewing circle (Mohegan FD, Summ. Crit. 30), to support other evidence for community, political authority, and overall leadership. The issue is how are the subgroups tied to each other. In the Snoqualmie finding, for example, the existence of family subgroups which discussed tribal politics and came to a decision that the subgroup would support in the larger tribe, at annual meetings, or in the council through representatives of the family subgroup, was accepted as a form of evidence for political process as required under 83.7(c). The guiding principle is that subgroup participation and leadership may be used as evidence of political influence when subgroup leaders also participate in tribal government and their leadership of subgroups contributes to their credibility and political power or informs their participation in the larger political grouping.

Factions, political subgroups, kinship groupings, residential affiliations of all sorts crosscut the political processes of a tribe. The CIT proposed finding found that regional/kin sub-groupings framed the politics of the Cowlitz tribe. Members elected a council with representatives from a variety of backgrounds. Those thrust forward as leaders from a particular regional/kin grouping, took on a larger political function in the council or the tribe, but their power base remained with the group that originally put them forward and their credibility as a leader came from that base. The council and those who operate on a tribal basis as a governing body may demonstrate political authority together as a group. The regulations do not require that a single individual have influence over an entire group, although if that can be shown, it would be accepted as meeting the criterion. It is equally accepted that a group of influential individuals who are in contact and working together, may demonstrate that they have political influence as a group.

The CIT proposed finding discussed at length the relationship among the five Cowlitz subgroups. (CIT PF 1997, ATR 45-46, 2.1.6). There is evidence discussed in the proposed finding and also new evidence since the proposed finding that joint action was carried on by the subgroups. Family reunions have been held for years, have a political component and are closely associated with the annual meeting. Today, politics are discussed at the family reunions and lobbying among the attendees occurs there too. Early intermarriages means that those attending family reunions are attended by a large number of individuals, some outside the immediate family line. In recent years, the tribal leaders are invited to attend family reunions. Funerals of elders were attended by individuals from diverse subgroups if the deceased was active in the tribe's political life. Religious movements cross sub-group boundaries. Leaders from the various sub-groups interacted to provide congressional testimony or appear at hearings concerning burial sites and subsistence fishing in the 1950's. Subgroup leaders were generally and still are, known to members who are not part of their group. Since the early part of this

century, some of these subgroups were led by individuals who were widely known outside their own subgroups and worked closely with leaders from other subgroups. The continuity and overlap of service is shown by the list below from the ATR:

Among the Upper Cowlitz were Sarah Castama [1873-1955], Mary Kiona [1869-1970], and John Ike Kinswa [1874-1947]. Among the Lower Cowlitz were Frank Wannassey [c.1873-1934], Maude Wannassay Snyder [b.1898], Jacqueline Wannassay Hill [b.1923], Frank Iyall [1873-1938], and Archie Iyall [1911-1993]. Among the metis were elected officials such as James Sareault [1895-1963] and Clifford Wilson [b.1912], and among the Boisfort/Peell were Charles Pete [1860-1926] and Jesse Pete, Sr. [b.1918]. Also, families such as the Cottonoire (or Cottonware) were married with Quinault, Boisfort/Peell, metis, and Yakima families (CIT PF 1997, ATR 46). [dates added for clarification]

An analysis of the signers of the 1934 fishing rights petition provides additional insight into subgroup leadership (CIT Pet. 1987, Ex. A-551; resubmitted as Quinault Ex. 7:1934-15). This petition, containing 64 names, is discussed in context in section V. It is analyzed here only in the immediate context of subgroups and leadership. Of the 64 signers,⁷² nine had signed the Cowlitz claims attorneys' contract in 1910: they may be considered old-timers.⁷³ Four of them were Upper Cowlitz; the other five represented three different metis lines, one of which was also intermarried with the Cascade Cowlitz subgroup. On the other hand, the petition was also signed by younger people: 22 lived to be included on the 1953/1963 membership list.⁷⁴ The signers included the past president, John Ike (Upper Cowlitz); the past tribal council chairman and Upper Cowlitz fishing rights leader, Louis Castama (Upper Cowlitz); the current president, John B. Sareault (metis); and the future secretary, Maude Wannassay [Snyder] (Lower Cowlitz). The signers included past and future leaders, were drawn from a variety of the Cowlitz ancestral lines, and cut across the social subgroups.⁷⁵ Additionally, they had close ties with other prominent Cowlitz: Louis Castama's widow Sarah and Mary (Yoke) Kiona (niece of signer Jim Yoke and

⁷²Three signers were spouses; the BIA researcher could not firmly identify five signers, e.g. Mary Smith (not a hypothetical example, but an actual signer) when no further data, such as an address, was on the petition.

⁷³Peter Bernier, Louis Castama, Peter Duprey, Sam D. Eyle, Celeste (Duprey) Nelson, John Ike (Kinswa), John J. Plamondon, Louise Virginia (Bernier) West, Jim Yoke.

⁷⁴Of the 64 names on the 1934 petition, eight are still alive and on the 1998 CIT membership list. All of these youngest signers also had parents who were signers.

⁷⁵Castama, Eyle, Ike (Kinswa-Satanas), Kiona, Phillips-Lashwicht, Saterlick, Yoke (Upper Cowlitz); Cheholtz, Lewis, Wahawa/Iyall, Wannassay, Waterton-Thomas, White, Williams (Lower Cowlitz); Rabbie (Cascade); Cathier-Cottonoire, Finlay/Bercier/Bernier; Finlay/Plamondon, Lozier, Provoe, Skloutwout/Gerrand, Scanewa/Plamondon/Sareault (Cowlitz metis). Because of the extensive intermarriage among the Cowlitz, many signers descended from more than one of these lines.

mother of signer James Kiona), who did not themselves sign this petition, would testify on behalf of the Cowlitz in the lawsuits of the 1950's, with signer Howard Ike serving as their interpreter (see above excerpt from the ATR).

4. *Provision of Services to Individual Cowlitz Indians.* Quinault stated that evidence of the provision of services to individual Cowlitz does not establish the existence of a "Cowlitz Tribe" (Quinault Revised Memorandum 1998, 30 (issue 9); Quinault Memorandum 1997, 20 (issue 9)). The petitioner replied (CIT Response 1998, 11-12).

a. Quinault's Position. Quinault stated:

The provision of services to individual members of unrecognized Indian groups was a common practice earlier this century. It is not evidence of federal recognition. See, 59 FR 9280, 9283 (Quinault Memorandum 1997, 20).

Provision of services to individual Indians during the earlier part of this century was common and is not evidence of the existence of a tribal entity. Evidence that during the 1920s and 1930s federal officials communicated with leaders of the Cowlitz group to obtain information in connection with the provision of services to individual Indians does not demonstrate the exercise of 'political influence or authority' as defined by the regulations for two reasons. First the services provided were not tribal in character, but individual relating to issues like education, medical care, and probate of trust and restricted lands owned by individuals (Quinault Memorandum 1997, 29).

b. CIT Comment. CIT argued that the "delivery of services through BIA was to Cowlitz tribal members, and not to 'individual' Indians without any tribal affiliation" (CIT Response 1998, 11), stating that, "while the fact of federal services to Cowlitz tribal members does not establish tribal existence by itself, it is part of the overall picture of tribal existence . . ." (CIT Response 1998, 11).

c. BIA Analysis. While Quinault's presentation of the evidentiary value of the provision of services to individual Indians is accurate, it is also irrelevant, since the CIT proposed finding did not utilize the provision of services to individual Indians as evidence of the existence of a Cowlitz tribal entity, nor was it discussed as providing evidence of previous unambiguous Federal acknowledgment at the dates these services were being provided.

Like many petitioners, the CIT confused the provision of services to individuals as evidence of the existence of the tribe that person belonged to. This type of evidence has never been accepted by the BIA to show tribal existence. The proposed finding stated clearly that from the mid 1930's through the 1950's, the BIA interacted primarily with Cowlitz Indians as individuals rather than with the CTO (CIT PF 1997, Summ. Crit. 15), and did not adduce this interaction as evidence

establishing tribal existence.

The CIT Response attempted to draw more inferences from such services than warranted under the regulations. The other point made by CIT under this heading, that "there is a substantial body of law which confirms that tribal existence is not exclusively a function of formal federal recognition." while accurate, is irrelevant to the topic as framed by Quinault.

C. Is Each Subgroup of a Petitioner Required to Meet Criterion 83.7(a) Separately?

Quinault asserted that the Cowlitz Metis subgroup does not meet the requirements of 83.7(a) (Quinault Revised Memorandum 1998, 16-17 (issue 4); Quinault Memorandum 1997, 10-11 (issue 4)⁷⁶), concluding that as a consequence, the petitioner as a whole does not meet the requirements of 83.7(a). The petitioner replied to this assertion (CIT Response 1998, 6).

1. Theoretical Discussion by Quinault.

a. Quinault's Position. Quinault stated: "The Cowlitz Métis Subgroup Does Not Meet the Requirements of 83.7(a) and the Petitioner Does Not Meet the Requirements of §83.8(d)(1)" (Quinault Revised Memorandum 1998, 16; Quinault Memorandum 1997, 10).

b. BIA Analysis. Quinault here attempted to introduce a supposed requirement, stated nowhere in the regulations, which would require that when a petitioner contains more than one subgroup, each subgroup individually, as well as the petitioner as a whole, must document that it meets criterion 83.7(a) and, by implication, each of the other criteria. The regulations do not contain any such requirement.

2. Application of Quinault's Theoretical Position to the CIT Petition.

a. Quinault's Position. Quinault stated (1) that, "[t]here is absolutely no evidence that the métis or Cowlitz métis population was ever considered an Indian tribe or band (Quinault Memorandum 1997, 4);⁷⁷ and (2) that, "the Cowlitz Metis were never identified as an American Indian entity.

⁷⁶It should be noted that Quinault's issue 4 contained two separate items, which have been separated for purposes of analytical discussion.

⁷⁷The historical report submitted by Nicklason Research Associates addressed this issue in the context of a specifically delineated later chronological period, rather than in the context of "ever": "During the years between 1904 and 1920, there is no mention of a separate 'Métis' Indian or 'Cowlitz-Métis' Indian group in the record. Therefore, there is no evidence to support a determination that the present day petitioner is an amalgamation of Lower Cowlitz, Upper Cowlitz and Métis (or Cowlitz-Métis) into an [sic] sovereign social and political Cowlitz Tribe. To the extent that any amalgamation occurred, it took place among Cowlitz descendants within the context of a claims group. In addition, evidence exists from internal document [sic] that group members continued to see a distinction between the Lower Cowlitz and the Upper Cowlitz as late as 1917. As a result, during the years between 1904 and 1920, there is no historical evidence to support a finding of prior unambiguous recognition" (Nicklason

They are not even recognized as a separate group, Indian or non-Indian, in federal documents. SUCPF at 11 . . . The Cowlitz Metis therefore do not meet the requirements of 83.7(a)" (Quinault Revised Memorandum 1998, 16; Quinault Memorandum 1997, 10).

b. CIT Comment. The CIT responded that, "[t]he term 'Cowlitz Metis' is nothing more than a nice way of saying 'half-breed,' a somewhat derogatory term commonly used in the 18th and 19th centuries to describe children born of Indian and non-Indian parents" (CIT Response 1998, 6). It added:

This group of people was not a separate tribe as such, but merely a class of individuals who were not pure blood Indians but nonetheless active members of the Cowlitz Tribe. In fact, Congress recognized this population as well and extended the opportunity to mixed-blood men and women to secure land under Section 4 of the Oregon Donation Act of 1850, as amended (9 Stat. 496) (CIT Response 1998, 6). [emphasis in original]

BAR's Dr. Virginia DeMarce explained that the Quinault incorrectly have been attempting to portray the Cowlitz metis as a tribal group, missing the fact that the metis people were "Lower Cowlitz descendants" and not a separate tribe. (On-the-Record Meeting Transcript at p. 60, 11.10-13.). . . Dr. DeMarce further said that the significance of the metis joining the Cowlitz Tribe at some later date is simply mischaracterized by Quinault. She explained that the matter was addressed by the BAR in developing the applicable regulations: (CIT Final Submission 1999, 7; citing Tr. at p.59, 11.8-17).

c. BIA Analysis. The regulations do not require that each subgroup of a petitioner meet the regulatory criteria. The regulations do not require that the métis, part of the Lower Cowlitz, be identified, as asserted by Quinault. Additionally Quinault conflated to some extent the issues of identification as an Indian entity by external observers (criterion 83.7(a)) and prior unambiguous Federal acknowledgment (83.8). Quinault's own statement that the Cowlitz metis were "not even recognized as a separate group" in Federal documents tends to substantiate the Government's conclusion in the PF that the metis were not distinguished from the remainder of the Lower Cowlitz Indians (see the much more extensive discussion in section V. below).

It is possible, however, that Quinault here intended to use "recognized" in the technical sense of having prior unambiguous Federal acknowledgment. Federal acknowledgment, however, is not a prerequisite for identification as an Indian entity by external observers under criterion 83.7(a). Additionally, the regulations do not require that a petitioner be identified as an Indian entity by Federal documents (Quinault Revised Memorandum 1998, 16) in order to meet criterion 83.7(a),

1997, 101-102).

but only that it be identified by some type of external observer.

The CIT comment was to some extent off point, in that it did not address Quinault's theoretical presumption that each subgroup of an amalgamated petitioner must separately meet criterion 83.7(a), contenting itself with asserting that the Cowlitz metis were not a separate tribe or band. The proposed finding indicated that the Cowlitz metis were a portion of the Lower Cowlitz tribe. The regulations do not require that Cowlitz métis have been the subject of separate identifications by external observers, as distinguishable from the remainder of the tribe.

D. General Adequacy of Evidence for 83.7(b). Quinault asserted that the proposed finding did not present a basis for finding the existence of a modern community (Quinault Revised Memorandum 1998, 34-38 (issue 13); Quinault Memorandum 1997, 22-25 (issue 14)). The petitioner replied (CIT Response 1998, 14-16).

*1. No Evidence of Actual Social Interaction Showing Historical Community.*⁷⁸

a. Quinault's Position. Although the issue under the regulations was that of CIT modern community (see above), Quinault stated:

The absence of documentary evidence indicating "community" activities from the turn of the century through the mid-1970s, other than annual claims group meetings between 1912 and 1930s and again following 1950, belies the claim that a joint Upper Cowlitz and Lower Cowlitz "community" formed between 1878 and 1904 (Quinault Revised Memorandum 1998, 32; Quinault Memorandum 1997, 21).

Quinault's researcher (Nicklason 1997, Nicklason 1998) argued at length that there was no showing of historical community for the CIT.⁷⁹

b. BIA Analysis. The proposed finding stated:

⁷⁸Some of the comments in the background report submitted by Quinault indicated unfamiliarity with the terminology used at various historical periods — for instance, that in 1919, "Nowhere in the Roblin narrative on the 'Cowlitz Tribe' does he mention the word 'Cowlitz community'" (Nicklason 1998, 110). "Community" was not a term used in the context of tribes in 1919.

⁷⁹"Nowhere in the record reviewed for this report is there a description of the 'Cowlitz tribe' as a social tribal entity. . . no evidence that the group's membership interacted socially. . . , on a regular and consistent basis involving the wide breadth of the group's membership and kinship lines. . . of family reunions, shared gift giving, shared religious activities, cooperative hunting or other economic activities that involved a significant number of members of other kinship lines. . . that most of the peripheral individuals maintained social ties and interacted with a social core. . . of the existence of organizations in which ceremonies or other activities could be practiced by the entire group. . . beyond the matter of claims, there is no evidence of any group activities" (Nicklason 1997, 102).

After 1863, Federal government policies combined the Upper and Lower Cowlitz for administrative purposes, and during the 1860's attempted to place the two on the Chehalis Reservation. By 1878, the Indian agent reported that prior hostilities between the two bands had ended and that they were beginning to intermarry. An actual community and political or tribal merger occurred gradually throughout the second half of the 19th century. Both groups have been part of the formal tribal organization since its founding in 1912 (CIT PF 1997, Summ. Crit. 4).

This statement occurred in the context of determining previous unambiguous Federal acknowledgment.⁸⁰ Because the regulations provide that petitioners proceeding under 83.8 do not need to show historic community, the technical reports did not evaluate evidence concerning it nor was the issue included in the discussion under criterion 83.7(b) as modified by 83.8(d)(2) in the Summary Under the Criteria (CIT PF 1997, Summ. Crit. 20-31), which pointed out:

When the petitioner is proceeding under 83.8(d)(2), the BIA may examine evidence pertaining to criterion 83.7(b) for earlier periods. This does not constitute a requirement that the petitioner demonstrate historical community. Rather, the data may be used both to provide context for the development of the observed contemporary situation under 83.8(d)(2), and to contribute to the discussion of criterion 83.7(c) under provision 83.7(c)(3), . . . (CIT PF 1997, Summ. Crit. 20-21).

Much of the critique of the proposed finding presented by the Nicklason Research Associates reports (Nicklason 1997, Nicklason 1998) related to the issue of historical community. Having presented the hypothesis that the petitioner did not qualify to proceed under the provisions of 25 CFR 83.8 (see above), Quinault then objected that the proposed finding did not address issues which the modification of the regulations for 83.8 petitioners do not require to be addressed.

The Cowlitz PF did not evaluate historical community. It evaluated only the modern community, as required under the provision for previously acknowledged tribes in the 1994 regulations which state under 83.8(d)(2) that to be acknowledged a petitioner must show that:

The group meets the requirements of the criterion in §83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically (83.8(d)(2)).

The anthropological report, once previous acknowledgment was determined for the Cowlitz,

⁸⁰Under 83.7(b), the statement was: "Between 1878 and 1904, the Upper Cowlitz and Lower Cowlitz bands not only merged politically as a consequence of Federal policy, but also to some extent socially, . . ." (CIT PF 1997, Summ. Crit. 22).

was not tasked with evaluating evidence for historical community. Its basic task was to evaluate the evidence pertaining to the petitioner's modern community under criterion 83.7(b) and modern political influence and leadership under criterion 83.7(c). The following discussion deals with some of the statements made by Quinault concerning whether or not Cowlitz met criterion 83.7(b) before the present. Because it is not a requirement, the Department need not respond to specific issues related to evaluation of historical community that Quinault raises.

However, some of Quinault's misstatements concerning how the regulations are applied and erroneous interpretation of precedent are discussed generally in the following sections. This is not an exhaustive analysis of the issues raised by Quinault. Rather, it is merely to clarify the Department's position on this issue as it was presented in the proposed finding, so that there will not be confusion in the public's minds about what the Department's position actually is.⁸¹

2. *Quinault's Specific Arguments Concerning Historical Community at Various Time Periods.*

a. Quinault's Specific Arguments Concerning Historical Community 1878-1904.

i. *Quinault's Position.* Quinault stated: "... in 1893, another agent reported that the Cowlitz Indians were scattered, lived on small farms, and are 'so much absorbed into the settlements that they hardly form a distinct class anymore.' NRA 1893-1" (Quinault Revised Memorandum 1998, 12). Several statements in the Nicklason Research Associates reports (Nicklason 1997, Nicklason 1998) repeated these hypotheses in various ways,⁸² summarizing that:

⁸¹ The fact that the Department does not discuss in this report something raised by the Quinault which is not required under the regulations, does not indicate the Department agrees with their critique or their evaluation of an issue.

⁸² "No evidence of significant differences between the Cowlitz and their non-Indian neighbors. . . concerning discrimination or relationships with non-Indians that would discourage interaction between the two groups. . . of informal relationships (friendships) occurring outside the formal claims group meetings. . . concerning family reunions, weddings and the like that would have involved a significant number of individuals from a significant number of kinship lines" (Nicklason 1997, 103).

"Evidence corroborating the disappearance of Cowlitz community is also found, as early as 1860, in reports characterizing the 'Cowlitz,' particularly the Lower Cowlitz, as scattered, living near, or on the lands of the non-Indian settlers. By 1870, they were reported to be adopting the habits of 'civilization.' These descriptions continued in the record through the 1880's. By 1895, the 'Cowlitz' were not only reported as scattered, but also losing their identity, absorbed into the surrounding settlements and mingling more with the non-Indians than with their own race. Indeed, after 1886, they were no longer described as a cohesive tribe, not even in the statistical tables of the Annual Reports of the Commissioner of Indian Affairs. . . indicated by the dramatic decline in the number of references to them in Federal documents after 1881. . ." (Nicklason 1997, 53).

The data presented by the BAR technical reports from the 1880 and 1900 censuses do not show the existence of a distinct Cowlitz community. In addition, there is no evidence in the record reviewed for this report to support a conclusion that a Cowlitz social community existed at the turn of the century (Nicklason 1997, 54-55).

ii. BIA Analysis. As noted above, the proposed finding under 83.7(b) did not address extensively the issue of whether there was a joint Upper Cowlitz and Lower Cowlitz "community" between 1878 and 1904 because it was not required to do this under the regulations. It referred to an administrative merger of the two groups for political purposes, e.g., "... the consolidation of the Lower Cowlitz and Upper Cowlitz by OIA policy, ..." (CIT PF 1997, Summ. Crit. 46).

There were other documents from the late 19th century which provided external identifications. On June 8, 1894, Acting COIA Frank C. Anthony replied to a letter he has received from a resident of Kelso, Cowlitz County, Washington, who requested "to be advised as to the rights of the Cowlitz River Indians, numbering some one hundred, and living off the reservation" (Anthony to Losey 6/8/1894; Wannassay Papers (BAR Files)).⁸³

Presumably, the Nicklason Research Associates report meant that the 1880 and 1900 Federal census did not show that the Cowlitz lived in a compact residential community, since that is the primary data that could be extracted from census records. The 25 CFR Part 83 regulations do not require the existence of a geographical community (see further discussion in subsection 3, below). The proposed finding addressed the traditionally dispersed residential pattern of the Cowlitz Indians (CIT PF 1997, Summ. Crit. 13).

In any case, the statements quoted by Quinault were ambiguous. On the one hand, the agents clearly were aware of the existence of Cowlitz Indians and appeared to be tracking their activities and general well-being. The statement that they "hardly constitute a distinct class anymore," on its face, indicates, although weakly, that in this agent's point of view the Cowlitz in 1895 still constituted a distinct class. On the other hand, these kinds of statements have often been applied to petitioners, many of whom have been recognized in past decisions, when the tribe did not live on a reservation and had taken on many cultural characteristics of non-Indian society. Nothing in this type of evidence would have immediately led the BIA

⁸³The writer had stated concerns about the taxability of the lands purchased by the Indians, and asked, "whether the Indians to whom you refer have a right to homes in severalty on an Indian reservation" (Anthony to Losey 6/8/1894, [1]). The OIA reply indicated various legal provisions, indicating that their applicability would depend on "further information as to who these Indians are, where they belong, whether they ever occupied a reservation, when they left the same, how many, if any, have had the benefits of the public land laws, to be ascertained, and reported by some Agent of this Department designated for that purpose" (Anthony to Losey 6/8/1894, [2-3]).

researchers to question the continuous existence of the tribe's community if the petitioner had been proceeding under the unmodified provisions of 83.7(b).⁸⁴

b. Quinault's Specific Arguments Concerning Historical Community and Social Interaction, 1920-1949.

i. Quinault's Position. Quinault's two formal comments did not specifically address community in this time period (Quinault Memorandum 1997; Quinault Revised Memorandum 1998), but did discuss it generally. Several passages in the Quinault historical reports (Nicklason 1997, Nicklason 1998) again assumed that the petitioner should have been required to make a showing of historical community for this time period.⁸⁵

ii. BIA Analysis. Some of the "evidence" listed in the Nicklason Research Associates report submitted by Quinault in support of its hypothesis cannot be regarded as in any way conclusive. For example, in regard to a 1933 letter of enquiry, the report maintained that members wrote to the BIA for information because they no longer maintained ties to the community or the leaders whom they believe should be answering the questions. The Nicklason Research Associates report states: "That an interested party to the Cowlitz claim did not seek information from the 'Cowlitz Tribe,' but from the Indian Office in Washington, D.C., indicates a lack of social communication and community" (Nicklason 1998, 154; see also Nicklason 1998, 161). The

⁸⁴Such statements must, in particular, be evaluated in the cultural context of the period. In 1893, the COIA report contained statements that in western Washington, many reservation Indians were "working for whites" (Quinault Reservation, COIA Report 1893, 329); the "unfortunate effects of citizenship," (Puyallup Reservation, COIA Report 1893, 329); and "many Indians formerly on reservations and within agency control and enumeration have gone away into outlying regions" (COIA Report 1893, 385).

⁸⁵"A review of the record between 1921-1949, reveals no examples of the "Cowlitz Tribe" as a social community or entity... no evidence that the group's membership interacted socially... on a regular and consistent basis. Also, there is no evidence of social community involving the wide breadth of the group's membership and kinship lines. For example, there is no evidence of family reunions, shared gift-giving, shared religious activities, cooperative hunting or other economic activities involving a significant number of members of other kinship lines... no evidence of the existence of organizations in which group ceremonies were practiced by the entire group or a significant part of it. There is no evidence of a community mobilizing resources to help those in need. Indeed, with the exception of the Cowlitz claim, there is no other evidence of group activities" (Nicklason 1997, 143; see also Nicklason 1998, 176-177).

"During the years between 1921 and 1949, there is no evidence of significant differences between the Cowlitz and their non-Indian neighbors. For example, there is no evidence in the record concerning discrimination or relationships with non-Indians that would discourage interaction between the two groups. Indeed, the two groups are described as intermingled and the Indians often described as 'citizens'" (Nicklason 1997, 143).

"During the years between 1921-1949, there is also no evidence of informal relationships, such as friendships, occurring outside the formal claims group meetings. Also, there is no significant evidence that substantial numbers of group members, including significant number of kinship lines, attended birthdays, funerals, weddings or other kinds of mainly informal gatherings" (Nicklason 1997, 143).

existence of such letters neither demonstrates community nor lack of community, unless their contents discuss the topic directly. Even as of 1999, the BIA frequently receives inquiries on a wide variety of matters from members of federally acknowledged tribes and petitioners alike who direct their letters and phone calls to agencies, area offices, and the central office rather than to their own tribal offices.⁸⁶

c. Quinault's Specific Arguments Concerning Historical Community, 1950-1973.

i. Quinault's Position. Numerous passages in the Quinault researcher's report (Nicklason 1997) addressed the issue of historical community 1950-1973.⁸⁷ (See also Quinault Revised Memorandum 1998, 21) and other statements may have been intended to discuss historical community between 1950-1973. Some statements appeared to reference 83.7(b), but seemed to pertain either to evidentiary standards or to criterion 83.7(c) (Quinault Affidavit of Prejudice 1997, 4).

ii. BIA Analysis. Nicklason's extensive critique on the issue of historical community, or "social community" during this period was applicable only under Quinault's prior assumption that the petitioner did not qualify to proceed under previous unambiguous Federal

⁸⁶See also Quinault's argumentation concerning the applicability of the direct correspondence of interested parties to the Cowlitz claims with the BIA and its applicability to issues of political leadership and authority in the more detailed discussion of this period in section V.E of this report, below.

⁸⁷"The 1950 constitution of the Cowlitz Indian Tribe was a clear statement acknowledging the group's previous lack of social community" (Nicklason 1997, 197).

"A review of the record between 1950-1973, compiled for this report, reveals no examples of the 'Cowlitz Tribe as a social community or entity. There is no evidence that the group's membership interacted socially (beyond claims organizational and formal claims meetings), on a regular and consistent basis. There is also no evidence of social involvement that included the wide breadth of the group's membership and kinship lines. For example, there is no evidence of family reunions, shared gift giving, shared religious activities, cooperative hunting or other economic activities involving a significant number of members of other kinship lines. In addition, there is no evidence of the existence of organizations in which group ceremonies could be practiced by the entire group. Furthermore, there is no evidence of a community mobilizing resources to help those in need. Beyond the claim, there is no other evidence of group activities" (Nicklason 1997, 195).

"There is no showing the most of the peripheral individuals maintained social ties and interacted with a social core, an essential requirement of showing social community" (Nicklason 1997, 197).

"During the years between 1950 and 1973, there is no evidence of significant differences between the Cowlitz and their non-Indian neighbors. For example, there is no evidence in the record concerning discrimination or relationships with non-Indians that would discourage interaction between the two groups. Indeed, the two groups are described as intermingled with the non-Indians, living with the general population of various non-Indians [sic] communities scattered throughout Washington State and elsewhere" (Nicklason 1997, 195).

"... during the years between 1950-1979, there is also no evidence of informal relationships, such as friendships occurring outside the formal claims group meetings. There is no significant evidence that substantial numbers of the group's members together attended birthdays, funerals, weddings and other kinds of mainly informal gatherings" (Nicklason 1997, 196).

acknowledgment. For a more detailed discussion, see section V.F of this report, below. Based on the finding that the CIT had prior federal recognition, the Department need not respond to these arguments advanced by Quinault.

3. *Quinault Arguments in Regard to Geographical Distribution.*

a. Quinault's Use of the "Cohen Criteria." The background report submitted by Quinault made the general statement: "As to geographic community -- certainly a requirement for a presumption of social community -- there is no evidence showing that a substantial portion of the Cowlitz inhabited a specific area or lived in a community viewed as distinct from all other populations in the area" (Nicklason 1998, 118, 177).⁸⁸ In addition to the substantial amount of space devoted to the issue of geographic dispersion in the technical reports, Quinault cited other references, e.g.: "Evelyn Bashor, the group's Secretary Treasurer testified that the group's membership was 'scattered all over in every state in the Union.' id. at 38" (Quinault Revised Memorandum 1998, 23; Quinault Memorandum 1997, 16). [before I.C.C.]

b. BIA Analysis. Quinault's arguments on this issue to go back to the "Cohen criteria" on the issue of geographical dispersion. By so doing, Quinault attempts to evade the criteria for Federal acknowledgment as stated in 25 CFR Part 83, which do not require the existence of a

⁸⁸The issue of geographical dispersion is presumably the reason for quoting the statement of Taholah Agency in 1943 that the George Spearchachen Indian homestead was "not within an Indian reservation or within close proximity of any Indian land center" (Nicklason 1998, 167).

The Nicklason Research Associates reports repeated substantially the same words for each chronological period analyzed: "Evidence substantiating a conclusion that a functioning social/political Cowlitz tribe or community had ceased to exist [*sic*] in the last decades of the 19th century is found in reports characterizing the 'Cowlitz,' particularly the Lower Cowlitz, as scattered, living near or on the lands of the non-Indian settlers" (Nicklason 1998, 57).

"There is no evidence that a substantial portion of the Cowlitz inhabited a specific area or lived in a community viewed as American Indian and distinct from other populations in the area. All of the evidence in the record reviewed for the purpose of this report shows a group so geographically scattered that not even a presumption of social community exists. In addition, the evidence in the record reviewed for this report clearly showed that the Cowlitz descendants living in non-Indian communities. Indeed, during this period the group's membership is not even defined" (Nicklason 1997, 103).

"There is no evidence that a substantial portion of the Cowlitz inhabited a specific area or lived in a community viewed as American Indian and distinct from other populations in the area. All of the evidence in the record compiled for this report shows a group so geographically scattered that not even a presumption of social community can be made. In addition, the evidence clearly showed that the Cowlitz descendants lived within the non-Indian communities" (Nicklason 1997, 144).

See also: "All of the evidence in the record compiled for this report shows a group so geographically scattered that not even a presumption of social community can be made. In addition, the evidence clearly showed that the Cowlitz descendants lived within the non-Indian communities of Washington State and elsewhere" (Nicklason 1997, 196).

geographical community (25 CFR 83.7(b)(1)⁸⁹ in the past or at present.

Of course, the CIT, because they were previously acknowledged, do not have to meet 83.7 (b) before the present. However, some response to Quinault's misapplication of the regulations is called for. The 1994 revisions include a provision that allow a "presumption" of social community in cases where members live in a "geographical area exclusively or almost exclusively composed of members of the group" inhabited by more than 50 percent of the petitioner, with the remaining members maintaining consistent interaction with some members of the community. Such as a geographical settlement is sufficient evidence in itself to show the existence of community (25 CFR 83.7(b)(2)(i)). This concentrated population distribution pattern is not required if there is other evidence of community. This population concentration is an optional form of evidence, as are several other forms of evidence which are sufficient in themselves to meet criterion 83.7(b)(2). These forms of evidence were not used by the CIT petition or the BIA in evaluating that petition, and the fact that any petitioner may not meet this standard does not mean that they can not meet the regulations combining other evidence for community.

4. *Quinault Challenge to Two-Tiered Concept of Social Relationships.* Quinault took a three-pronged approach on this issue.

a. Use of Evidence from Subgroups.

i. Quinault's Position. Quinault argued that the use of evidence from subgroups was not permissible under the regulations and the BIA analyzed this point, § IV.A.3.

ii. BIA Analysis.

b. Applicability of Subgroup Evidence to the Petitioner as a Whole.

i. Quinault's Position. Quinault argued that: "... evidence of 'subgroups' is not probative evidence of the existence of a larger Cowlitz community, encompassing the 'subgroups'" (Quinault Revised Memorandum 1998, 32).

ii. BIA Analysis. Quinault's statement of the proposed finding's conclusions is not entirely accurate; the proposed finding did not conclude that the evidence of subgroups was evidence of

⁸⁹For a more extensive commentary on the basis of this provision of the regulations, see the comments to the 1994 regulations (59 FR 9286-9287, February 25, 1994), which pointed out that the revision of criterion 83.7(b) "omitted an apparently implied requirement that a group live in a geographical community in order to demonstrate that this criterion was met" (59 FR 9286), and that, "[t]he omission of a geographical requirement reflects current practices in interpreting the regulations and recognizes that tribal social relations may be maintained even though members are not in close geographical proximity" (59 FR 9287). Compare 83.7(b)(2)(i).

the existence of a larger Cowlitz community encompassing the subgroups. Rather, it concluded that there was evidence of interaction within each subgroup constituting "strong social community" and "weak but demonstrable" community, still adequate to meet criterion 83.7(b), among the subgroups, i.e., for the petitioner as a whole (CIT PF 1997, Summ. Crit. 25; see also CIT PF 1997, Summ. Crit. 27).

c. Validity of the Depiction in the Proposed Finding.

i. Quinault's Position. Quinault argued that the depiction of the Cowlitz subgroups in the proposed finding was not valid:

...the proposed description of a two tiered Cowlitz community with strong social interaction among members of certain identified subgroups and weak but sufficient interaction between members of the subgroups is not supported by the evidence. The record made available to the Quinault Nation, including redacted portions of Dr. Schoepfle's interviews, the Irwin Affidavits, and associated material, simply do not describe the subgroups which the Department identifies as the constituent components of the modern Cowlitz community or the membership of these alleged subgroups. More importantly, there is no probative evidence that demonstrates significant social interaction across kinship lines among a majority of the Cowlitz membership necessary under the regulations. As discussed below, the alleged evidence of "weak" social interaction described by the proposed findings simply does not meet the acknowledgment criteria (Quinault Revised Memorandum 1998, 34).

ii. BIA Analysis. The proposed finding concluded:

Viewed in the light of the requirement in 83.1 that the criterion for community be "understood in the context of the history, geography, culture, and social organization of the group," we find that the historical development of the Cowlitz Indian Tribe (CIT) has resulted in a two-level community structure, in which community is stronger at the level of the subgroup and looser, but still consistently extent, at the level of the tribe as a whole. Therefore, the petitioner meets criterion 83.7(b) as modified by criterion 83.8(d)(2) (CIT PF 1997, Summ. Crit. 31).

The issue here is a difference between the Government and the Quinault in their interpretation of the significance of the evidence in the record. In the proposed finding, the AS-IA concluded that the evidence demonstrated that the petitioner did meet the criterion for modern community. The technical report for the final determination provides immediately following, and also in section V., a more extensive analysis of the evidence in the record and its significance for criterion 83.7(b), as modified by 83.8.

5. *CIT Comment: Fitzpatrick Supports Cowlitz Community.*

a. CIT Comment. A recent researcher who had published concerning the Cowlitz wrote to the BIA stating:

I understand that certain portions of my 1986 dissertation on the Cowlitz, entitled We Are Cowlitz: Traditional and Emergent Ethnicity, is being used against the Cowlitz.⁹⁰ I suppose almost anything can be used against almost anyone, but I consider my dissertation to strongly support the Cowlitz as a community and a tribe of Indian people. But, it could be the case that the reader would have to know how to use the information and understand what that information means (Fitzpatrick to Fleming 2/5/1999). [footnote added]

Fitzpatrick supported the existence of a modern Cowlitz community, stating that her research had found that kinship was especially strong:

Chapters Three and six are where I present the data for and my conclusions that the Cowlitz are a community and a tribe of Indian people. They are especially strong in their genealogical, family, and kinship network connections. For instance, see pages 207, 213, 214, 220 [of *We Are Cowlitz*] and the kinship charts which show lineal descent, and kinship networks, and clusterings of families who are related to one another, continue to work together on the Cowlitz behalf, and visit one another frequently, informally, so that their relationship is more than official. Additional statements can be found on pages 233 and 235 [of *We Are Cowlitz*] (Fitzpatrick to Fleming 2/5/1999).

She also responded to specific issues raised by Quinault:

I was directed to pages 94 and 108 [of *We Are Cowlitz*] as selections which the Quinault Tribe have misused to critique the Cowlitz. If the quote from page 94 is completed, . . . then it clearly is supportive of the Cowlitz as a tribe. Page 108 strikes me as a trivial issue since it is difficult for anyone to find something contemporary to read on the Cowlitz, and they may not be interested in legends. I interpreted the embarrassment I noticed, in the Cowlitz leaders, to his request to mean that they wished there was something recent for people to read, not that they were ignorant of reading sources (Fitzpatrick to Fleming 2/5/1999).

b. BIA Analysis. The material submitted by CIT in this comment was directed primarily at

⁹⁰Possibly a reference to the analysis of Fitzpatrick's dissertation in the Nicklason Research Associates report (Nicklason 1998, 274-275).

Quinault's interpretations of Dr. Fitzpatrick's research, presenting no new data on the issue of modern community, and no criticism of the BIA proposed finding in this regard.

6. Quinault's Specific Issues Concerning Modern Community.

a. 1955 Lawsuit. Quinault stated that it was inappropriate for the BIA to use litigation concerning grave sites and subsistence fishing in the 1950's as evidence for modern community (Quinault Revised Memorandum 1998, 34-35; Quinault Memorandum 1997, 22-23).

i. Quinault's Position. Quinault stated:

... this lawsuit predates the time frame the Bureau has chosen as appropriate for showing modern community. It is inappropriate to exclude the 1950s from the period designated necessary for a showing of modern community and then suggest that a single isolated action during this earlier period is evidence of community at a later date (Quinault Revised Memorandum 1998, 34-35; see also Quinault Memorandum 1997, 23).

ii. BIA Analysis. Under criterion 83.7(b), the Summary Under the Criteria stated:

In 1955 the General Council leadership sued the City of Tacoma to protect the grave sites and subsistence fishing of families affected by the damming of the Cowlitz river. Elderly Upper Cowlitz witnesses provided testimony about both their own and also Lower Cowlitz family sites, indicating familiarity with the activities of Cowlitz settlements that crossed subgroup lines and individual geographical concentrations. . . . The 1955 lawsuit is important because it shows that the Tribal Council intervened to protect the grave sites and subsistence fishing rights of their membership affected by the proposed dams (CIT PF 1997, Summ. Crit. 27-28).

This passage contained no apparent suggestion that "a single isolated action during this earlier period is evidence of community at a later date" (Quinault Revised Memorandum 1998, 35), but rather defined the importance of the event as pertaining to another criterion, 83.7(c), providing one form of evidence listed in criterion 83.7(c) as required at 83.8(d)(3) for previously acknowledged petitioners.

b. Disputes over Use of Group Property. This item raised by Quinault pertained to the construction of a sweat lodge on CIT-owned property (Quinault Revised Memorandum 1998,

35: Quinault Memorandum 1997, 23-24).⁹¹

i. Quinault's Position. Quinault approached the construction of the sweat lodge in a matter involving two criteria, stating: Religious Disputes Over the Use of Group Property show a Lack of Community and Political Influence" (Quinault Revised Memorandum 1998, 35). In regard to the issue under criterion 83.7(b), Quinault asserted that, "[t]he actions of a self-selected faction of the petitioner in constructing improvements on group property and establishing rules for the use of the property without consultation with the group's 'leaders' or other authorization by the group as a whole, demonstrates a lack of broad social community . . ." (Quinault Revised Memorandum 1998, 35).

ii. CIT Comment. The CIT response on this topic may be found in the discussion under criterion 83.7(c), as it was more pertinent to the issue of political influence or authority.

iii. BIA Analysis. At this point, Quinault did not specify how it believed that the presence of internal disputes within the CIT indicated a "lack of broad social community." Many federally recognized tribes do not consistently function on the principle that members always agree on issues. The BIA evaluations have generally held the opposite position: that arguments and differing opinions about issues of importance to a large portion of the community tend to show that a community exists. Such arguments can not occur among individuals who are not in contact, do not know one another and do not care deeply about issues of concern to the tribe. In this case, the disputes over religion and the sweat lodge are a shorthand way of discussing the overall purpose and intention of the petitioner. The members are asking: Is the tribe a business and development oriented entity composed of a well acculturated membership or a cultural and welfare entity composed of individuals who are culturally "Indian?" Many of the discussions about religion are actually discussions about the overall direction the tribe should take, rather than about imposing specific religious ideology on members. The fact that a majority of the members participate in this discussion indicates that members share a cultural idiom which allows them to discuss this issue on shared terms.

In fact, the case of the sweat lodge shows widespread interest in tribal affairs, contrary to Quinault's arguments above. Virtually everyone interviewed knows about the sweat lodge controversy. They know the issues, the players and the social fault lines. Many steps have been taken to avoid head-on conflict in several ways:

1. They tend to minimize the importance of religion. Those interviewed denied that the dispute involved religion and played that aspect down. People were reluctant to criticize others' religious practice and were anxious to make clear to the BIA anthropologists that the

⁹¹Quinault discussed the same issue under the category of political authority and/or influence (Quinault Revised Memorandum 1998,46; Quinault Memorandum 1997, 32).

argument did not involve criticism of religious practice.

2. The tribal council discussed insurance and liability on the property. Some worried about the safety of children who ran free on the river's edge while parents were in the sweat. The property was posted. The rules established have come predominantly from the tribal council and deal with safety and liability issues, not religious doctrine.

3. There was a strong feeling among most that anyone who wanted to attend should be allowed to attend a sweat. A few believed that inclusiveness, although well intentioned, should have some limits if another person's religious sensibilities would be offended by the actions of others in the sweat lodge. They were concerned that some people may invent or insert actions, words or music in a sweat, including Christian or Plains Indian elements, that would offend others who follow a prescribed procedure or ritual that they believe to be more authentic of Cowlitz or Northwest coast traditional practices. One person objected to non-Indians attending a sweat. The issue seems to be handled at present by having both widely advertized sweats and more private sweats.

The political aspects of this issue are discussed below in section IV.E.

c. Quinault's Specific Arguments Concerning the 1973 Changes in Membership Eligibility.

i. Quinault's Position. Quinault states: "The 1973 Revision of Enrollment Qualifications Does Not Reflect the Pre-Existing Social Boundaries of the Cowlitz Petitioner." (Quinault Revised Memorandum 1998, 35; Quinault Memorandum 1997, 24-25). Quinault states that: "Prior to 1973 membership in the Cowlitz group was open to any person of Cowlitz descent" (Quinault Revised Memorandum 1998, 35; see also Affidavit of Prejudice 1997, 5), adding a footnote that, "This fact itself [is] evidence of the claims nature of the organization" (Quinault Revised Memorandum 1998, 35n24).

Quinault summarized the proposed finding as follows:

The proposed findings assert based on the opinion expressed in the Anthropological Technical Report that this change adjusted the membership requirements to reflect the known social community and affected relatively few individuals who had previously been active in Cowlitz activities. SUCPF at 30 (Quinault Revised Memorandum 1998, 36).

Quinault objected to the above conclusions, arguing that they were not "based on probative evidence in the record" and "there is no showing that a "social community" existed in the early 70's or before" (Quinault Revised Memorandum 1998, 36), with a footnote reading: "This is a further example of an effort to rely upon the existence of historic social community which is

never demonstrated" (Quinault Revised Memorandum 1998, 36n25).⁹² Quinault maintained that:

... the context of the decision belies the claim that change in membership reflects a desire to limit membership to a socially active core group. The record indicates that the membership change was a direct response to the settlement of the group's claim before the Indian Claims Commission and the desire to prevent dilution of the award. Concern was expressed that individuals who were enrolled with other tribes had already obtained benefits not received by other Cowlitz members. No contemporaneous records indicate that the change was an effort to exclude those who had not previously been active in the group (Quinault Revised Memorandum 1998, 36-37).

ii. CIT Comment. CIT replied that, "[i]t is axiomatic that a tribe has an unfettered right to establish criteria for membership" (CIT Response, 1998, 16). CIT contended that the 1973 actions: (1) "established a blood quantum requirement for membership similar to that adopted by many tribes, including the Quinault," (2) prohibited dual enrollment, "similar to requirements of many tribes and all federally recognized tribes, including the Quinault," and (3) while they may have excluded some people from membership, they did not permit the inclusion of individuals otherwise not entitled to membership (CIT Response 1998, 16). CIT added that, "of particular significance is that the genealogical continuity and integrity of the current membership is unquestioned" (CIT Response 1998, 16).

iii. BIA Analysis. To a considerable extent, Quinault takes an inconsistent position and defines the "Cowlitz group" (used as an alternative term for the formal organizations of the CTO, CTI, and CIT sequence) as equivalent to the Cowlitz Indians or the Cowlitz tribe. The report submitted by Quinault asserted that an August 24, 1933, letter from E.G. Potter of Puyallup, Washington,⁹³ to the COIA concerning the progress of the Cowlitz claims bill

⁹²Quinault reiterated at this point that the BIA anthropologist's conclusions were tainted by actual bias (Quinault Revised Memorandum 1998, 36). For discussion of this allegation, see above in the section concerning methodological and procedural issues.

Quinault reiterated at this point its statements concerning "contradictions" between the CIT, PF, ATR and GTR. For discussions of this matter, see above in the section concerning methodological and procedural issues.

⁹³The BIA has identified the correspondent as Everett Potter, b. 19 January 1891, Puyallup, WA (Roblin Roll p. 15, 1/8 Cowlitz, 1919 res. Aberdeen, WA) (see Nicklason 1998, 159-160, 164). The information that enabled this identification was provided to Quinault as part of the FOIA (Cowlitz GTKY File, BAR). Comments by Quinault counsel at the On-the-Record Meeting, November 23, 1998, indicated that he had not yet utilized this material (Transcript, On-the-Record Meeting, November 23, 1998, 147-150).

Potter was not, in fact, connected to Cowlitz events: on June 3, 1929, he had written to Superintendent W.B. Sams of the Taholah Agency stating: I just received a letter today stating you were at the head of the Cowlitz [*sic*] Tribe and I would like to hear from you by return mail. . . I all so find that the cowlitz [*sic*] tribe has

"indicates a lack of social communication and community" (Nicklason 1998, 154; see further Nicklason 1998, 155). However, elsewhere, Quinault argues that the decision by the CIT in 1973 to exclude such remotely-descended persons, most of whom did not reside along the Cowlitz River, from membership did not indicate that the tribe knew its own social boundaries (Quinault Revised Memorandum 1998, 36).

Evidence in the record indicates that the petitioner was clearly aware of the distinction between tribal membership and possible eligibility to share in a judgment award. The CTI attorney, on May 7, 1968, wrote:

It is our understanding that officials of the Cowlitz Council have prepared a form whereby persons claiming Cowlitz descent may apply for registration with the Tribe and that the Council has been accepting a small fee from each applicant for registration. It is further our understanding that the officials of the Council consider that the acceptance of the application and the small fee is not to be construed as a recognition by the Council that any particular applicant is of Cowlitz descent or as a commitment that such applicant will be entitled to share in any award or the benefits of any award which may be recovered on behalf of the Cowlitz Tribe in Docket No. 218. We are also informed that some concern has arisen in connection with the foregoing procedure because a substantial number of persons presently enrolled with the Yakima Tribe of the Yakima Reservation are applying to register with the Cowlitz Tribe (Weissbrodt and Weissbrodt to McNichols 5/7/1968; Wannasay Papers, BAR Files.)

Minutes and correspondence and other documents make it clear that at the time the 1973/1974 decision was made, members were very well informed as to the results. They knew who would be in and who would be out once the line was drawn at 1/16th. But the petitioner was

not been organized full but just a few of them on record" (Potter to Sams 6/3/1929; Quinault Ex. 7:1929-10). Sam replied that all papers relating to the claim were "evidently in the hands of the attorney or of the Business Committee of the Cowlitz Indians" (Sams to Potter 6/5/1929; Quinault Ex. 7:1929-11).

Everett Potter's mother (nee Millie Nix, b. 25 February 1870, Roblin Roll p. 15, 1/4 Cowlitz, 1919 res. Centralia, WA) had successively married two non-Indians; he himself had also married a non-Indian. This family cannot be classified as part of the Cowlitz metis social group, since none of the non-Indian marriage partners after the first generation were French-Canadian/Cowlitz. Neither did the family reside in the Cowlitz River Valley.

Early 20th century testimony stated concerning this family's ancestress: "The father of Clockomolt the elder was one named Walktie, a hyas tyee, who was part Cowlitz and part Black river with some Snohomish relation." (Quinault Adoption Case No. 5). Her daughter, Clockomolt the younger, married Charles Forrest, who died in 1851. Their daughter, Mary Jane Forrest, was living at Steilacoom in Pierce County as early as 1855, where she married Ronmous Nix. As a descendant, E.G. Potter had a right to be interested in the progress of the claim. This did not mean that he was socially part of the tribal entity, which may be one reason why that in regard to him, "no tribal community or political leadership existed at this time to mobilize economic resources to help to take care of their poor" (Nicklason 1998, 160).

nevertheless able to hold the vote and enforce it.

For the last statement in CIT's comment, see the discussion under "Descent from the Historic Tribe," section IV.G of this report, since Quinault did raise questions concerning the issue of descent.

d. Quinault's "Three Examples in 40 Years" Argument.

i. Quinault's Position. "The Presentation of Three Examples of Purportedly Significant Social Interaction Spanning a Period of More than Forty Years Does Not Demonstrate the Existence of a Modern Community" (Quinault Memorandum 1997, 25). More specifically, Quinault stated that:

... the petitioner must demonstrate significant rates of social interaction which extend broadly among members of the group as a whole. . . . The lack of probative evidence of continuing significant social interaction across the group as a whole is underscored by the fact that two of three examples presented can readily be explained as claims related (Quinault Revised Memorandum 1998, 37).

ii. BIA Analysis. Quinault did not list which three examples it was discussing in this passage. Quinault did not specify to which 40 year time span its argument referred. For a petitioner which has established previous Federal acknowledgment, the regulations only require that the petitioner demonstrate that it comprises a distinct community at present. 83.8 (d)(1). In this case, the BIA's analysis of the petitioner's present community has focused upon the period spanning 1981 (some ten years before the documented petition was submitted) to the present. Nor did Quinault specify which two of the three undefined examples it considered to be claims-related. Therefore, consult generally section V. of this report for a discussion of the record.

e. Assumption of Leadership Roles by New Members.

i. Quinault's Position. "The Lack of a Strong Modern Community is Demonstrated by the Relative Ease With Which New Members Assume Leadership Positions in the Cowlitz Petitioner" (Quinault Revised Memorandum 1998, 37). Quinault stated: "The ease with which Marsha Williams and her cousin Sonny Aalvik assumed leadership positions shortly after discovering their 'Cowlitz roots' demonstrates a lack of a true community among the members of the petitioner" (Quinault Revised Memorandum 1998, 37), and provided a somewhat more extensive commentary (Quinault Revised Memorandum 1998, 37-38).

ii. BIA Analysis. The record shows that the extended families of these "new members" had been involved with Cowlitz activities for generations. While the Cowlitz connection of their

families may have come as news to the individuals at some point in their young adulthood because of their own early connections to Yakima, the broader family lines from which they came had been interacting with the Cowlitz, as noted by a substantial number (16 of 64) of Skloutwout/Gerrand descendants who signed the 1934 petition for Cowlitz fishing rights (see above).

While the technical reports ordinarily avoid presenting genealogical data concerning living individuals, the following is stated because all of the persons have served as CIT officers, and are thus publicly identified as Cowlitz. The common grandmother of Marsha Williams and Sonny Aalvik was an only child. Abby (Gerrand/Weaser/Stooquin) Reynolds Estabrook was enrolled and allotted at Yakima in right of her mother. Neither she nor her children were members of the CTO or CTI. Her descendants after 1946 were determined ineligible for Yakima enrollment when that tribe changed its membership requirements to require residency in or near the Yakima Reservation. Marsha Williams first joined the CIT at some time between the 1966/69 list and the 1978 list, roughly the same time that many of the duly enrolled Cowlitz at Yakima were barred from CIT membership. However, though new members, Williams and Aalvik were not strangers to the established CIT leadership: for example, CIT chairman Roy Wilson, born on Yakima, was also a descendant of the Skloutwout/Gerrand line, and a second cousin of the mothers of Aalvik and Williams. In this context, their assumption of leadership roles should not be interpreted as showing an absence of community within the petitioner. What is illustrated by their and others' life stories is the combined results of establishing discrete boundaries not only for the Cowlitz in 1973 but also for the Yakima in the 1940's.

E. General Adequacy of Evidence for 83.7(c). Quinault stated that the evidence does not support a finding that the petitioner has maintained substantially continuous political influence or authority over its members from historic times to the present through identified leaders or otherwise (Quinault Revised Memorandum 1998, 39-46 (issue 14); Quinault Memorandum 1997, 25-32 (issue 15)). The petitioner replied (CIT Response 1998, 16-18).

Throughout the background report submitted by Quinault (Nicklason 1998), the documentation cited is basically that which was considered by the BIA for the proposed finding. Quinault's interpretation of the significance of that documentary record does not agree with the interpretation accepted by the AS-IA in the proposed finding. The general standard imposed by 25 CFR Part 83 is that there should be a reasonable likelihood of the validity of the facts — not that there must be conclusive proof (see 25 CFR 83.6(d)) (Quinault revised Memorandum 1998, 31).

Certain of Quinault's arguments which to some extent pertained to this topic have been discussed above under section IV.D., Types of Evidence Acceptable as Demonstrating Tribal Existence.

1. Quinault's General Hypothesis.

a. Quinault's Position: Without Community, No Political Authority. Quinault asserts the general hypothesis that the Cowlitz organization was a claims organization, and there was no community (as the word is defined and used in 25 CFR Part 83) over which the organization's leaders exerted any sort of influence (Quinault Revised Memorandum 1998, 45-46; Quinault Memorandum 1997, 26). A substantial portion of the background reports submitted by Quinault (Nicklason 1997, Nicklason 1998) was devoted to this argument.⁹⁴

The proposed findings recognize the fact that a group may have had leaders is not sufficient to demonstrate the existence of political influence and authority required by 25 CFR §83.7(c) whether modified by §83.8(d)(3) or not. Even as revised the regulations "maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historic continuity of tribal existence." SUCPF at 32. "[P]olitical authority cannot be demonstrated without a showing that there is a community within which political influence is exercised." 59 FR 9287 (Quinault Revised Memorandum 1998, 39; see also Quinault Memorandum 1997, 25-26).

b. CIT Comment. "There is a continuity of the Cowlitz tribal organization without break from the early 20th Century, a continuity which could not be matched with documentation by many currently-recognized tribes — including Quinault — if they were required to do so" (CIT Response 1998, 16). The comment continued by mentioning scattered activities including voting by Cowlitz Indians in the 1935 IRA election for the Quinault Reservation (CIT Response 1998, 17), and by attacking the Quinault Nation's constitution (CIT Response 1998, 17).

c. BIA Analysis. Quinault's argument is an effort to repudiate the modified evidentiary standards for criteria 83.7(b) and 83.7(c) in 25 CFR 83.8, presumably on the basis of its arguments advanced elsewhere that the BIA improperly permitted CIT to proceed under the provisions of 83.8. The language quoted by Quinault from the comments to the 1994 regulations, that "[p]olitical authority cannot be demonstrated without showing that there is a community within which political influence is exercised" (59 Fed.Reg. 9287, 2/23/94), pertained specifically to the issue of demonstrating historical community under the unmodified provisions of criterion 83.7.

The CIT was mistaken in its interpretation of participation by Cowlitz Indians in the 1935

⁹⁴"Because there is no evidence of social community, there can be no existence of political influence and authority. . . . Put another way, the existence of an active formal organization, particularly one that only dealt with claims, does not in itself demonstrate that the group was exercising tribal political authority, especially if the members do not form a community or maintain political relationships" (Nicklason 1997, 147).

"Because there is no evidence of social community, there can be no existence of political influence and authority" (Nicklason 1997, 104).

Quinault IRA election. "Cowlitz Indians" as such did not participate, but only such Cowlitz descendants who were Quinault allottees (see 1935 Quinault Voters' List). CIT's comment in regard to the Quinault constitution is irrelevant to evaluation of CIT under 25 CFR Part 83.

2. *Quinault's Specific Issues.*

a. Evidence of Tribal Character. Quinault stated: "The Evidence Does Not Establish that the Petitioner is Tribal in Character or that It Has Maintained Historic Continuity of Tribal Existence Essential to Maintenance of Political Influence or Authority" (Quinault Revised Memorandum 1998, 39). Quinault did not present any new data in this section, but referenced "the evidence discussed above" (Quinault Revised Memorandum 1998, 39). For extensive discussion of the entire issue, see sections IV.B., IV.D., and V. of this report.

b. Lower Cowlitz Leaders as Political Leaders of the Cowlitz Metis. (Quinault Revised Memorandum 1998, 39-40; Quinault Memorandum 1997, 26). See detailed discussion below under section V.D of this report.

c. Evidence Concerning Cowlitz Leaders Exercising Political Influence or Authority during the 1880's and 1890's. (Quinault Revised Memorandum 1998, 40-41). See detailed discussion below under section V.C of this report.

d. Non-Claims Political Leadership 1904-1950 (Quinault Revised Memorandum 1998, 41-44; Quinault Memorandum 1997, 28-29). See detailed discussion below, under the nature of the CTO, section V.E of this report.

e. Political Influence 1950-1974 (Quinault Revised Memorandum 1998, 45-46; Quinault Memorandum 1997, 31-32).⁹⁵ For detailed discussion of Quinault's points under this heading, see below in section V.F. of this report.

f. Political Influence, 1980's and 1990's.

i. Quinault's Position. Quinault stated: "Evidence for the 1980s and 1990s indicates that the Group through Its Leaders or Otherwise Does Not Exercise Sufficient Political Influence or Authority to Control the Use of Group Resources by Its Members" (Quinault Revised

⁹⁵Quinault also addressed this point as an issue of evidence and evidentiary standards:

Significantly, the ATR, neglects to discuss the Cowlitz group's own characterization of its nature in the 1950 Constitution and bylaws. That self-characterization is inconsistent with the Bureau's proposed finding that the Cowlitz organization was something more than a voluntary association of Cowlitz descendants formed for the purpose of pursuing claims (Quinault Affidavit of Prejudice 1997, 4).

Memorandum 1998, 46; Quinault Memorandum 1997, 32).⁹⁶ For detailed discussion of Quinault's points under this topic, see below in section V.H of this report.

F. Descent from a Historical Tribe. Quinault asserted that the petitioner's membership does not consist of individuals who descend from a historic Indian tribe or tribes which combined and functioned as a single autonomous entity as required under criterion 83.7(e) (Quinault Revised Memorandum 1998, 47 (issue 16); Quinault Memorandum 1997, 32-33 (issue 16); Quinault Memorandum 1997, 4). The petitioner replied (CIT Response 1998, 18).

1. Definition of Descent from a Historical Tribe.

a. Quinault's Position. Quinault presented two direct arguments which, if accepted would modify the definition of "descent from a historic tribe" under criterion 83.7(e). Quinault also, by implication, questioned the descent of the Cowlitz metis from the Lower Cowlitz Indians. Quinault stated:

The Cowlitz petitioner does not meet the requirements of §83.7(e) for two reasons. First, as discussed above, the metis were never considered Indian⁹⁷ prior to their alleged amalgamation into the petitioner. Second, as discussed previously the evidence does not support a finding that the Upper Cowlitz, Lower Cowlitz, and Cowlitz metis groups historically combined to form a single autonomous political entity (Quinault Revised Memorandum 1998, 47; Quinault Memorandum 1997, 32-33). [footnote added]

Similarly, the proposed findings seek to extend the umbrella of previous federal acknowledgment to the Cowlitz metis as a consequence of their alleged direct descent from and continuing ties with the Lower Cowlitz before 1855 (Quinault Revised Memorandum 1998, 4).

b. CIT Response. The CIT based its response on the findings of Dr. Verne Ray (no citation) and restated that, "the Cowlitz Metis [*sic*] was never a tribe as such, but rather constituted the Cowlitz mixed blood population which otherwise was part of the tribe" (CIT Response 1998,

⁹⁶Quinault discussed the same issue under the topic of modern community (Quinault Revised Memorandum 1998, 35; Quinault Memorandum 1997, 23-24).

⁹⁷Quinault did not address the issue of why children of the Cowlitz metis families were sent to Indian schools prior to the establishment of the CTO (for examples, see CIT PF, GTR 13, 57, 68, 114-116), presumably the date meant by the phrase "their alleged amalgamation into the petitioner" (Quinault Revised Memorandum 1998, 47). Neither did Quinault address the inclusion of some Cowlitz metis on the special Indian population census schedules in 1900, also prior to formation of the CTO. Both these facts indicate that the Cowlitz metis were considered Indian and part of the Cowlitz prior to the formation of the CTO.

18).

c. BIA Analysis. The Quinault comments indicate several significant misunderstandings of the provisions of criterion 83.7(e).

First, criterion 83.7(e) does not state that the petitioner's members must descend from a group "considered Indian," but requires rather that they descend from a historic tribe -- one which existed at the time of earliest sustained contact with non-Indian settlers in a region. There is no historical question that both the Upper Cowlitz and Lower Cowlitz tribes existed at the time of first sustained contact.⁹⁸ The 25 CFR Part 83 regulations do not prohibit that descent may come through intermarriage of members of the historic tribe(s) with persons of any other racial group -- in this instance, through the Lower Cowlitz marriages with French Canadians and their children, the Cowlitz metis, or mixed blood Cowlitz. The Cowlitz metis may be distinguished from other mixed blood descendants of Indians only in that they descend from a specific set of marriages: those of Lower Cowlitz Indian women to French-Canadian men, or of non-Cowlitz Indian women who were married to French-Canadian men and who had come to be associated with the Cowlitz Tribe in pre-treaty times.

The Quinault issue of whether or not the Upper Cowlitz and Lower Cowlitz Indians merged politically in the second half of the 19th century is discussed in detail below, section V.B of this report. The Quinault issue of the nature of the Cowlitz metis and the subgroup's relationship to the Lower Cowlitz Indians is discussed in detail below, section V.C. of this report. The proposed finding did not classify the "Cowlitz metis" as a third distinct band, as implied by Quinault.

As for the "alleged direct descent" of the metis from the Lower Cowlitz Indians (Quinault Revised Memorandum 1998, 4), Quinault itself showed in other portions of its submission that it was aware of the "genealogical connection" when remarking that in 1878 the Lower Cowlitz chief Atwin Stockum and Simon Plamondon Jr. were "close relatives" (Quinault Revised Memorandum 1998, 6). Quinault did not provide evidence disputing the ancestry delineated in the GTR.

2. 35% of Petitioner's Ancestry Comes from Non-Cowlitz Women.

a. Quinault's Position. Quinault stated: "Fully 35% of petitioner's current membership traces itself to non-Cowlitz ancestresses of these French-Canadian employees. GTR at 3" (Quinault Revised Memorandum 1998, 13).

⁹⁸The Official Guidelines summarize that "historic" or "historical" tribes are "tribes that existed when non-Indians settled in the petitioner's immediate territory -- or parts of these tribes, or combinations of them" (Official Guidelines 1997, 52).

b. BIA Analysis. This 35% of the petitioner's current membership traces to ancestresses, who were non-Cowlitz Indian wives of French-Canadian Hudson's Bay Company employees.

To a considerable extent, Quinault's comment in this matter rests upon its assertion that the petitioner did not qualify to proceed under 83.8 discussed above. The petitioner did indeed have previous unambiguous Federal acknowledgment. The proposed finding emphasized the importance of the fact that the association of these ancestresses with the Lower Cowlitz took place in pre-treaty times (before 1855), prior to the last date of prior federal recognition. Since the Federal government recognized the Lower Cowlitz which include these ancestresses, under 83.7 (c) as modified by 83.8, the petitioner traces to the entity which existed at the latest date of previous unambiguous Federal acknowledgment, however, it came to be. It is not necessary under the acknowledgment regulations to analyze how that entity came to be or the elements which composed it. The historical tribe from which the petitioner must descend is the one which was acknowledged by the Federal Government. The petitioner meets this criterion. The proposed finding emphasized that these associations occurred in pre-treaty times (CIT PF 1997, Summ. Crit. 46; CIT PF 1997, GTR 76-84). See also the Supreme Court docket file in *Halbert v. U.S.*, at 366, where the District Court quotes the testimony of Roblin:

David Provoe's mother was a Stikine Indian, that is, from the Stikin district of south Alaska. . . She had been brought down into this county and had been tribally adopted under the old customs of the Cowlitz tribe and had been amalgamated and become a member of the Cowlitz tribe and David Provoe had been born from a marriage contracted at that time in the Cowlitz country and was always considered and recognized as a Cowlitz Indian. . . the Provoe family. . . I listed them as belonging to the Cowlitz tribe." Chief William Mason of the Quinault tribe of Indians stated that Mary Francis Provoe and her children were "members of the Cowlitz tribe." ⁹⁹

Most of the federally acknowledged reservation tribes of western Washington -- Nisqually, Puyallup, Quinault itself -- have many members who descend from "other Indians" who moved onto and became associated with the reservations at some point in the second half of the 19th century or who were adopted by the reservation tribe at some point (as in the case of the 1911-1912 Quinault allotments).¹⁰⁰ Such developing historical associations are not prohibitive of Federal acknowledgment. In 1892, much of the argumentation presented by "A Boston

⁹⁹ *Id.* at 609.

¹⁰⁰ At the On-the-Record Meeting, November 23, 1998, the BIA researcher offered to do a study of ancestral lineage origins for the Quinault enrolled membership to provide a basis for comparison. Quinault did not accept the offer.

Tillicum" in his book about the Puyallup Reservation was that many of the allottees weren't "natural born" Puyallup, but had just been placed on the reservation by the government and should not have had a right to any land allotments. The Department did not then accept this argument and does not now accept it.

The proposed finding explained in full the circumstances under which, prior to the 1855 date of unambiguous previous Federal acknowledgment, the non-Cowlitz women in question came to be associated with the Cowlitz Indians (CIT PF 1997, Summ. Crit. 35-36; CIT PF 1997, GTR 76-83).

A concrete example of the durability of these associations was given in the August 3, 1908, deposition of Edward Cottonaire, the son of one such woman who became affiliated with the Cowlitz. He described himself as "a member of the Makah tribe of Indians," (other records identified his mother as Quinault, Ketse, or Chinook) who, "being first duly sworn deposes and says that he has lived with the Cowlitz tribe of Indians for seventy years, that he has known Simon Plomondon Jr. since said Plomondon was eight years of age" (CIT Response 1998). Contemporary primary documents showed the presence of Edward Cottonaire and his parents on Cowlitz Prairie in the 1830's (Warner and Munnick 1972, 38/39).¹⁰¹ These long-standing relationships continue to be effective to the present day, as testified by a long-term officer of the CIT: "My mother's mother, Elizabeth Gervais Plamondon, died when my mother was born, and Edward Cottonware (Cottenoir) and his wife raised my mother, so we always called him Grandpa Edward" (Evelyn St. Germain Bashor Byrnes Affidavit 1989, CIT Pet. A-2359).

Edward Cottonaire's older brother, Michel, had married Cowlitz metis Sophie Plamondon already in 1842, prior to the treaty. The marriages between the first-generation "Cowlitz by blood" metis with the first-generation children of these "associated" ancestresses indicated the social integration of the families descended from the "associated" women. For example, the 1900 Federal Census' special Indian Population schedule of Olequa Precinct, Cowlitz County, identified both parents of Simon Cottonware, son of Michel Cottonaire and Sophie Plamondon, as "white and Cowlitz" (1900 U.S. Census, Olequa Precinct, Cowlitz County, Washington, 84A, Special Schedule - Indian Population, #7/7), although the father descended from an "associated" ancestress and the mother from Cowlitz Chief Scanewa.

The most important point is that this category of the petitioner's ancestresses were Indian women who were incorporated socially and politically into the Cowlitz tribe, as were their descendants. Whatever their origins, this made them Cowlitz (as tribal membership is a

¹⁰¹Marriage #39: The 8 April 1839 . . . Michel Cogenoir, farmer of this place, formerly of Saint Cuthbert district of Montreal, Canada, and Marie, Ketse by nation . . . wits. Augustin Rochon and Simon Plamondon (Warner and Munnick 1972, 38). ". . . before whom the said spouses have recognized as their legitimate children Edouard aged 7 years, David aged 3 years; and the groom recognizes as his legitimate children by another woman now dead, Michel aged 18 years and Lisette aged 17 years" (Warner and Munnick 1972, 38/39).

socio/political designation, comparable to citizenship at the Federal level). The incorporation of these ancestresses into the Cowlitz tribe, prior to the latest date of unambiguous previous Federal acknowledgment, resulted in a change in tribal membership, just as the enrollment of persons of Cowlitz ancestry on Chehalis, Nisqually, Quinault, or Yakima resulted in a change in tribal membership status. The descendants of these women are Cowlitz by virtue of their ancestor's incorporation into the tribe, although not by their ancestor's birth. This was specifically recognized by *Halbert v. U.S.* when it designated the Provoe family as Cowlitz for purposes of allotment on Quinault, although the facts indicated that the specific ancestress had been a Stikeen woman incorporated into the Cowlitz tribe.

3. *Significance of 1973 Membership Changes for Descent.*

a. Quinault's Position. Quinault stated:

The Genealogical Technical Report, hereafter GTR, presents substantial evidence that as the result of major changes in its membership in the early 1970s, the petitioner is not the same as Cowlitz Tribal Organization that was formed as the result of the merger of the Lower Cowlitz, Upper Cowlitz, and Cowlitz métis in 1912¹⁰² (Quinault Revised Memorandum 1998, 8; see also Quinault Memorandum 1997, 4). [footnote in original]

b. CIT Comment. The CIT's general comment concerning the 1973 membership eligibility changes (CIT Response 1998, 16) did not directly address this issue.

c. BIA Analysis. This is not an issue properly raised under criterion 83.7(e), and would appear on the face of it to apply to criterion 83.7(b), community, or, possibly, to the issue of tribal continuity from the previously recognized entity under 83.8 (see section III). However, Quinault's footnote indicated that the intention was to raise the issue as one of genealogical descent.

The modification of a petitioner's membership requirements does not contradict descent from the historical tribe under 83.7(e) because the members who remain in the petitioning group show descent from the historic Cowlitz. The regulations require that the petitioner be the same as that previously recognized or a portion thereof. CIT meets this requirement. As analyzed under criterion (b) and (c), the changes in membership requirements did not impact the tribal continuity of the petitioner.

¹⁰²The Quinault Nation notes that it has been prevented from conducting an independent evaluation of the tribal heritage of petitioner's membership and changes in membership that may have occurred because it does not have membership lists and genealogical information (Quinault Revised Memorandum 1998, 8n10).

V. FACTUAL ISSUES AND INTERPRETATION OF DATA IN THE RECORD.

This section of the technical report addresses the evidence and data in the record. Interpretations of the meaning of the regulations and the applicability of certain types of evidence under the regulations have been addressed in section IV, above.

A. Historical Data Not in the Record at the Time of the Proposed Finding.

1. Sources of New Documentation Used.

a. New Documentation Located by BIA Researchers and Solicitor's Office. New historical documentation pertinent to the CIT petition was located by BIA researchers as follows:

i. 1922 Letter. A letter to the Chairman, Committee on Indian Affairs, United States Senate, concerning Court of Claims jurisdiction and referencing the Cowlitz as "without any tribal organization" (Finney to Spencer 4/19/1922), located in another petition in BAR files;

ii. 1951 Letter from COIA. A letter from the COIA to a member of the House of Representatives concerning the removal of the BIA office from Hoquiam to Everett and listing the Cowlitz as among the tribes (members unenrolled) to which the agency extended services (Myer to Mack 11/16/1951), located in another petition in BAR files;

iii. Documents pertaining to 1855-56. A series of documents pertaining to the Cowlitz Indians in the period 1855-1856 which had not been submitted by the petitioner at the time the proposed finding was issued on NARA Microfilm Series M-5, Reel 16. A BIA staff member identified these in August 1997, while researching another petition; and

iv. Excerpts from Supreme Court docket file in Halbert v. U.S., including excerpts from district court decision and Roblin's testimony.

b. New Documentation Submitted by CIT. In its 1998 Response to the first set of Quinault comments (CIT Response 1998), CIT included a certain amount of additional historical documentation, as inventoried in the List of Sources of this report (other items duplicated material already in the record). Additionally, members of the CIT Wannassay family independently submitted additional documentation during the comment period (Wannassay Papers).

c. New Documentation Submitted by Quinault. Some of the materials submitted as exhibits by Quinault in December 1998 (Nicklason Exhibits 1998; see inventory in the List of Sources of this report) were not and had not been in the record at the time the proposed finding was issued. Other items duplicated material already in the record.

2. *Principles of Usage for New Documentation.* Regardless of source, the new documentation will be analyzed topically in this technical report rather than according to who located or submitted the material, or to what date it was located or submitted.

B. Corrections and Additions to Topics Discussed in the Proposed Finding.¹⁰³

1. *In Regard to the 1855-1856 Indian War.* For the final determination, the BIA received additional documentation which corrects the historical technical report for the proposed finding.

a. HTR Statement Concerning Confiscation of Cowlitz Guns. The HTR summarized petition statements concerning confiscation of firearms belonging to the "Cowlitz Tribe" by Captain Edward D. Warbass on May 12, 1856 (CIT Pet. 1987, Narr. 12-13) and stated: "The petitioner's own documentary exhibits (CIT Pet. Ex. A-47, A-48 - A-59), dated May through July, 1856, do not clearly support the interpretation that the weapons taken at this time were the property of the Cowlitz tribe" (CIT PF 1997, HTR 49).

b. Additional Documentation. Subsequent to issuance of the proposed finding, a BIA researcher identified additional documents concerning the Cowlitz Indians during the period from 1855 through 1857 intermixed with documentation concerning the Medicine Creek treaty tribes (NARS M-5, Reel 16). These documents were also submitted in evidence by Quinault (Quinault Ex. 2, Ex. 3).

c. Additions and Corrections HTR. In a report on the setting up of the Cowlitz Reservation, October 1855, Agent John Cain indicated that he had "assembled all", about 450 in number, and had induced them to give up their guns and ammunition and go to a temporary reservation (NARA M-5, Reel 16). Subsequent to the war, Cain submitted a list of the names of owners of the guns and ammunition, and the value -- a total of 44 guns. Several of the owners¹⁰⁴ bore the same names as persons who also appeared as Cowlitz on such later documents as the 1870 Federal census and the 1878 Milroy censuses (see CIT PF 1997, GTR; see also below).

¹⁰³Quinault submitted considerable documentation pertaining to the pre-treaty period (Quinault Ex. 1:1822-1 through 1854-4; Quinault Ex. 2:1854-5 through 1855-5). Since the final determination has found no reason to alter the decision that the petitioner should proceed under §83.8, these documents have not been analyzed in detail in the technical report. Much of the documentation submitted by Quinault concerning the treaty negotiations was in the record for the proposed finding and constituted resubmissions (Quinault Ex. 2:1855-7). This material has been noted.

¹⁰⁴Yak-e-nah, K'l till, Wal-eeh, Wal-i-qui-is, Tal-u-yah, Wy-ee-noo, Shuc-wal-ah, Wah-a-wah, Sil-u-yan, Kas-tom-ie, Qual-i-an, Kay-ken, Wats-how-ish, K[blot]-i-tom-ie, Tal-i-kish, Eel-shan-um; Tash-u-ick, Ky-ap-ut, Ti-ky-an, Wal-a-hee, Lah-quos, Qui-tom-ah, Tstal-pat-tie (NARS M-5, Reel 16; submitted as Quinault Ex. 3:1857-8, 3).

2. *In Regard to BIA Contact with the Cowlitz, 1856-1912.* For the final determination, the BIA has received data providing additional material on topics discussed for the proposed finding and addressing some topics not discussed for the proposed finding. The BIA has taken these new submissions into consideration in preparing the technical report for the final determination, even though each individual item may not be cited.

a. Material Pertaining to BIA Contacts with the Cowlitz Between 1856 and 1880. This has been discussed above in Section III of this report, under the topic of previous unambiguous Federal acknowledgment.

b. Indian Homestead Affidavits. Quinault submitted, in addition to the list of Cowlitz Indians' homesteads in the Cowlitz River Valley, which was available for the proposed finding, copies of selected affidavits made to obtain these homesteads, with some related documents. These have been discussed and evaluated in section III of this report, under the topic of previous unambiguous Federal acknowledgment.

c. Yakima Allotment Applications. Quinault submitted extensive portions of Reports of Action of the committee on applications for enrollment and allotment on the Yakima reservation from 1910 through 1912. Quinault's use of these was in relation to the impact of the application for and acceptance of such allotments on maintenance of tribal relations by the tribe from which the Yakima applicant was relinquishing membership. They have been discussed in section III above.

d. BIA Correspondence. Most of this material pertained to the early years of the Cowlitz Indians' claims initiative. Some items (Quinault Ex. 4:1904-1; Acting COIA Tonner to Hon. Francis W. Cushman, 10/24/1904 re: Cowlitz claim) were basically just a summation of COIA reports over the years. These reports were in the record at the time of the proposed finding. Other of this documentation represented additions to the record,¹⁰⁵ and has been discussed below under the appropriate topics in this report.

3. *Since 1912.* For the final determination, the BIA has received data providing additional material on topics discussed for the proposed finding and addressing some topics not discussed for the proposed finding. The BIA has taken these new submissions into consideration in preparing the technical report for the final determination, even though each individual item may not be cited.

¹⁰⁵Simon Plamondon Jr. affidavit, July 6, 1909 (RG75, GenSer 55826-09-260; Quinault Ex. 4:1909-11). Follow-up documents (Quinault Ex. 4:1909-25, 1909-26; Quinault Ex. 5:1910-2 - 1910-63; COIA to U.E. Harmon, November 9, 1910, Quinault Ex. 5:1910-68). Also pertaining to possible allotments of Cowlitz Indians on Quinault, 1911, were: (Quinault Ex. 5:1911-8 - 1911-9, 1911-12, 1911-14, 1911-17, 1911-18, 1911-19, 1911-20, 1911-21, 1911-22, 1911-23, 1911-25, 1911-27, 1911-28, 1911-30, 1911-34).

a. BIA Correspondence. The majority of the additional correspondence from the early years continued to pertain to the topics of possible allotments for Cowlitz Indians on the Quinault Reservation (Quinault Ex. 5: 1912-2, 1912-4, 1912-6, 1912-8, 1912-18, 1912-21, 1912-23, 1912-24, 1912-27, 1912-29, 1912-40, 1912-46, 1913-1, 1913-2, 1913-9, 1913-9B). The majority of the Quinault submissions of BIA correspondence for the period from the 1920's through the 1940's consisted of correspondence from individuals pertaining to the Cowlitz claims initiative, as did the Quinault submissions for the period from 1950-1973 (see Section V, below). There was little new BIA correspondence pertaining to the period from 1974 to the present.

b. Claims Documents and Membership Lists. Quinault submitted a substantial number of additional Cowlitz lists of varying types. For description and analysis of these lists, see sections V.E. and VI. of this report.

c. Documents Pertaining to Legislation to Enable a Cowlitz Claim, 1912-1940's. Much of this material overlapped with the category of BIA correspondence. It has been discussed under the appropriate topics within this report.

d. Documents from and Pertaining to ICC Docket 218. Chronologically, the additional submissions from this source ranged widely in date, not all pertaining to the period since the ICC claim was initiated in the 1950's. These documents have been discussed under the appropriate topics.

e. Internal Cowlitz Documents. The overall contents of the submission are listed in the List of Sources for the technical report. The most important were the records obtained from heirs of James Elias Sareault, which do not constitute the entirety of his papers pertaining to the CTO and CTI, and some modern affidavits.

C. Association of the Lower Cowlitz and Upper Cowlitz.

1. Amalgamation of the Lower Cowlitz and Upper Cowlitz. Quinault maintained that there is no probative evidence supporting the proposed finding that the Upper Cowlitz and Lower Cowlitz Bands merged politically and socially between 1878 and 1904 (Quinault Revised Memorandum 1998, 31-32 (issue 11); Quinault Revised Memorandum 1998, 12-13 (issue 3); Quinault Memorandum 1997, 20-21 (issue 11)). The petitioner replied (CIT Response 1998, 13-14).

a. Quinault's Position. In discussing whether or not the CIT was qualified to proceed under 25

CFR 83.8,¹⁰⁶ Quinault stated: "The proposed findings attempt to address this problem by claiming that the Upper Cowlitz and Lower Cowlitz were amalgamated and gradually merged through the second half of the 19th century. Summary Under the Criteria for Proposed Finding, hereafter SUCPF at 4" (Quinault Revised Memorandum 1998, 4). Quinault denied that such a merger or amalgamation occurred (Quinault Revised Memorandum 1998, 12) and summarized its view of the proposed finding's statements in regard to this topic under issue 3 at points A), B), and C), which pertained to this topic rather than to the role of the metis (Quinault Revised Memorandum 1998, 12-13; Quinault Memorandum 1997, 6; both citing CIT PF 1997, Summ. Crit., 4).

i. Quinault summarized its own perspective as follows: "There is no probative evidence to support this conclusion and the evidence that does exist is overwhelmingly to the contrary" (Quinault Revised Memorandum 1998, 31), and by stating that the accompanying Nicklason Research Associates Report:¹⁰⁷

demonstrates the lack of support for the conclusion that the Lower Cowlitz and Upper Cowlitz underwent a gradual process of merger during the latter part of the 19th century. While at times the agents may have referred to the groups collectively by the generic term "Cowlitz Tribe" or "Cowlitz Indians,"¹⁰⁸ the reports consistently describe the existence of two separate groups the Lower Cowlitz and the Upper Cowlitz (also sometimes referred to as the Tait-tin-a-pam or Cowlitz Klickatats). For example, in his 1876 Annual Report the Commissioner of Indian Affairs described the Tait-tin-a-pam as a separate group who remained apart from the Cowlitz (Quinault Revised Memorandum 1998, 14; see also Quinault Memorandum 1997, 8). [footnote in original]

¹⁰⁶For discussion of the issue of previous unambiguous Federal acknowledgment, see above, section III of this report.

¹⁰⁷This was stated more elaborately in the Nicklason Research Associates report: "There is no evidence to support a conclusion that the Lower and Upper Cowlitz tribes amalgamated between 1855 and 1903. For example, the historical record reviewed for this report consistently described two separate tribes residing in and around the Cowlitz River Valley, the Lower Cowlitz tribe and the Upper Cowlitz Tribe (also know [sic] as the Tait-tin-a-pam, or Cowlitz-Klickatats). In addition, other published descriptions of the Cowlitz consistently described two distinct tribal entities (the Lower Cowlitz and the Upper Cowlitz), in the area of the Cowlitz river Valley). Although the Lower and Upper Cowlitz were sometimes grouped together under the generic term 'Cowlitz,' within that grouping, they were consistently referred to separately as the Lower Cowlitz and the Upper Cowlitz tribes" (Nicklason 1997, 52).

¹⁰⁸"The use of the collective term 'Cowlitz Tribe' or 'Cowlitz Indians' can hardly be viewed as evidence of merger when many of the reports that use this term refer the [sic] 'Cowlitz' as on the decline and scattered among the whites" (Quinault Revised Memorandum 1998, 14n12).

ii. Quinault also stated:

Notably, the government's effort to relocate the Upper and Lower Cowlitz, the end of active hostility between the two groups, evidence of intermarriage, and the occasional lumping of the two groups together for administrative purpose, which are claimed as evidence of a process of merger all predate the late 1870s [sic], a time when it is clear that there had been no merger (Quinault Revised Memorandum 1998, 15n13 [no citation to specific pages in the CIT PF 1997]):

The local agent's statement during this period [1860's-1870's] that the Upper Cowlitz and Lower Cowlitz groups were now at peace after a long period of hostility and had intermarried to some unknown extent hardly demonstrates merger in light of the widespread practice of intermarriage among neighboring tribal groups (Quinault Revised Memorandum 1998, 14-15; Quinault Memorandum 1997, 8).

iii. Quinault stated thirdly:

Even more compelling evidence of the lack of merger of the three groups is the letter written by the Lower Cowlitz leader Atwin Stockum to agent Milroy in 1877 which is discussed in the HTR at 83-84. In his letter Stockum advises Milroy that he will look out for his own people "but will not have a thing to do with the click a tat." *Id.* Stockum's reluctance to take responsibility for the Upper Cowlitz was apparently known to the local settlers who about the same time asked that Milroy appoint Captain Peter as Chief of the Klickatats. HTR at 84; *see also*, SUCPF at 33 (Quinault Revised Memorandum 1998, 15; Quinault Memorandum 1997, 9).

b. CIT Comment. The CIT basically defended the practices of anthropologists and ethnohistorians as using "resources which might not rise to the level of 'documentation' which nonprofessionals might otherwise seek," particularly citing to the work of Dr. Verne Ray produced for the ICC (CIT Response 1998, 13), which concluded that the CIT which he represented was "the political continuation of, and successor to, the aboriginal Cowlitz Tribe" (CIT Response 1998, 14). CIT also referred to some other contemporary statements:

Milroy convened the Cowlitz tribe through the leadership of their chief, Atwin Stockum, for a council on December 13, 1878. He wrote: "I requested Chief Atwin to assemble his people in council the next day together with all the Klickatats in that vicinity which he did." Milroy met with the Cowlitz tribe in this council. Milroy explained to Hayt that the Klickatats acquiesced in the leadership of Chief Atwin Stockum: "The few Klickatats present agreed to abide by what At-win said. Most of the Klickatats reside on the upper Cowlitz"

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(Milroy 1878a, Ex. 3373) (CIT Response 1998, 11).

CIT also cited other mentions that the Klickitat were with Atwin Stockum:

“Their chief At-win (preferably Antoine) (See Report Coms. Ind. Affs. for 1870, p. 18), is considered a reliable and trustworthy man. His people and said band of Klickatats made peace some ten years ago and are intermarried and bands of them live with At-win on Mr. [H.D.] Huntington’s land” (Milroy 1878a, Ex. 3372) (CIT Response 1998, 10).

c. BIA Analysis. Under the regulations, the issue is whether there is enough evidence to show that the petitioner meets each of the mandatory criteria under the standard of reasonable likelihood of the validity of the facts. Under the provisions of 83.8, the proposed finding did not have to address a merger of these communities between 1878 and 1904. Excluding this issue leaves the following discussion of the political situation, as it was analyzed under criterion 83.7(c), clearer.

The proposed finding did not question that there were still two distinct bands as of 1878. Some evidence clearly indicates a distinction of the two groups as of 1878, such as the Pumphrey letter. On December 25, 1877, William Pumphrey, a resident of the Cowlitz watershed, wrote to Milroy requesting that the BIA Agent “make Captain Peter Chief of the Clickatat Indians” (Pumphrey to Milroy 12/25/1887; NARA M-234 Roll 219, 103). The 1878 census of the two bands is discussed below. No official document appointing Captain Peter has been located. Federal agents, however, later dealt with him as a chief.

While the Nicklason Research Associates reports (Nicklason 1997, Nicklason 1998) argued that there was no amalgamation between the Lower Cowlitz and the Upper Cowlitz, they and the associated exhibits submitted by Quinault provided a significant amount of new documentation of association between the two bands, much of it pre-dating 1878. For example, in a series of 1854 suggestions concerning proposed treaty reservations, William H. Tappan, Sub-agent for the Southern District of Washington, suggested that the Cowlitz “probably could be . . . induced to go with the Tie tin a pans” (Nicklason 1998, 18). Quinault does not agree with the BIA’s interpretation of the data cited. The disputes revolve, to some extent, around the issue of whether the regular OIA grouping of the Cowlitz and the Tainnapam together, while still listing both of the names, should be interpreted as indicating association or lack of association (Nicklason 1998, 24, 27, 29, 33, 34, 38, 59-60). The Department interprets the group as one of association.

As the CIT references and other sources indicate, the two groups were intermarried and interacted. Although Stockum may have had reservations, the proposed finding concluded that in the end they were joined by the Federal government agents, which dealt with them as a unit. These people and their descendants who remained within the Cowlitz Tribe, joined by this

action, have continued since then to act together in various contexts.

2. *Specific Topics.*

a. Pre-1878 Cowlitz Decline.

i. Quinault's Position. Quinault stated:

"Cowlitz" decline, due to contact with non-Indians, was identified as early as 1857. By 1863, the Cowlitz were described as few in number. As early as 1865, the "Cowlitz" were referred to as a remnant or remnant tribe,¹⁰⁹ a characterization that continued to appear when they were mentioned in the Historical record throughout the early years.¹¹⁰ The combined BAR Technical Report on the Duwamish Tribal organization stated that when observers used the word "remnant," it indicated that a historical tribe was losing its distinctiveness. (BAR Technical Reports, Duwamish Tribal Organization, p. 26, para.1) In 1878, the agent reported that the Upper Cowlitz were still in a state of decline (Nicklason 1997, 52-53). [footnotes added]

ii. BIA Analysis. This argument can not be accepted.

First, Quinault misquoted the passage from the Duwamish HTR, which was focusing on the

¹⁰⁹The Nicklason Research Associates report indicated that in a general sense, as early as 1854, Sub-agent William H. Tappan of the Southern District of Washington Territory referred to the Indians of his jurisdiction as "remnants" of "tribes who at one time had been numerous and powerful but were then degraded and few in number" (Nicklason 1998, 16). The "remnants" in this generic sense would include a number of tribes which are now federally acknowledged.

The specific 1865 reference would seem to be to a September 7, 1865, letter from Chehalis Reservation Farmer Joseph Hubbard to Agent A.R. Elder: "There is but a remnant of the Cowlitz tribe left" (Nicklason 1998, 360). Generally, the Nicklason Research Associates report equated some degree of acculturation with a dissolution of tribal relations: "By 1870, they were reported to be adopting the habits of 'civilization'" (Nicklason 1997, 53)

The adoption of "civilization" by the Indians was news that the COIA wanted to hear from field agents, as in the 1893 report from the Neah Bay Agency: "... it is gratifying to me to report a great deal of good accomplished for the betterment of these Indians tending towards their civilization, much more than I dared hope for at the commencement of my term of office;" (COIA Report 1893, 325).

¹¹⁰See for example the 1869 COIA report, which described as "remnants of tribes" the Chehalis, Shoalwater Bay, Chinook, Cowlitz, Clatsop, and others" (Nicklason 1998, 38); the 1872 COIA report which referred to all the non-treaty tribes, including Cowlitz, as "remnants of tribes" (Nicklason 1998, 40). (But see, Docket - Supreme Court at 337, 348-49, where the District Court states that the Cowlitz tribe had a tribal organization, unlike the Chehalis and Chinook. This description cannot be regarded as determinative that such groups no longer maintained tribal relations, since the Federal Government assigned Chehalis a Federal reservation and Chehalis has continued in acknowledged status until the present.

loss of distinctiveness among the historical Puget Sound tribes after they were consolidated onto joint reservations:

Some observers thought that historical tribes, like the Duwamish, were losing their distinctiveness. The first Handbook of American Indians, published in 1907, stated that the “remnant” of the Duwamish band was “incorporated with the Snohomish and others under the Tulalip” agency (Hodge 1907, 1:407). This observation was repeated in 1916 by local historian Clarence Bagley (Bagley 1916, 77). When asked in 1913 to indicate the tribal populations on each reservation, the superintendent at the Tulalip Agency claimed that “it is not possible to draw distinct tribal lines” because the treaty tribes had intermarried so extensively . . . (U.S. BIA Tulalip [1913], 1) (Duwamish PF, HTR 26).

Second, the plain language of “remnant” or of descriptions of tribe as being in a “state of decline” is identifying a group which retains some distinctiveness even if it may not be as strong and easily identified as in previous years.

Third, the evaluation of the evidence done by the BIA for the proposed finding and for this final determination indicates that both the Lower Cowlitz (including their metis relatives) and the Upper Cowlitz still existed and still had unambiguous previous Federal acknowledgment as late as 1880 (see above, Section III).

b. Prediction of Cowlitz' Continued Decline in the 1878 Agent's Report.

i. Quinault's Position. Quinault repeatedly stated that by the second half of the 19th century, the Cowlitz no longer constituted a viable tribal entity. Several of these statements were based on a single report by Milroy: “. . . by 1878 government reports indicated that the Upper and Lower Cowlitz were rapidly diminishing and stated the two groups would ‘dwindle out of existence which they will in less than one generation’” (Quinault Revised Memorandum 1998, 12; see also Quinault Revised Memorandum 1998, 16; citing NRA 1878-2; Quinault Memorandum 1997, 9).¹¹¹

ii. BIA Analysis. Agent Milroy's 1878 statements, along with the census records he compiled (see below) document that both the Lower Cowlitz and Upper Cowlitz were in existence at the 1878 date of his report, and that the Federal Government then regarded itself as having responsibility for them. His prediction that they would “dwindle out of existence,” however, did not come to pass, as documented by the evidence relied upon in this decision.

¹¹¹George Gibbs had made a similar prediction some 24 years earlier (Nicklason 1998, 13-14). Gibbs' prognostication had not been realized within the next generation; there is no reason to assume without further documentation that Milroy's prognostication would be realized within the generation following 1878.

3. *Merger of the Lower Cowlitz and Upper Cowlitz after 1878.*

a. Quinault's Position. Quinault stated: "Available Evidence for the Latter Quarter of the 19th Century Indicates a Dissolution of the Tribal Structure Not Merger" (Quinault Revised Memorandum 1998, 16; see also Quinault Revised Memorandum 1998, 47; Quinault Memorandum 1997, 9)¹¹² and "There is No Probative Evidence Supporting the proposed Finding that the Upper Cowlitz and Lower Cowlitz Bands Merged Politically and Socially Between 1878 and 1904" (Quinault Revised Memorandum 1998, 31; Quinault Memorandum 1997, 20). Quinault stated:

In his reports for 1880 and 1881, Milroy reported the Lower Cowlitz and Upper Cowlitz were scattered among the whites and where they were continuing to suffer decay. NRA 1880-1; 1881-3. In 1886, the *Chehalis Bee Nugget* reported that some Cowlitz families remained in the area of Toledo, "but they too, like the old settlers of that date are passing away." Seven years later Agent Eels reported that the Cowlitz Indians were scattered, lived on small farms, and are "so much absorbed into the settlements that they hardly form a distinct class anymore." NRA 1893-1.¹¹³ (Quinault Revised Memorandum 1998, 16; Quinault Memorandum 1997, 9-10). [footnote in original]

b. BIA Analysis. The OIA reports for 1880 and 1881 included the reports from Superintendent R.H. Milroy, focusing primarily on his attempts to get valid census figures for the bands, and provided little additional data (see CIT PF 1997, HTR 87-89). The reports for this period indicated that the Cowlitz were perceived to be under the jurisdiction of the agencies (Puyallup, Nisqually, and Chehalis Agency in 1881; the Nisqually, S'Kokomish, and Tulalip Agency in 1883 (CIT PF 1997, HTR 88-89)).

In the 1893 report, Agent Edwin Eells of the Puyallup Agency (Consolidated) reported on the following reservations: Puyallup, Chehalis, S'Kokomish, Quinaielt, Nisqually, Squaxin, and Georgetown (COIA Report 1893, 328-330). The reservations were followed by a description which began, "[b]esides the Indians living on these seven reservations, the S'klallam tribe, . . ." mentioning two villages and that, "[t]he other Indians of this tribe are very much scattered, some living on homesteads and some near towns, . . ." (COIA Report 1893, 330). This was

¹¹²These descriptions continued in the record through the 1880's. By 1895, the 'Cowlitz' were not only reported as scattered, but also losing their identity, absorbed into the surrounding settlements and mingling more with the non-Indians than with their own race." (Nicklason 1997, 53. See also op. cit., 16).

¹¹³Efforts to discount Agent Eell [sic] first hand observations by suggesting that he was simply reflecting assimilationist policy of the time fail to take into account the fact that Agent Eells [sic] observation is part of a consistent historic record describing the assimilation of the Cowlitz and the loss of their tribal entity (Quinault Revised Memorandum 1998, 16n14).

followed by the description of the "Cowlitz Indians" quoted by Quinault, and then the statement: "These, with some other scattered bands of smaller size, make up the Indians connected with this agency. Fully two-thirds of them are citizens of the United States and of this State, and very generally exercise the right of suffrage, and a few hold office" (COIA Report 1893, 330). In the proposed finding, the AS-IA did not regard this as evidence that the Cowlitz Tribe had ceased to exist as a continuing political entity as of 1893. This position is consistent with the Department's position on the Jamestown S;Klallam, also mentioned in this passage and also a group that has been acknowledged through 25 CFR Part 83.

The 1886 newspaper article did not mention the "Cowlitz families" in the area of Toledo, Washington, in the context of extinction as a tribal entity, but rather as part of a historical retrospective indicating that the generation of people who had taken an active part in the Indian wars of 1855-1856 was no longer young, and was passing from the scene. The statement cannot be taken as describing the decline of a Cowlitz tribal entity any more than it can be taken as implying that the governmental structures of the non-Indian settlers of Washington Territory were vanishing as a result of the deaths of the pioneers.

4. Cowlitz Leadership during the 1880's and 1890's.

a. Quinault's Position. "The Evidence Does Not Establish the Existence of Cowlitz Leaders Exercising Political Influence or Authority During the 1880s and 1890s" [*sic*] (Quinault Revised Memorandum 1998, 40; Quinault Memorandum 1997, 27).¹¹⁴ Quinault argued that evidence from kinship ties and Shaker Church activities was inadequate and that, "... there is no evidence of political influence being exercised during this period by the chiefs appointed by the government in the 1870s [*sic*]" (Quinault Memorandum 1997, 27).

While Cowlitz leaders were identified in the record between 1880 and 1904 -- Atwin Stockum and Captain Peter -- a social/political entity is not described in the historical record reviewed for this report. As a result, there are no examples showing that these individuals exercised political influence and authority over the Cowlitz. This is particularly true in the case of Atwin Stockum for the years between 1877 and 1903 (Nicklason 1998, 60).

b. BIA Analysis. For a discussion of continuing kinship ties within the Cowlitz group in the

¹¹⁴The historical report for Quinault focused for this period almost entirely upon the COIA reports: "Indeed, after 1886, they were no longer described as a cohesive tribe, not even in the statistical tables of the Annual Reports of the Commissioner of Indian Affairs . . . indicated by the dramatic decline in the number of references to them in Federal documents after 1881. . . ." (Nicklason 1997, 53; see also 16).

All of this COIA report material was reviewed in the HTR for the proposed finding. The Proposed Finding, as does this Final Determination, concludes that the COIA report material was entitled to less weight than the other evidence.

second half of the 19th century, see the following subsections.

Quinault appears to have directed its more extensive arguments concerning Shaker leadership not to criterion 83.7(c), but rather to 83.7(b), as shown by its use of "community" terminology:

Evidence that some Upper Cowlitz and Lower Cowlitz families may have participated in the 1890s together with other Indians in the pan-Indian Shaker religious movement is not evidence of a broad merger of the two groups, given the religious diversity of Upper Cowlitz and Lower Cowlitz descendants. The fact that Shaker ceremonies may have involved mobilization of economic resources is evidence of the existence of a religious community of Shaker adherents. It is not evidence of a broader umbrella Cowlitz community in light of the religious diversity of the Cowlitz group (Quinault Revised Memorandum 1998, 32; see also Quinault Memorandum 1997, 20-21; Quinault Revised Memorandum 1998, 40-41; see also Quinault Revised Memorandum 1998, 41n).

The pan-Indian nature of Shakerism does not prevent it from being a vehicle for exertion of local leadership. In other instances (Poarch Creek, Mohegan, HPI, MBPI), the AS-IA has found that churches of mainstream denominations were used by the local Indian leadership as a vehicle for exerting influence over the tribal membership. The evidence in the record, which shows that not only Atwin Stockum and Iyall Wahawa but also Henry Cheholtz, the son of Kiskox (Quinault Ex. 1962-8) all served as Shaker leaders, plus the continuing practice of Shakerism in some components of the Cowlitz membership to the present, indicates that in the 1890's and early 1900's, the movement did provide an important focus for some of the Cowlitz Indians' continuing interactions.

D. Role of the Cowlitz Metis.

1. Relationship of the Cowlitz Metis to the Lower Cowlitz Indians and Upper Cowlitz Indians. Quinault stated that the assertion in the proposed finding that the Lower Cowlitz, Upper Cowlitz, and Cowlitz metis merged in the late 19th and early 20th century to form a single community is not supported by the available evidence (Quinault Revised Memorandum 1998, 12-16 (issue 3); Quinault Memorandum 1997, 6-10 (issue 3)), restated as: "The factual premise that Lower Cowlitz, Upper Cowlitz, and Cowlitz métis groups underwent a process of gradual merger in the latter part of the 19th century is not supported by the evidence" (Quinault Revised Memorandum 1998, 7; Quinault Memorandum 1997, 4). Quinault also addressed the role of the Cowlitz metis at several other loci (Quinault Revised Memorandum 1998, 5-7 (issue 2); Quinault Memorandum 1997, 3-4, 26, 32-33). The petitioner replied (CIT Response 1998, 6).

a. Quinault's Three-Point Summary of Its Position.

i. Quinault's Point 1.

Quinault's Statement. Quinault summarized its view of the proposed finding as follows:

The proposed findings further contend that the Cowlitz metis were directly descended from the Cowlitz, maintained a continuing close interaction with the Lower Cowlitz bands [*sic*] and like the Upper Cowlitz have been part of the Cowlitz Tribal Organization since its formation in 1912 (Quinault Revised Memorandum 1998, 13; see also Quinault Memorandum 1997, 7).

BIA Analysis. There is no serious challenge in the more detailed Quinault comments either to the proposed finding's conclusion that "the Cowlitz metis were directly descended from the Cowlitz" (see section IV.G of this report) or to the finding that the metis "have been part of the Cowlitz Tribal Organization since its formation in 1912" (see section V.E of this report). Quinault's arguments focus primarily on whether or not there was "a continuing close interaction with the Lower Cowlitz bands [*sic*]" (Quinault Revised Memorandum 1998, 13). This will be analyzed in detail below.

ii. Quinault's Point 2.

Quinault's Statement. Quinault restated its hypothesis that:

. . . the Cowlitz metis population from which petitioner claims partial descent was not considered either a separate Indian tribe or band or a part of the Upper or Lower Cowlitz Tribes in the 19th century (Quinault Revised Memorandum 1998, 47).

CIT Comment: CIT stated:

The best information available indicates that the Cowlitz Tribe of 1855 represented and included all of the Indians of the Cowlitz. The suggestion that Cowlitz Metis [*sic*] somehow formed a separate tribal organization without ties to, and independent of, the Cowlitz Tribe itself is simply wrong, . . . (CIT Response 1998, 6).

BIA Analysis. As explained above, this point represents a recurring misinterpretation by Quinault of the descriptions of the historical development of the 19th century Cowlitz in the proposed finding and its accompanying technical reports. These did not at any point analyze the metis as a separate Indian tribe or band. Rather, they discussed the metis as an identifiable subgroup which, during the second half of the 19th century, emerged from within the Lower Cowlitz Indians as they had existed in 1855.

iii. Quinault's Point 3. This is an extension and elaboration of Point 2.

Quinault's Statement.

... discussions and enumerations of the Cowlitz Indians in the latter half of the 19th century do not include the Cowlitz metis families among the Cowlitz Indians. Evidence from this period indicates that metis identified themselves as Canadian, not Indian. See NRA 1856-15. In sum there is no evidence that the metis population was considered part of the historic lower Cowlitz Tribe or Band, or merged with the Lower Cowlitz or Upper Cowlitz, until the descendants of all three groups formed the Cowlitz Tribal Organization, claims organization after the turn of the century (Quinault Revised Memorandum 1998, 14; see also Quinault Memorandum 1997, 7-8).

BIA Analysis. For self-identification of the Cowlitz metis as "Canadian," Quinault referred to a single incident -- the inclusion of Simon Plamondon Jr. in the meeting of "Canadian residents" on Cowlitz Prairie on May 19, 1856 (Nicklason 1998, 25). The accompanying exhibit (Quinault Ex. 1856-15) does not so much show the self-identification of the Cowlitz metis as "Canadian" as it shows the Canadian residents at Cowlitz Prairie as supporters of the Americans during the 1855-1856 Indian War. The meeting did show that Simon Plamondon's metis son was included in the meeting. Other data, including the much later recollections of Simon's sister Mary Ann (Plamondon) St. Germain, also showed that the family feared attacks by the hostile Indians during the war (St. Germain 1925).

However, this identification was not universal, or even consistent. Five years earlier, George Gibbs' 1850 proposal concerning reservations for the Indian tribes of western Washington, summarized in the Quinault submissions, suggested that the governor, "settle the tribes and . . . exclude non-Indians, with the exception of those, with proper character, who were married to Indian women. Those individuals would be allowed to remain within the reservation as long as they obeyed the territorial laws, . . ." (Nicklason 1998, 10). This at least implies that Gibbs viewed the Indian wives of non-Indian men as retaining their tribal affiliation. Five years after the 1855 meeting on Cowlitz Prairie, the 1860 Federal census of Lewis County, Washington, listed many of the metis offspring of French-Canadian fathers and Indian mothers as "Indian," whether in their own households or still living in the households of their fathers.¹¹⁵ The fact

¹¹⁵See, for example:

1860 U.S. Census, Lewis Co., WA, #455: Catnose, Edw. (Indian), 28, farmer, b. WT; Catnose, Eliza, Ind, 26, f, b. WT;

1860 U.S. Census, Cowlitz Twp., Lewis Co., WA, #671/671: Simon Plumondo, 67 [62?], m, trapper, \$18,000/\$750, b. Canada; Henneth, 56, f, Ind, b. WA; Moayse, 19, m, Ind, laborer, b. WA; Battise, 16, m, Ind, laborer, b. WA; Urtin[?], 8, m, Ind, b. WA; Jarome, 6, m, Ind, b. WA; Battice Atwine, 27, m, Laborer, b. WA; Jane, Atwine, 20, f, Ind, b. WA; Mary Atwine, 4/12, f, Ind, b. WA.

that Plamondon, Jr. did not attend the 1856 meeting, does not overturn other evidence in 1850 and 1860 that the metis were considered Indians.

The “enumerations” of the Cowlitz appear to be primarily the 1878 Milroy censuses (see Nicklason 1998, 45-46), as none of the other censuses or discussions reported included individual names (see Nicklason 1998, 46-50, 51-52).

b. Origins of the Cowlitz Metis.

i. Quinault’s Position. Quinault stated:

The Cowlitz metis population was a French speaking Catholic group of individuals composed of the descendants of former Hudson Bay Company employees and their Indian spouses, many of whom were not even Cowlitz (Quinault Revised Memorandum 1998, 7).

The Cowlitz Metis population traces itself to the families of Hudson Bay Company farm employees. Many of these French-Canadian employees brought with them Indian wives from a wide variety of tribes. Others married Cowlitz women. Fully 35% of petitioner’s current membership traces itself to non-Cowlitz ancestresses of these French-Canadian employees. GTR at 3 (Quinault Revised Memorandum 1998, 13; Quinault Memorandum 1997, 7).

ii. BIA Analysis: The proposed finding did not indicate that all metis families of Hudson’s Bay employees stationed on Cowlitz Prairie were to be categorized as “Cowlitz metis.” The term was used for those metis families associated with the predecessor groups of the CIT petitioner -- it did not include the descendants of Hudson’s Bay employees whose wives were neither Cowlitz nor associated with the Cowlitz over a significant period of time, beginning prior to the 1855 treaty date.

c. “Separation” of the Cowlitz Metis and the Cowlitz.

i. Quinault’s Position. Quinault stated: “The Evidence Demonstrates that the Lower Cowlitz, Upper Cowlitz, and Cowlitz Metis Remained Separate Through the 1870s (Quinault Revised Memorandum 1998, 13; Quinault Memorandum 1997, 7). Quinault elaborated upon this hypothesis with several different arguments:

Similarly, there is no evidence despite their genealogical connection that the Cowlitz Indians viewed the metis as part of a “Cowlitz” community prior to 1900. For example, the 1878 censuses of the Upper and Lower Cowlitz prepared by Milroy with the assistance of the Cowlitz Chiefs do not list any metis as heads of households, even though metis individuals like Simon

Plamondon, Jr. were close relatives (Quinault Revised Memorandum 1998, 6).

The proposed findings themselves later note, the [*sic*] metis population remained separate from the Lower Cowlitz and Upper Cowlitz. As the GTR also indicates, from 1855 to 1920, the vast majority of metis marriages were to non-Indians or other metis descendants, with only a handful of marriages between metis and Upper or Lower Cowlitz (Quinault Revised Memorandum 1998, 13; citing to CIT PF 1997, Summ. Crit., 22; Quinault Memorandum 1997, 7¹¹⁶).

ii. BIA Analysis. Quinault's argument that the Cowlitz metis "remained" separate is based on its *a priori* hypothesis that they were ever separate or distinct from the Lower Cowlitz. The proposed finding did not "note" that the "metis population remained separate" as stated by Quinault. The passages read:

Socially, the metis emerged as a distinct subgroup as the consequence of their use of the French language as the primary language within their households, their commitment to Roman Catholicism, their association, in many cases, with the Cowlitz Prairie Mission, and their resultant extensive intermarriage with one another (CIT PF 1997, Summ. Crit. 22).

The Lower Cowlitz metis living along the Cowlitz river Valley were distinct from the Lower Cowlitz band *per se* during the period 1855-1880 in the limited sense that they resided in French-speaking households . . . As the first-generation Cowlitz metis matured during the 1870's and 1880's, and came into leadership positions in the early 20th century, they did not form a political subgroup that was clearly distinct from the Lower Cowlitz, but remained closely associated with the BIA-appointed Lower Cowlitz leaders (CIT PF 1997, Summ. Crit. 33-34).

There is a clear analytical distinction between the concepts of "remaining separate" and "emerging as." The selective quotations on the part of Quinault ascribed to the PF conclusions diametrically opposed to those which it actually reached that the Cowlitz metis did not form a political subgroup that was clearly distinct from the Lower Cowlitz, but "remained closely associated" with the Lower Cowlitz leaders.

d. The Issue of Land Ownership.

¹¹⁶The 1997 phrasing was slightly different: "The proposed findings themselves later note, the metis population remained separate from the Lower Cowlitz and Upper Cowlitz . . . SUCPF at 22; *see also* SUCPF at 33-34" (Quinault Memorandum 1997, 7).

i. Quinault's Position. Quinault stated:

Because their French-Canadian fathers had entered into Donation Act Claims, the mixed blood metis children took title to their land in fee. Consequently, they were not considered wards of the government and had little contact with the Indian agents (Quinault Revised Memorandum 1998, 14; Quinault Memorandum 1997, 7).

ii. BIA Analysis. The "mixed blood metis children" of Cowlitz women were not considered wards of the government, but this was not a direct consequence of their having inherited fee simple title to their fathers' land, nor was it so explained in the proposed finding (CIT PF¹1997, Summ. Crit. 18; CIT PF 1997, GTR 58-60). It was because the Cowlitz were not, at the time, a federally acknowledged reservation tribe. Cowlitz full bloods were also not "wards" in the first half of the 20th century, because the Cowlitz were not a reservation tribe.

The ownership of land in fee simple, either by current members of a group or by their ancestors, was not in the 19th century and is not now a disqualification for membership in a federally acknowledged tribe (for example, in the late 19th and early 20th centuries, many members of the Puyallup Tribe owned off-reservation land in fee simple). Neither is it a disqualification for Federal acknowledgment under 25 CFR Part 83. Neither do the Federal acknowledgment regulations require contact with Indian agents. Many of the eastern tribes which have been acknowledged through the process had no contact with Federal Indian agents from the date of the establishment of the Federal government to the date of acknowledgment.

Additionally, how the metis obtained or held their land does not distinguish the metis from other mixed blood Indians. Cowlitz metis children of French-Canadian fathers, like other mixed-blood Indians, inherited fee simple title to their non-Indian father's donation land claim. Also, American mixed-blood Indians were eligible to apply for donation land claims in their own right. Michel Cottonnoire, for example, held a donation land claim; one of the heirs was his mixed-blood son, Edward (NARS M-815, Roll 97, Frames 954-982).¹¹⁷ Edward also applied for land in his own right (McNeill and Lyden 1978, 1:13).¹¹⁸

¹¹⁷Olympia, W.T. Donation Certificate No. 380, Michael Cottonnoire. Heirs at law of Michael Cottonnoire Sen., deceased, Lewis Co., WT. His settlement commenced 10 October 1834. He d. 30 August 1851. He was a naturalized U.S. citizen, declaration 18 April 1849, Lewis Co., WA. Heirs at law are Michel Cottinear Jr., age 37; Edward Cottinear, 25; David Cottinear, 19; Mary Cottinar, age 15. He was born in Macas Co., Canady [sic], 1795. m. Mary, 13 September 182[?]5, Louis Co., WA. Sworn 3 November 1853. Frame 971 says he arrived on Oregon, 2 October 1815 (NARS M-815, Roll 97, Frames 954-982).

¹¹⁸Bee - Fri. - Sept. 18, 1885. HOMESTEAD APPLICATION: Edward Cottonware App. #3130 for W ½ of SE 1/4 & add'l. App. # 3243 for E ½ of SE 1/4 of Sec. 34, Tp. 11 N., R 2 West Oct. 3, 1886 (McNeill and Lyden 1978, 1:13).

Conversely, mixed-blood children were not excluded from inheriting Indian homesteads in trust. The metis children of Kittie Tillikish inherited her Indian homestead trust land (BIA Taholah Agency Probate 20315-39), which continued to be administered for them in trust by the BIA under provisions of the 1885 act. This was less common because comparatively few Indian women qualified for homesteads as heads of household.

e. The Issue of Citizenship.

i. Quinault's Position. Quinault argued that, "... federal agents during the 19th century viewed the metis as 'citizens'" (Quinault Revised Memorandum 1998, 7), citing that: "The record further indicates that BAR staff noted during the April 23, 1996, 'Peer Review' of the Cowlitz petition that in the 19th Century federal agents 'were treating the metis as citizens and the others as 'tribes.' See attached notes of April 1996 BAR Peer Review Meeting" (Quinault Revised Memorandum 1998, 6).

Quinault returned to a discussion of the citizenship issue in relation to the 1920 congressional hearing on its claims legislation, in which Congressman Sloan, "stated his understanding '... that the Cowlitz Indians have practically no organization as a tribe but as individual Indians are exercising the rights of franchise and citizenship and maintaining themselves ...' *Id.* at 21. (Emphasis added.)" (Quinault Revised Memorandum 1998, 20) [emphasis in QRM]. Quinault further quoted a statement of Assistant COIA Merritt in 1927 to the effect that, "[t]he affairs of the Cowlitz Tribe have long been disposed of and the various members of this band unattached at the various agencies of Washington and Oregon have long been considered citizens of the United States" (Quinault Revised Memorandum 1988, 20; citing NRA 1927-37).

ii. BIA Analysis. Federal agents in Washington did not only "view" the Cowlitz metis as citizens, but plainly stated that the majority of all Indians in southern Puget Sound were, under the law, citizens, having been so determined by state courts (COIA Report 1893, 335). Later in the same document, these same Indians were described as "under the Dawes bill of 1887" (COIA Report 1893, 389). Quinault itself noted that on August 15, 1896, the superintendent of the Puyallup Agency stated that, "[a]ll of the Indians of this agency with the exception of the Georgetowns and Quinaielts are citizens" (Nicklason 1998, 52).¹¹⁹ As the Puyallup Agency included several other federally acknowledged tribes under its jurisdiction (the Nisqually, the Puyallups, the Chehalis), the later 19th century descriptions of Cowlitz as citizens cannot be regarded as having evidentiary value supporting Quinault's arguments concerning the "dissolution" of the Cowlitz tribal structure during that period (Quinault Revised Memorandum

¹¹⁹The Supreme Court's *United States v. Nice* decision in 1916, 241 U.S. 591, 598 (1916), held "citizenship is not incompatible with tribal existence or continued guardianship." See also, the general discussion in Duwamish PF, HTR 24.

1998, 16). Citizenship and tribal membership status are not inconsistent¹²⁰

f. Political Leadership of the Cowlitz Metis Families, 1855-1880.

i. Quinault's Position. Quinault stated: "The Evidence Does Not Establish That Lower Cowlitz Leaders Were Considered Political Leaders of the Cowlitz Metis" (Quinault Revised Memorandum 1998, 39; Quinault Memorandum 1997, 26).

The proposed findings acknowledge that the Cowlitz metis households during the period 1855-1880 were headed by French-Canadian fathers who acted as the patrons of the metis population in dealings with both local authorities and the federal government. SUCPF at 33-34. The findings then make the contradictory statement that there is no evidence that this group was regarded as having any political leadership other than that provided by the chiefs of the Lower Cowlitz band. SUCPF at 34. Certainly this was not true during the 1855-1880 time frame. And, there is simply no evidence that "Lower Cowlitz chiefs" functioned or were recognized by the government as political leaders of the Cowlitz metis, or that the Cowlitz metis population was considered part of the Lower Cowlitz 'band' during the latter quarter of the 19th century. See §§ 2 - 4, *supra* (Quinault Revised Memorandum 1998, 40; see also Quinault Memorandum 1997, 26).

ii. BIA Analysis. The situation did not remain static throughout this 25-year period defined by Quinault. In 1855, almost all of the households containing Cowlitz metis members were headed by French-Canadian men who had taken Indian wives and had metis children born between the late 1820's and the treaty date. Only a few of the mixed-blood children were yet old enough to head their own households (see 1850 and 1860 Federal census, generally). On the other hand, by 1880 most of the households containing Cowlitz metis members were well into the second generation and the majority were headed by adults who were themselves metis, a situation which would continue into the 20th century.¹²¹

¹²⁰All American Indians have long since been granted the right to vote and are citizens of the United States (43 Stat. 253, Act of June 2, 1924). Exercise of the franchise by members of a petitioning group, whether in the past or in the present, is not interpreted under current Federal Indian law as indicating a dissolution of tribal relations, nor is it a disqualification for Federal acknowledgment under 25 CFR Part 83.

¹²¹Children were born at an approximately 50/50 male/female gender ratio. The Cowlitz metis men who married then became heads of households containing Cowlitz metis members. A very high proportion of the first-generation Cowlitz metis women married Cowlitz metis men, so their children were in metis-headed households. Therefore, the only second-generation households containing Cowlitz metis members whose heads were not themselves Cowlitz metis were those in which a Cowlitz metis woman married out of the tribe, whether to a Cowlitz full-blood, to an Indian or metis of another tribe, or to a white man.

The concept of "patron" as used to describe the situation in the later 1870's and 1880's (Quinault Revised Memorandum 1998, 40), is not synonymous with the concept of political authority and/or influence as used by the regulations under criterion 83.7(c). A group which has its own internal leadership and bilateral political relationships may, nonetheless, rely on external patrons as intermediaries in dealing with outside authorities.

2. *Level of Known Data Concerning Social Contact Between "Cowlitz Indians" and "Cowlitz Metis Families" as defined by Quinault.*

a. Quinault's Position. Quinault stated:

While inter-marriage between Indian women and non-Indians (French Canadians or half-bloods) occurred to some undetermined extent during this period, the record do not reveal if they associated with the "Cowlitz" prior to its disappearance from the primary historical record, or if they associated with the non-Indians to whom they were married and who surrounded them. The evidence in the record would suggest the latter. . . (Nicklason 1997, 54).

b. CIT Comment. CIT pointed out that the 1878 Pumphrey letter opposing removal of the Lower Cowlitz band was accompanied by a petition signed by several men who were either Cowlitz metis or who had married Cowlitz women and whose children were Cowlitz metis. (CIT Response 1998, 12).

c. BIA Analysis. The period under consideration in the above passage is presumed to be from 1855 through an undetermined date in the later 19th century, some time after 1880. Under the 25 CFR Part 83 regulations, a "half-blood" is not a "non Indian" as it is defined by Nicklason in the quoted passage (Nicklason 1997, 54).¹²² The Nicklason Research Associates report, having previously made the assumption that the "Cowlitz" had undergone a "disappearance from the primary historical record," then builds upon this assumption to state that the record does not reveal whether or not the women who made such marriages associated with Cowlitz Indians or with the "non-Indians" to whom they were married and who surrounded them.

The Cowlitz Indians, whether full blood or half blood, did not disappear from the historical record during the second half of the 19th century. In the period following 1880, the number of mentions of the Cowlitz as an organized entity in official BIA records was sharply reduced, an

¹²²Nor does the BIA impose any blood quantum standard, either on petitioners or on federally acknowledged tribes. The decisions pertaining to enrollment eligibility are made by the tribes themselves. Some federally acknowledged tribes use only the criterion of descent from certain rolls, but their enrolled members, no matter what the blood quantum, are "Indians" rather than the Nicklason Research Associates report's definition of the half-bloods as "non-Indians."

aspect of the record strongly emphasized by Quinault.¹²³ However, the evidence in the record for the proposed finding consisted of much more than COIA reports and OIA correspondence. It included the Federal census records, county vital records, ethnographic studies, and a variety of other documentation, including the recollections of local residents (see generally the HTR and GTR), all mentioning the Cowlitz Indians.

There is very little evidence in the record that Cowlitz full-blood women continued to marry French Canadians in the post-treaty period. The few new marriages of this nature after 1855 were the remarriages of widows, often to the widower of another Cowlitz woman. In all but a few cases, the spouses were too old to produce additional children.

There is a great deal of evidence in the record that the first-generation Cowlitz metis married one another very extensively (see Cowlitz GTKY File, BAR). Thus, the record lacks evidence concerning associations among the Cowlitz only if one accepts Quinault's definition of the Cowlitz metis (half-bloods) as non-Indian, which the Department does not accept. The number of marriages between Cowlitz full-bloods and Cowlitz metis in the post-treaty period was limited, but several did occur, such as Cheholtz-Rabbie, Pete-St. Germain, and Pete-Cottenoire (see Cowlitz GTKY File, BAR), while other Cowlitz metis also married full-blood Indians of other tribes or, in a few cases, metis of other tribes. To put this pattern in context, it should be noted that the Cowlitz full-bloods also continued the traditional pattern of inter-tribal marriage during the second half of the 19th century, many continuing to take spouses who were Nisqually, Chehalis, Yakima, etc., just as there were continuing intermarriages among Indians of those federally acknowledged tribes.

The first generation Cowlitz metis children (who, with their own children, evolved into the identifiable Cowlitz metis social subgroup as it existed from the treaty period through at least the 1920's) were born from the late 1820's through the 1850's; there was no significant number of new marriages between Cowlitz Indian women and French Canadians after 1855.¹²⁴ CIT is accurate in stating that the 19th century records often referred to these individuals as "half-

¹²³As stated by Nicklason Research Associates:

The disintegration of the "Cowlitz" tribe is perhaps best indicated by the dramatic decline in the number of references to them in Federal documents after 1881. For example, the "Cowlitz" are mentioned in the record only once in 1882. The same record makes no mention of the Cowlitz, Lower Cowlitz, or Upper Cowlitz in the historical record between 1883 and 1892. The Cowlitz are mentioned only one time in that record in 1893, 1894 and 1895 and then only in relation to their assimilated condition. No mention of the Cowlitz, the Lower Cowlitz or the Upper Cowlitz exists in the record between 1896 and 1903 (Nicklason 1998, 58).

¹²⁴The Cowlitz/French-Canadian marriages which took place after 1855 were remarriages of widows and widowers. No new French-Canadian immigrants are known to have come to the Cowlitz in post-treaty times (see Cowlitz GTKY File, BAR).

breeds," both in the Federal census¹²⁵ and in the donation land claims files (NARS M-815).¹²⁶

During the second half of the 19th century, some of the Cowlitz metis, both men and women, also married whites (see CIT GTKY File, BAR).¹²⁷ Whether or not these marriages drew the Indian spouse out of the tribal community cannot be an *a priori* assumption, either negative or positive, but has to be determined on an individual basis, by analysis of the families.

3. *CIT Comment Regarding Quinault's Understanding of the Relationship between the Metis and the Cowlitz Tribe* (CIT Final Submission 1999, 6-8, Issue II).

a. CIT Comment.

Although the Quinault opposition ostensibly is built on several issues, it actually boils down to the contention that the Cowlitz Tribe in its current form was formed long after BAR's accepted date of last unambiguous prior federal recognition, with the suggestion that the "new" tribe has no historical predecessor from which it can trace and no unambiguous prior recognition from which to trace (CIT Response 1998, 6).

¹²⁵For example: 1860 U.S. Census, Lewis Co., OT, #466: Provo, Battise, white, 55, m, farmer, b. Canada; Matilda, Indian, 12, b. WT; David, 9, HB, b. WT (Moyer 1931-32, 106); 1880 U.S. Census, Pierce Co., WA, p. 470, #112/117: Corcoran, Dominick, W, m, 57, b. Ireland; Josephine, HB, f, 36, wife, b. WT; Mary, QB, F, 18, dau; Mark, QB, M, 16, son; Catherine, QB, F, 14, dau; John, QB, m, 12, son; Elizabeth, QB, f, 10, dau; Bartholemew, QB, m, 6, son; Maggie, QB, f, 4, dau.; 1900 U.S. Census, Marion Co., OR, ED 183, Sheet 8, North Salem Precinct, Chemawa United States Indian Training School, Indian Population. Joseph Wiggins, Chinook, father white, mother HB, b. 1887, WA, age 13. Depending on the county, the precise identification varied: the 1870 Federal census of Lewis County and Cowlitz County used "I/W" rather than "HB." Many other instances of identification as mixed-blood Indians appear throughout the notes in the Cowlitz GTKY (BAR Files). The Wiggins family had both Chinook and Cowlitz ancestry.

¹²⁶NARS M-815, Roll 108, Oregon and Washington Donation Land Files 1851-1903, Washington, Vancouver Land Office, Donation Certificate No. 306, Frames 000422-000618. John B. LaPartree and wife. Contested 1887 by James H. Adams. Patent 1895. John B. LaPartree of Lewis Co., arr. 14 May 1843; Declaration of intent filed 15 December 1853. b. Canada, 1810. m. Philimion his wife 30 January 1849. aka LaPatrie; frame 456 says naturalized as LaBertree.

Frame 453: Philemon St. Cyr - nee- LaPatrie the wife of the Donce herein; Bonaparte Plomundon, Edward Cottonoir and Mrs. Pike are half breeds with the exception of Mrs. St. Cyr who is a full blooded indian [*sic*] and all of whom cannot read or write . . .

Frame 463, John B. Sareault, grantee.

Frame 471. About 1852, John B. Lapartree, a French Canadian, married an Indian girl that had been brought up at the Mission.

¹²⁷There is no evidence that Cowlitz full bloods again began to intermarry with whites prior to the 1920's.

b. BIA Analysis. The CIT's response neither adduced new evidence nor reinterpreted evidence already in the record, but consisted merely of its summation of Quinault's argument. It does not, therefore, require analysis.

E. Nature of the Cowlitz Tribal Organization (CTO) 1912-1950 as Predecessor Organization of the Cowlitz Indian Tribe (CIT).

Quinault described the nature of the "umbrella Cowlitz group" as a claims organization, not a tribal social and political entity (Quinault Revised Memorandum 1998, 17-25 (issue 5); Quinault Memorandum 1997, 11-17 (issue 5); see also Quinault Revised Memorandum 1998, 12 (issue 2); Quinault Revised Memorandum 1998, 47-48). The petitioner replied (CIT Response 1998, 7-8).

Quinault additionally submitted documentary exhibits, including several lists of signers of Cowlitz petitions and attorney contracts from the period between 1910 and 1920, correspondence to and from the legal firms representing the Cowlitz claims action, and BIA central office and agency correspondence (Quinault Ex. 5; Quinault Ex. 6). While much of this material was in evidence at the time of the proposed finding, the Quinault submission added new documentation.

1. Quinault's Description of the CTO.

a. Quinault's Position. Quinault stated: "The Historic Record Contains Repeated Descriptions of the Cowlitz Umbrella Group that Formed in the early part of the 20th Century As a Claims Group, Not a Tribal Social and Political Entity: (Quinault Revised Memorandum 1998, 17; Quinault Memorandum 1997, 11).¹²⁸ In connection with this point, Quinault restated its assertion that the Lower Cowlitz, Upper Cowlitz, Cowlitz metis descendants did not constitute a single tribe in the early 20th century.¹²⁹

b. BIA Analysis. The nature of the three Cowlitz subgroups and their interrelationships in the later 19th century have already been discussed above. The pursuit of claims during the first

¹²⁸"When the Cowlitz descendants of each of three subgroups do join together in the early part of the 20th century it is to form a claims organization, not a social and political community" (Quinault Revised Memorandum 1998, 16).

¹²⁹"... the evidence is overwhelming that the three groups were considered separate into the beginning of the 20th century when their descendants established a claims organization, called the Cowlitz Tribal Organization, which never constituted a distinct tribal community" (Quinault Revised Memorandum 1998, 7).

Elsewhere, however, Quinault asserted that the metis "were not even recognized as a separate group" in Federal documents prior to the formation of the CTO (Quinault Revised Memorandum 1998, 16). The Quinault comments did not resolve this inconsistency.

quarter of the 20th century is not an activity which invalidates the existence of an Indian tribal entity. For example, the Nicklason Research Associates report described the activities of Peter Kalama as an agent on behalf of the Cowlitz claim, referring only casually that, "[l]ater in the letter, Peter Kalama indicated that he was also working on the Nisqually¹³⁰ claim" (Nicklason 1998, 95; see Kalama to Sells 1/13/1916, Quinault Ex. 6, 1916-3).

This letter is also supporting evidence that the CTO was a tribe. Kalama included one statement which indicated that in 1916, the CTO was not merely a descendency group, discussing instances where individual Cowlitz had relinquished tribal relations for various reasons, such as the move of Iyall Wahawa to Yakima cited by Quinault (Nicklason 1998) 53-54), were known to the group as a whole:

After these upper and lower [*sic*] Cowlitz Indians had signed the last petition . . .
¹³¹ Then I was instructed by these Indians that I am representing to contest any claim of the upper and lower Cowlitz Indians, that had relinquished [*sic*] their rights from the Cowlitz tribe and were adopted in various reservations and were given allotments, annuities and protection from the government, in various ways (Kalama to Sells 1/13/1916, 1; Quinault Ex. 6:1916-3). [footnote added]

Kalama stated that he was enclosing lists containing both the names of those which had never received any "compensation or assistance" and, separately, of those "that have been adopted on various reservations" (Kalama to Sells 1/13/1916,1; Quinault Ex. 6:1916-3).¹³² Kalama continued with a discussion of compensation, reiterating the point that Cowlitz descendants who had been adopted or allotted on reservations should not be eligible for any claims award, specifically distinguishing between the unallotted Cowlitz Indians he was representing and the

¹³⁰Nisqually was and is a federally acknowledged tribe.

¹³¹"The above names were passed by the committee [*sic*], (Mrs. Mary Longfred, Mrs. Ann Hyton and Mrs. Frances Northover) as Cowlitz Indians and had signed my petition, that was submitted by Hon. C. E. McChesney" (Kalama 1/13/1916, note to "List of names of the upper and lower [*sic*] Cowlitz Indians, that were adopted and received allotments on various reservations" (Quinault Ex. 6:1916-3). All three of these elderly full-blood women who had served on the CTO genealogical eligibility committee were themselves among the "adopted and allotted" (Longfred on Nisqually; Hyton on Puyallup; Northover on Yakima).

¹³²There were four relevant items, starting with a handwritten cover sheet: "Lists of Names of both allotted and unallotted Cowlitz Indians (Upper and Lower) Kalama." The list of unallotted Cowlitz Indians (item 1) contained 197 names; it was followed by (item 2) a list of 103 unallotted Nisqually; then (by number) a list (item 3) indicating that 43 of the "unallotted" Cowlitz had been adopted and allotted (including the reservation upon which this had occurred); then by a list (item 4) of known Cowlitz descendants who had not signed Kalama's claims petition because they were allotted. A note on item 4 added that there were "many more at Yakima that I was not able to get their names as Mr. Iyall refused to furnish me the list of those he is representing that were adopted at Yakima reservation" (Quinault Ex. 6:1916-3).

Yakima reservation group, represented by Frank Iyall (who were by this time advocating a different type of Cowlitz claims settlement based on descendency alone).¹³³

2. *Quinault's Allegations of Misinterpretations in the Proposed Finding.*

a. The McChesney and Roblin Reports. Quinault stated that the proposed finding misrepresented the reports of McChesney and Roblin (Quinault Revised Memorandum 1998, 27-29 (issue 7); Quinault Memorandum 1997, 18-19 (issue 7)). The petitioner replied (CIT Response 1998, 9-10).

i. Quinault's Position. Quinault stated: "The proposed findings suggest the McChesney and Roblin reports support the existence of a functioning tribal community. SUCPF at 17. They do not" (Quinault Revised Memorandum 1998, 27; Quinault Memorandum 1997, 18). "The Roblin and McChesney Reports are consistent with the descriptions of the Cowlitz entity that emerged in the early 20th century as a claims group" (Quinault Revised Memorandum 1998, 29).

Quinault presented extensive direct quotations from the Roblin report (Roblin to COIA 1/31/1919; citing to CIT Pet. A-956, 958-959) (Quinault Revised Memorandum 1998, 27-28; Quinault Memorandum 1997, 18-19), but no references to or quotations from the 1910 McChesney letter (McChesney to COIA 4/20/1910; CIT Pet. A-114).

Quinault stated:

The statement in the summary that Roblin's final report reprinted in the HTR at 117-119, "identified the Cowlitz as a single group, still maintaining a

¹³³This later division of opinion as to whether or not the claims eligibility should be based strictly on descendency was reflected in Mary Longfred's 1917 letter, in which she associated herself with Charlie Peter, Sam Wallison, Mrs. Joe Northover, Mrs. Annie Haylon [*sic*, Hyton], as the "Executive Committee" with Frank Iyall as the group's Washington DC delegate (Longfred to Sells 1/19/1917; Quinault Ex. 6:1917-1).

See for the context of Iyall's activities in the 1920's, the letter of the Yakima superintendent "with reference to what is to come to the persons who have been financing the so-called representatives of the Cowlitz Indians in Washington" (Estep to COIA 2/26/1927; Quinault Ex. 7:1927-9), the Assistant COIA's reply directing the superintendent to investigate those who had been collecting money for the purpose (Meritt to Estep, 3/8/1927; Quinault Ex. 7:1927-11), and the Assistant COIA's subsequent conclusion to the effect that:

Any Indians of Cowlitz blood who have received allotments at Yakima are now Yakima Indians and it is believed that they should not be entitled to participate in any funds which may be recovered for the Cowlitz Indians unless they relinquish all their rights including their rights in land at Yakima and other reservations on which they have accepted benefits (Meritt to Estep 7/8/1927; Quinault Ex. 7:1927-33).

community and described these Indians as the blue blood of Western Washington" is untrue. Roblin describes the Cowlitz he is enumerating as the descendants of the Cowlitz Indians who are scattered throughout Washington and Oregon. His description says nothing about an existing Cowlitz social community in 1919 and the reference to the Cowlitz being considered "blue-bloods" is clearly a reference to the past (Quinault Revised Memorandum 1998, 28).

Neither McChesney nor Roblin's Report, describe the existence of a functioning Cowlitz tribal community. The difficulty that Roblin describes in getting accurate information on the scattered Cowlitz membership, is telling evidence of a lack of community.¹³⁴ The Roblin and McChesney Reports are consistent with the descriptions of the Cowlitz entity that emerged in the early 20th century as a claims group (Quinault Memorandum 1997, 19). [footnote in original] [punctuation sic]

ii. CIT Comment. See Section IV.B.2.iii, above. The CIT Response also indicated that by going beyond Roblin's summary report (Roblin to COIA 1/31/1919), and utilizing the applications for enrollment and allotment of Washington Indians, the data "clearly reflects that he and the Tribe were able to identify both the members and where they resided" (CIT Response 1998, 10).

iii. BIA Analysis. The Summary under the Criteria for the proposed finding contained the following sentence:

In 1919, Special Agent Charles E. Roblin's final report provided a list of 891 unenrolled Cowlitz. In his report summary he identified the Cowlitz as a single group, still maintaining a community, and described these Indians as constituting the "blue blood of Western Washington" (CIT PF 1997, Summ. Crit. 14).

Quinault's analysis was correct in pointing out that the "blue blood" phrase applied specifically to the past, as can be seen from the passage as quoted in the technical report (CIT PF 1997, HTR 118).¹³⁵ It is equally clear that Roblin was, in the next sentence, tying his analysis of the

¹³⁴"McChesney did not independently estimate Cowlitz numbers as is suggested. His report states that in the absence of an accurate census of the Cowlitz, he was given an estimate by the individuals with whom he met" (Quinault Memorandum 1997, 19n10).

¹³⁵ The Cowlitz tribe was a powerful tribe, and in the early days constituted the "blue blood" of western Washington. They were independent, fearless and aggressive; and they refused to subordinate themselves to the white man by

circa 1918 “present” into that past: “Their descendants have the same qualities which placed their ancestors in the position of leaders” (Roblin to COIA 1/31/1919; CIT Pet. Ex. A-958).

Quinault argues that Roblin had difficulty in getting names and addresses which indicates a lack of community. However, most names and addresses were on prior CTO lists and on Roblin's own Quinault adoption applications, not to mention on the affidavits. Because of the following passage in the Roblin letter of 1/31/1919, it is unclear that he was writing about addresses:

It is very difficult to get accurate or dependable information about the membership of this tribe. The prospect of a fat payment has brought forth a horde of claimants, many of whom have been allotted or are enrolled at some of the Washington agencies, but who can probably establish the possession of some Cowlitz blood. I have tried to eliminate all those from the schedule submitted, as well as I could (Roblin to COIA 1/31/1919; CIT Pet. Ex. A-959).

Roblin appears to be referencing the problem of distinguishing the Cowlitz tribe as a social/political unit from distant Cowlitz descendants interested in a claims payment.

b. Comparison to Other Findings under 25 CFR Part 83.

i. Quinault's Position. Quinault stated:

With the formation of the Cowlitz Tribal Organization in 1912 hardly a decade passed without one or more statements by federal officials and other observers describing the Cowlitz group in a manner consistent with a voluntary claims organization, rather than a tribal political and social entity. The descriptions and treatment of the Cowlitz by the government resemble descriptions of the Duwamish and Chinook, rather than the Snoqualmie (Quinault Revised Memorandum 1998, 12; see more discussion of STO formation at Quinault Revised Memorandum 1998, 18).

entering into a treaty with him. Their descendants have the same qualities which placed their ancestors in the position of leaders. They have been progressive and industrious, and there are very few of the present representatives of the tribe who are not in good circumstances. They have homesteaded lands, made good homes, raised families much above the average, are in good standing in the communities in which they live, and are far from “homeless” or “indigent” (Roblin to COIA 1/31/1919; CIT Pet. Ex. A-958).

As quoted, CIT PF 1997, HTR 118-119).

ii. BIA Analysis: Quinault presented the above comment in connection with its issue 2 (prior unambiguous Federal acknowledgment), but did not pursue it at that point, nor did it describe any specific ways in which it appeared to the commenter that the unidentified statements by Federal officials were “consistent with a voluntary claims organization rather than a tribal political and social entity” (Quinault Revised Memorandum 1998, 12). As this comment went to the nature of the entity being described by Federal officials rather than to the specific issue of prior acknowledgment, it is placed under this heading. Because the Quinault argument does not cite specific statements, a detailed response is not possible. However, the evidence on Cowlitz demonstrates that they are a tribe within the meaning of the regulations.

c. Quinault’s Allegation that the Proposed Finding Ignored Negative Evidence.

i. Quinault’s Position. Quinault stated:

The proposed findings assert that few of the external observers referred to the overall Cowlitz community, SUCPF at 13, and that references to the Cowlitz following the turn of the century refer to the Cowlitz Tribe or to individuals as members of a Cowlitz Tribe without describing the entity itself. SUCPF at 14. Nonetheless the proposed findings infer that these reference [sic] must refer to a tribal political and social entity. SUCPF at 14-15

This inference ignores repeated descriptions of the umbrella Cowlitz group as a claims group, i.e., a voluntary association of individuals of various degrees of Cowlitz descent formed for the purpose of seeking monetary compensation for wrongs done to the historic Lower Cowlitz and Upper Cowlitz tribal groups (Quinault Revised Memorandum 1998, 17; see also Quinault Memorandum 1997, 11).

ii. BIA Analysis. The proposed finding’s Summary under the Criteria made no reference to “overall tribal community” (CIT PF 1997, Summ. Crit. 13). Rather, in connection with criterion 83.7(a), the statement read:

External identifications of the Cowlitz Indians as an entity in non-Federal records were complicated by the nature of Cowlitz history. The bands ancestral to the modern petitioner were never, from the earliest historical records, in one village. Instead, they were scattered for a distance of some 80 miles along the length of the Cowlitz river. As a result, most external observers in the second half of the 19th century and first half of the 20th century did not see the complete “Cowlitz entity”. Rather, external observers identified Cowlitz who happened to live in the vicinity of Kelso or Olequa, or Cowlitz Indians who had contact with their own particular organization, or Cowlitz Indians who were known to their immediate neighbors.

Extended external identifications of individuals known generically as Cowlitz Indians, of families known similarly as Cowlitz Indian, and of the component Cowlitz settlements which were part of the Cowlitz Tribal Organization and its successors, were frequent. However, other than the BIA records discussed above, few of these external observers referred to the whole of which the components were a part (CIT PF 1997 Summ. Crit. 13).

The proposed finding was not, in these passages, analyzing the nature of the CTO or discussing descriptions of the CTO, whether as a claims organization or not. Rather, it was addressing the issue of the nature of external descriptions of the Cowlitz Indians, or individual settlements of Cowlitz Indians, as an entity under criterion 83.7(a) as modified by 83.8(d)(1). The Summary Under the Criteria at this point specifically pointed out that 20th century ethnographic studies from 1907 through 1934 “did not focus on the political or social organization of the Cowlitz tribe of that era . . .” and “. . . provided no systematic examination of the Cowlitz as an organized social entity” for purposes of 83.7(b) and (c) (CIT PF 1997, Summ. Crit. 14-15). The Summary under the Criteria discussed elsewhere the development and nature of the CTO under criterion 83.7(c) as modified by 83.8(d)(3) (CIT PF 1997, Summ. Crit. 35-37).

Generally, the Nicklason Research Associates report appeared to lack a clear understanding of the nature of evidence acceptable for criterion 83.7(a). At one point, it stated:

The BAR Summary argument [*sic*] that the “paucity of descriptions of the full entity is considered to be a consequence of the historically dispersed residential pattern of the groups in the Cowlitz River Valley,” is flawed. For example, after their return from the Bosque Redondo in 1868, individual Navajos and their clans were dispersed on a reservation containing 2,000,000 acres. In addition, thousands of others occupied millions of additional acres of public domain lands. Despite this tremendous dispersion, the Navajos were consistently identified by local residents, local officials, Federal officials and published works as belonging to the Navajo Tribe. The same is true of the Sioux, Chippewa and other plains tribes during this period (Nicklason 1997, 53-54).

These comparisons cited by the Nicklason Research Associates report would be, in fact, close parallels to the way the BIA evaluated the evidence for the Cowlitz. The records for the period (local residents, local officials, Federal officials, and published works) did quite consistently identify individuals living in a dispersed residential pattern both as Cowlitz Indians and as members of the Cowlitz Tribe. They did not, however, describe the tribe *per se*, its social organization, or its political structure. Similarly, identifications of widely dispersed individuals as members of the Navajo, Sioux, or Chippewa tribes would not be considered as “descriptions of the full entity” in the context of criterion 83.7(a).

Additionally, the analysis in the Nicklason Research Associates reports is inconsistent. In

another locus, Nicklason Research Associates wrote for the period 1921-1941, "All of the evidence in the record compiled for this report shows a group so geographically scattered that not even a presumption of social community can be made" (Nicklason 1997, 144). Presumably, Quinault is not proposing to argue that the Navajo, Sioux, and Chippewa were not Indian tribes because their members lived in dispersed geographical patterns (Nicklason 1997, 53-54), however, they so argue in regards to the Cowlitz. The evidence, however, demonstrates that the Cowlitz established by the reasonable likelihood of the validity of the facts, criteria 83.7(b) and 83.7(c).

d. Quinault's Assertion that the Proposed Findings Did Not Take CTO/CTI/CIT Meeting Minutes Sufficiently into Account.

i. Quinault's Position. Quinault stated:

In attempting to build a case for substantially continuous existence of leaders exercising political influence, the proposed findings largely ignore the minutes and other reports of the meetings of the Cowlitz group during the period from 1912 through 1950. The minutes of these meetings are remarkable in the absence of political activity unrelated to claims issues. Repeatedly, these reports indicate that the only matters considered were issues such as election of group officers, reports on the status of claims, and claims attorney contracts. The minutes of Cowlitz meetings and other existing reports demonstrate the group's almost total lack of activity political or otherwise unrelated to claims activities (Quinault Revised Memorandum 1998, 44; Quinault Memorandum 1997, 30).

Elsewhere, Quinault claimed that the records of the meetings of the CTO and CTI from 1912 through the mid-1930's and following 1950, "unambiguously demonstrate that the Cowlitz Tribal Organization and the later Cowlitz Tribe of Indians were voluntary claims organizations, nothing more or less" (Quinault Revised Memorandum 1998, 25).

ii. BIA Analysis. The BIA did consider the CTO minutes for this period (CIT PF 1997, HTR 128, 130, 135-136, 141), and stated that, "[m]ost of the surviving records of the Cowlitz tribal organization pertain to the claims initiative" (CIT PF 1997, HTR, 127; see also CIT PF 1997, HTR 141-142). The Anthropological Technical Report focused on modern community as required under 83.8 and did not specifically address the period from 1910-1950.

The minutes of the CTO organization were not the sole source of information or the only form of evidence available concerning Cowlitz political activity and influence from 1912 through 1950. On the basis of analysis by BIA staff, the AS-IA concluded in the Summary under the Criteria that, "the political influence of the named Cowlitz leaders extended well beyond 'claims' issues as usually defined" (CIT PF 1997, Summ. Crit. 37). This issue is a difference in interpretation of the significance of the evidence between the AS-IA and Quinault; not a

result of the Department's having failed to consider the evidence in the record.

On the basis of an evaluation of the full body of evidence, the AS-IA concluded in the proposed finding that the CTO's claims activities represented only one aspect of the political leadership and political processes of the Cowlitz tribe as a whole.

3. *Specific Quinault Assertions Concerning Content of the Historical Record.*

a. Organization and Early Years of the CTO, through 1920.

i. Events in 1910.

Quinault's Position. Quinault stated:

After years of no mention in the primary Historical record as a cohesive Indian tribe,¹³⁶ the 'Cowlitz Tribe' re-emerged after 1904. While they referred to themselves as the 'Cowlitz Tribe,' the documents reviewed for this report, consistently characterized the Cowlitz tribe as a claims group that sought monetary compensation from the Federal Government for lost lands¹³⁷ (Nicklason 1997, 101). [footnotes added]

Quinault argued that in 1910, two years prior to the organization of the CTO, lawyers working on a Cowlitz claim action described the Cowlitz Indians as not in tribal relations:

In 1910, the law firm of Harmon and Hull, which had been working with the Cowlitz descendants on their claim for five years, wrote . . . "[The Cowlitz] have not maintained any strictly tribal relations for a good many years, and the tribes of the upper and lower Cowlitz Indians do not exist as an organized body at this time. They have their assemblies now and then, but there is no attempt to keep up their tribal relations. They have married and intermarried with the whites, but all of the people we represent in this proceeding are direct descendants from these old tribes." NRA 1910-55 (Quinault Revised

¹³⁶This statement refers to the characterizations in BIA reports from 1893-1902 discussed in the Nicklason Research Associates report (Nicklason 1998, 51-56). This data was in the record at the time of the proposed finding. It was summarized and discussed in the evaluation of the evidence (CIT PF 1997, HTR 95-96).

¹³⁷"Beyond claims, there is no adequate description of historical political processes between 1904 and 1920 . . . limited activity of pursuit of land claims. . . no other political issues or leaders with other political agendas. . . enrollment . . . was described in the record as necessary for the purpose of determining individuals who were eligible to participate in claims award. . . hunting and fishing rights only involved individuals or were clearly tied to the group's claim. . ." (Nicklason 1997, 104).

Memorandum 1998, 18; see also Quinault Memorandum 1997, 11-12, 28).

Additionally, the Nicklason Research Associates report stated:

That the contract was made with the "Upper and Lower Cowlitz River Indians," illustrates the continued historic separateness of the two entities in 1910. Indeed, two signers, Sam Williams, and Lewis Gerard, purposefully identified themselves as Upper Cowlitz. The historical evidence only shows lineal Cowlitz descendants coming together for the sole purpose of filing a land claim against the United States. Even their own attorney acknowledged that the group had lost its tribal (political and social) cohesiveness (Nicklason 1998, 75).

BIA Analysis. The long statement quoted by Quinault was from a September 22, 1910, letter from Harmon & Hull to the COIA (Quinault Ex. 5:1910-55). It followed a description of the "old Indians" and the sentence ending "descendants from these old tribes" above did not end in the original, but continued as: "descendants from these old tribes, and some of the old men and women still are living, although they are comparatively few in number" (Harmon and Hull to COIA 9/22/1910; Quinault Ex. 5:1910-55). In a follow-up letter of October 18, 1910, the same firm submitted the proposed contracts and said:

The old chiefs now living have for the most part signed the agreements, in fact all of them who could be seen, and in addition to this we have had the Indians themselves sign from time to time as we have been able to get them. They are widely scattered and they signed up as they happened to go to Chehalis or Tacoma (Harmon & Hull to COIA 10/18/1910; Quinault Ex. 5:1910-63).

The attorneys' statements were, in fact, consistent with the legal status of the Cowlitz Indians in 1910. The proposed finding did not at any time conclude that "the tribes of the upper and lower Cowlitz Indians" existed as an organized body in 1910, in the sense of having a reservation and the status of Federal wards, or "tribal relations," as interpreted under the law at the time. The same document described the Cowlitz Indians as having chiefs and assemblies "now and again," which presumably referred to the years preceding the 1910 letter and is evidence of a political system. The fact that Cowlitz descendants on Indian reservations signed the contract does not preclude a finding that the CTO was a tribe.

The two signers specified in the Nicklason Research Associates report, Sam Williams and Lewis Gerrand [not Gerard], were neither residents of the Cowlitz River Valley nor Upper Cowlitz Indians. Williams lived at Celilo on the Columbia River and was later allotted on Yakima; Gerrand was a metis descendant of Lucy Skloutwout, a Lower Cowlitz Indian woman, and resided on the Warm Springs reservation in Oregon (see Cowlitz GTKY File, BAR).

ii. Participation in Cowlitz Activities, 1912-1920.

Quinault's Position. Quinault stated:

In 1912 when Cowlitz descendants established the formal Cowlitz Tribal Organization, the reports of the meeting indicate that only business discussed related to prosecution of the group's claim. The reports further indicate that an eight man committee was appointed with power to act on behalf of the group because it would "make it unnecessary to assemble again at any time soon, to the great inconvenience and expense of many of them who came from distant parts of the state." NRA 1912-33¹³⁸ (Quinault Revised Memorandum 1998, 18; Quinault Memorandum 1997, 12). [footnote added]

Quinault also stated in relation to the 1912 organizational meeting of the CTO that, "[t]he attendance list indicates that fully two-thirds of those in attendance resided on various Indian reservations and presumably were part of the reservation communities where they lived" (Quinault Revised Memorandum 1998, 18; Quinault Memorandum 1997, 12; references NRA report, no page citation).

BIA Analysis. In connection with the formation of the CTO and its development from 1910 through 1920, Quinault submitted a significant amount of material which supplemented the data available to the BIA at the time of the proposed finding. This material included the names of the signers of the 1910 attorney's contracts (Quinault Ex. 5:1910-63), the names of those Cowlitz who in 1911 petitioned for allotments on the Quinault Reservation (Quinault Ex. 5:1911-20), the names of the persons (not all Cowlitz) present at the June 3, 1912, meeting (Quinault Ex. 5:1912-32A), the signers of the 1912 attorney's contracts (Quinault Ex. 5:1912-2), a list (probably a partial copy) submitted by Peter Kalama in 1915 and transmitted to the COIA by Charles McChesney (Quinault Ex. 5:1915-7), a list submitted by Frank Iyall in 1915 and transmitted to the COIA by Charles McChesney (Quinault Ex. 5:1915-9), and Peter Kalama's 1916 modification of and comment on his 1915 list (Quinault Ex. 6:1916-3).

The eight-person committee elected at the 1912 meeting was, according to the minutes, elected for a specific purpose. They were chosen "as trustees to act for the tribe in all matters pertaining to the presentation of the demands of the Cowlitz Indians before the Department of Indian Affairs, the Secretary of the Interior and the Congress of the United States and to enter into contract with the attorneys for services rendered and to be rendered" (CTO Minutes

¹³⁸The exhibit upon which Quinault based this analysis was a newspaper article from the *Chehalis Bee-Nugget*, June 6, 1912, reproduced from the CIT petition (A-841) (Quinault Ex. 5:1912-33). However, Quinault also submitted two pages of a typescript of the minutes of this meeting, with typed signatures of Frank Thomas as President and Willie Frank as Secretary, which phrased the purpose in a more limited fashion: "Then when said contract is entered into by said trustees that it shall be as the act of the tribe of Cowlitz Indians, this action being taken for convenience and to avoid the necessity of individual signatures by people living remote from each other" (Quinault Ex. 5:1912-32A [5-6]).

6/3/1912; Quinault Ex. 5:1912-32A [6]). Three of the elected "trustees" were spouses of Cowlitz women (Kalama, Eynard, Meyers); one was a Cowlitz allotted on Yakima (Iyall); two were metis (Plamondon and Sareault); two were unallotted full-bloods (Suterlick and Kiona).

Quinault provided only minimal analysis of the material submitted. The BIA entered each list into the historical membership data base of the Cowlitz and analyzed them comparatively, with one another, with the 1915/1917 contributors list compiled by J.F. Spencer (cited in PF as Spencer 1917; resubmitted as Quinault Ex. 10:NSE1917-2), and with the 1919 Roblin Roll (cited in PF as Roblin 1919a; resubmitted as Quinault Ex. 6:1919-1). However, the conclusions that could be drawn were limited in that no list in the series purported to be either a census of the Cowlitz tribe or a membership list of the Cowlitz Tribal Organization. Each one was drawn up under different circumstances and for different reasons.

The list of signers of the 1910 attorney's contracts (Quinault Ex. 5:1910-63) contained 85 total names, including those of both Atwin Stockum and Captain Peter, the chiefs of the Lower Cowlitz and Upper Cowlitz bands appointed by the OIA in 1878. Additional signers were from the family lines of Castama, Cathier/Cottonoire, Cheholtz, Eyle, Farron, Finlay/Bercier, Finlay/Plamondon, Kimphus, Kinswa, LaQuash, Lozier, Phillips, Provoe, Quatanna, Satanas, Saterlick, Scanewa/Plamondon, Skloutwout/Gerrand, Skoutwout/Weiser, Wahawa/LaDue, Waterton/Thomas, White, and Yoke. An additional signer, Mrs. Annie Hayden [Hiten, Hyton, Highton] was a Nisqually with Cowlitz ancestry. Two signers were Chehalis spouses of Cowlitz women (George Jack and Perry Youckton). Three signers could not be identified by ancestral line (Mrs. Mary Heck, Katherine Kuskie, Lee Parsons).

The 58 persons who petitioned in 1911 that the Cowlitz claim be resolved through allotments on the Quinault reservation (Quinault Ex. 5:1911-20) contained the names of at least four spouses (Mrs. Margaret Iyall, George Jack, Johnnie Johnson, Mrs. Susie Williams), and three persons whose lineage could not be determined (Fred McKenzie, Lee Parsons, Joseph Riddle) (BAR, Historian's File). The remainder represented the families of Cathier/Cottonoire, Cheholtz, Finlay/Bercier, Finlay/Plamondon, Kimphus, Lozier, Moxloch, Provoe, Quatanna/Farron, Scanewa/Plamondon, Skloutwout/Gerrand, Wahawa/Iyall, Wahawa/LaDue, Waterton/Thomas, White, and Williams (BAR, Historian's File). The 1912 meeting repudiated Quinault allotments as a satisfactory settlement of Cowlitz claims (see CIT PF 1997, HTR 113).

The list for those attending the 1912 meeting was headed as follows:

MEETING OF THE COWLITZ INDIANS AT CHEHALIS WASHINGTON
JUNE 3rd, 1912.

A meeting of the Cowlitz River Indians having been called to meet at Chehalis Washington on the 3d day of June, 1912, for the purpose of

considering pending legislation in the Congress of the United States for the relief of said Indians and for the purpose of entering into contract for services rendered during the past seven years and to be rendered as required in their behalf by Hudson, Holt & Harmon, of Tacoma, W.H. Doolittle of Tacoma, and A. A. Hull of Chehalis, all residents of the State of Washington [*sic*], and reputable practicing attorneys in said State, and the council having been regularly called to order the following persons were found to be present:

Name	Address	Occupation
(Quinault Ex. 5:1912-32A).		

In other words, the list of 213 persons consisted simply of those who were present -- it was not a list of Cowlitz Indians as such, nor a membership list of the CTO. As can be seen from the addresses of those who attended, it clearly had not become even a meeting of "Cowlitz River" Indians.

The 1912 list was distinguished from the 1910 signers in that it contained the names of 27 people who were definitely associated with the Yakima Reservation (i.e., who were located by the BIA on Yakima census; were Yakima allottees; or were later signers of the *circa* 1921 Yakima Cowlitz petition) and many more people who lived in the Yakima area. This beginning interest or involvement of Yakima in the issue of the Cowlitz claim would lead to a clear split in 1915 (see below), and to the formation of a Yakima Cowlitz claims organization which still exists, and which is not the petitioner for Federal acknowledgment.

The BIA identified 11 more of those adults present at the 1912 meeting (including some with identified Cowlitz ancestry) as enrolled or allotted at Chehalis, Nisqually, or Puyallup. Those with Cowlitz ancestry may be assumed to have attended because of a potential interest in the claim, but this is not the case for those attendees without Cowlitz ancestry. At least five additional men (George Jack, James Julius, Peter Kalama, John Longfred, and William Kaygar) were Chehalis, Nisqually, or Puyallup, but were spouses of women with identified Cowlitz ancestry. Several other Chehalis Indians were present -- for example, the children and stepchildren of Lucy Jack.¹³⁹ Of those attending the 1912 meeting, 77 would be listed in 1919 by Roblin as unenrolled Cowlitz Indians (Roblin 1919a); 19 more were from Roblin Roll Cowlitz families but not themselves listed by Roblin.

In the fall of 1913, the legal firm with whom the Cowlitz had contracted in 1910 no longer

¹³⁹Some light is thrown upon the nature of their attendance by Peter Kalama's separate listing of some people who were known Cowlitz descendants, but not valid 1915 petition signers because they were enrolled or allotted elsewhere. His list in this category included Mary Longfred, Margaret Iyall, Lucy Jack, and his own wife (Kalama to Sells 1/13/1916 [11]; Quinault Ex. 6:1916-3). Kalama's distinction makes it clear that the CTO was not simply a descendency organization.

represented the case (Kalama to Sells 1/13/1916 [1]; Quinault Ex. 6:1916-3). By 1916, there was a clear split:

Then I was intructed [*sic*] by these Indians that I am representing to contest any claim of the upper and lower Cowlitz Indians, that had relinquished [*sic*] their rights from the Cowlitz tribe and were adopted in various reservations and were given allotments, annuities and protection from the government, in various ways.

Therefore your honor. . . , all I want is justice. I am protecting the interest of the government, as well as the interest of unallotted Cowlitz Indians, that never received no allotments, nor any assistance, from the government.

...
These Indians that were adopted, are enrolled and known as a tribe of the reservation where they are located now. Therefore I think I am save [*sic*] to say, that they can not come in, in the claim of the unallotted Cowlitz Indians, that remained on the Cowlitz country (Kalama to Sells 1/13/1916 [1]; Quinault Ex. 6:1916-3).

The submitted copy of Peter Kalama's 1915 petition (Quinault Ex. 5:1915-7) contained only 80 names and was probably, based on comparison to his 1916 comment on this petition (Quinault Ex. 6:1916-3), which contained a total of 189 names, incomplete. The BIA, therefore, has compared the 1915 petition presented by Frank Iyall and George Q. Jack, of the Yakima allottees, containing 185 names (Quinault Ex. 5:1915-9), to Peter Kalama's 1916 commentary on his 1915 petition (Quinault Ex. 6:1916-3).¹⁴⁰ There was almost no overlap between Iyall's 1915 list and Kalama's 1916 list -- only 12 names from three families, all allotted at Yakima.¹⁴¹

The data thus indicates that the Cowlitz tribal entity was not simply a "claims organization" that was open to "all Cowlitz descendants," but rather that there was internal political activity which indicated that the members of the Cowlitz tribe, as such, distinguished themselves from

¹⁴⁰It seems probable that these two lists, or perhaps the Iyall list only, constitute the item referred to by Roblin in 1919 as: "The present representatives of this tribe are active in the work of the Northwestern Federation of American Indians, and they have prepared lists of members, one of which was forwarded to your office, I am informed, by the late Dr. McChesney, Supervisor. I know from my own knowledge of the Yakima allotment schedules that this list contains the names of many Yakima allottees" (Roblin 1919a; CIT Pet. Ex. A-959; see CIT PF 1997, HTR 34-35).

¹⁴¹Alexander Eyle, Helen C. Eyle, Lena Eyle, Maggie M. Eyle, Annie (Northover) Guyette, Eddie Joseph Mesplie, Emma Sadie (Northover) Mesplie, Arthur Northover, David Northover, Frances (Katell) Northover, Joseph Northover, Sam Williams (BAR, Historian's File).

Cowlitz Indians enrolled elsewhere who wished to participate in the claims activity that the Cowlitz chiefs had initiated. There was controversy about the nature of the CTO and how it should reflect the Cowlitz tribe itself.

In 1915, the Cowlitz Tribal Organization held a series of meetings to discuss the claims proposals (see CIT PF 1997, HTR 115-116). On September 15, 1915, a committee to approve Cowlitz genealogy was chosen, consisting of Sam Williams of The Dalles, Oregon; Charles Pete of Castle Rock, Mrs. Mary Longfred of Roy, Mrs. Annie Hiten of Tenino, and Mrs. Frances Northover of Wapato (*Chehalis Bee-Nugget* 9/17/1915; see CIT PF 1997, HTR, 116).¹⁴² Of the persons approved as Cowlitz by this committee,¹⁴³ 189 signed the petition presented by Peter Kalama. However, his 1916 commentary stated that he had found that 43 of these Cowlitz-descended signers were enrolled or allotted, so their names were to be removed (Kalama to Sells 1/13/1916 [10]; Quinault Ex. 6:1916-3). Of the 146 remaining names, at least three more were allotted or married to allottees, while 23 were children of allottees and there is no record of their having been CTO members. Of the 120 signers from non-allotted families, 76 were themselves on the Roblin Roll in 1919 while 23 more were identified as belonging to Roblin Roll families. The remaining names¹⁴⁴ could not be identified from material in the record and have no identified descendants in the petitioner (BAR, Historian's File). To some extent at least, Kalama was distinguishing persons with a potential interest in the claim based purely on descent, from persons who were specifically identified as Cowlitz Indians in the sense of belonging to the Cowlitz tribe. His distinction between the two categories was clear, but in regard to individuals, he had only incomplete data, see next paragraph.

By January 1916, Kalama commented that not only were the 43 names that he had taken off his petition allottees, but also "many more at Yakima that I was not able to get their names as Mr.

¹⁴²Of these, Frances (Kattel) Northover and Sam Williams were allotted at Yakima; Mary Longfred and Anne Hiten (in right of their former or current husbands) at Nisqually; only Charles Pete was unallotted.

¹⁴³Kalama named only Mrs. Mary Longfred, Mrs. Ann Hyton and Mrs. Frances Northover (Kalama to Sells 1/13/1916 [10]; Quinault Ex. 6:1913-3).

¹⁴⁴Alice Cecile, Dawson Cultee, Noble F. Cultee, Bethry George, Cecilia Henry, Marie Henry, Francis James, Lizabeth John, Willie [John? -- no last name listed], Nellie M. Johnson, Willie Kane, Mrs. Flora Leroy, McLissie Moxley, Stanley Petoie, Mary Rice, Musey Simmons, Amos Smith, Laura L. Smith, Maggie Smith, Kate Williams.

Dawson Cultee and Noble F. Cultee appeared on both the Nisqually and Chehalis censuses in the later 19th century: their Nisqually mother was remarried, as Jennie Benn, on Chehalis (see for example NARS M-595 Reel 408, Chehalis Census 1894). "Cecilia Henry" may have been Cowlitz, the wife of Henry Spehaken, using her husband's given name as a surname; "Marie Henry" may also have been Cowlitz, the wife of Henry Cheholtz. Flora Leroy and Mary Rice may have been members of the Ross family at Nisqually; similarly, McLissie Moxley may have been Elizabeth Moxlie on Chehalis or Blissie Moxley on Nisqually (NARS M-595 Reel 408, Nisqually Census 1894), but the available data was not sufficient to be certain (BAR, Historian's files).

Iyall refused to furnish me the list of those he is representing that were adopted at Yakima reservation" (Kalama to Sells 1/13/1916 [11]; Quinault Ex. 6:1916-3). The names on the 1915 Iyall/Jack petition were not approved by the same committee that had been named to certify Cowlitz genealogy at the 1915 meeting in Chehalis. Rather, the committee which approved this list was entirely different and consisted only of Yakima reservation residents:

We the undersigned,
 Lincoln White -- -- -- -- -- 67 -- years of age.
 Mary Case -- -- -- -- -- 80 -- " " "
 Julia Henry -- -- -- -- -- 76 -- " " "
 Margarete Iyall -- -- -- -- -- 60 -- " " "
 John Lumley -- -- -- -- -- 82 -- " " "

Members of the Cowlitz Tribe of Indians residing upon the Yakima Indian Reservation, State of Washington, at a meeting held at White Swan, State of Washington, October 12, 1915, being appointed by the members of the Cowlitz Tribe of Indians residing upon the Yakima Indian Reservation, to act as a committee to pass upon the names of legal members of the Cowlitz Tribe of Indians, which are written below as follows (Quinault Ex. 5:1915-9 [5]).

Of this committee, the BIA could identify only one, Lincoln White, as descending from the Cowlitz Indians who resided in the Cowlitz River Valley during the second half of the 19th century: he was a brother of Frank Wannassay's wife, Annie White. Margaret Iyall was a Nisqually, widow of the Cowlitz Iyall Wahawa. The Cowlitz ties of the other three committee members could not be documented on the basis of material in the record. The majority of persons on this list did not consist of ancestors of the CIT petitioner: the CIT has some members who descend from the Farron, Iyall, and Mesplie families listed. Of the 186 persons on Iyall's list, only three (Annie (Reed) Farron and two of her sons) appeared on the Roblin Roll as unenrolled Cowlitz. This evidence that the great majority of the Yakima Cowlitz allottees on Iyall's list of 1915 are not ancestral to the petitioner, further documents that the CTO was not a descendency/claims group, but was a tribe.

J.F. Spencer's 1915/1917 list of 445 persons who contributed money to support Frank Iyall's work to pass legislation enabling a Cowlitz claim (Quinault Ex. 10:NSE1917-2) may be a version of a list, "Descendants of the Cowlitz Tribe of Indians," utilized for the proposed finding (Spencer 1917; see CIT PF 1997, HTR 35), but time constraints prevented a name-by-name comparison. It was not congruent with any other list -- not even with Iyall's 1915 list nor with the circa 1921 list of Yakima Cowlitz signers (CIT Pet. Enrollment Forms and Ancestry Charts; see CIT PF 1997, HTR 36, 36n18). It contained:

60 names (of 213) of persons who had attended the 1912 meeting
 80 names (of 189) that had appeared on Iyall's 1915 list
 79 names (of 185) that had appeared on Kalama's 1916 list

91 names which would appear as unenrolled Cowlitz on the 1919 Roblin Roll
59 names which would appear on the circa 1921 list of Yakima Cowlitz signers
212 names which appeared on none of the above

Some 1915/17 contributors who had no other identified participation in this period were from persons with Cowlitz ancestry enrolled on other reservations, such as the Mounts family at Quinault. Many contributors, however, had no identifiable historical Cowlitz connection, nor did they appear on any later available lists, even of the "Yakima Cowlitz" as such. The list appeared to be a list of contributions to a project rather than a list of members of an organization, even though Spencer's letter referred to "people paying dues" (Spencer 1917).

b. Evidence from External Descriptions, 1910-1920 (Quinault Revised Memorandum 1998, 41-44; Quinault Memorandum 1997, 28-29).

i. Quinault's Position. Quinault stated:

... the proposed findings state that from 1904 through 1934¹⁴⁵ the evidence demonstrates a smooth shifting of political leadership from government appointed chiefs to elected leadership. While there were individuals identified as Cowlitz leaders during this period¹⁴⁶ there is no probative evidence that indicates that these individuals exercised political influence or authority over significant matters of concern broadly to the Cowlitz other than claims-related issues,¹⁴⁷ or that there was a single amalgamated social community of Cowlitz in which such political influence could be exercised. See NRA and discussion above (Quinault Revised Memorandum 1998, 41; Quinault Memorandum 1997,

¹⁴⁵Quinault's topical sentences were in some cases broader than this specific time period, *e.g.*, "There is no Probative Evidence that Leaders of the Cowlitz Claims Group Exercised Political Influence or Authority over the Group Between 1904 and 1950 on Significant Non-Claims Related Matters" (Quinault Revised Memorandum 1998, 41; Quinault Memorandum 1997, 28).

¹⁴⁶"Actions taken by external authorities concerning the Cowlitz and their leaders could be significant evidence of tribal political processes, if there is evidence that these authorities regarded the Cowlitz leaders as generally exercising political authority or that they regarded the Cowlitz as a political entity BIA contacts with the organization were largely claims connected . . ." (Nicklason 1997, 104).

¹⁴⁷"During the years between 1904 and 1920, there is nothing in the records to show leaders exercising political influence over the wide breadth of the group's membership. In addition, there is no evidence of the existence of bi-lateral political relationships. In addition, there is no evidence of dispute resolution, use of influence to correct behavior, or allocate resources. Also, there is no evidence in the record describing how the leaders communicated with the members, or how the leaders were influenced by public opinion and influential groups or individuals within the organization. Furthermore, there is no important evidence showing how community efforts were mobilized and consensus developed" (Nicklason 1997, 104).

28). [footnotes added from Quinault's submissions]

Quinault argued that in the years between 1912 and 1920, the BIA regarded the CTO as only a claims organization:

In the 1918 Annual Report of the Cushman Trades School local Bureau officials reported: "Members of the Cowlitz and Clallam¹⁴⁸ tribes scattered among the whites on the public domain maintain a business organization which meets periodically at Tacoma to discuss the ways and means for obtaining recognition in the way of lands or money from the U.S. Government. So far as known, this organization, or organizations, have no official recognition and exert little influence except among the land hungry" (Quinault Revised Memorandum 1998,18; Quinault Memorandum 1997, 12; citing CIT Pet. A-623). [footnote added]

ii. BIA Analysis. In this section, Quinault once more, in accordance with its argument that the CIT petition should not have proceeded under the provisions of 83.8, presents an argument based on the absence of showing of historical community in the early 20th century. The remainder of the Quinault statements derive from this basic premise. In the proposed finding, the AS-IA considered the nature of Cowlitz leadership in the period from 1912 onward and concluded that the evidence for political leadership and a bilateral political relationship was sufficient to demonstrate that the petitioner met criterion 83.7(c) during the period from 1912-1939, including this specific period from 1912-1920.

The additional materials submitted by Quinault, particularly the 1915 letter from Peter Kalama to COIA Sells (see above) substantiate further that during this period the elected leaders were, in fact, receiving direction from the tribe's members as to how to proceed, and were acting in accord with those directions. The selection quoted by Quinault from the head of the Cushman School (citing to a document submitted in the CIT petition exhibits) was accurate in stating that the CTO at this time had no official recognition by the Federal government. It contained no data to indicate how the writer had reached the conclusion that its officers had little influence among the tribe's members and thus carries little weight on this point.

c. Descriptions of the CTO in Connection with 1920's and early 1930's Legislative Initiatives.

i. Quinault's Position. Quinault stated that statements made in 1920 at hearings before the House Committee on Indian Affairs demonstrated "how the Cowlitz were perceived by members of Congress and by Frank Iyall," described by Quinault as "one of the Cowlitz Tribal Organization's leaders" (Quinault Revised Memorandum 1998, 19). Quinault also presented a

¹⁴⁸The Clallam tribe has received Federal acknowledgment through 25 CFR Part 83.

discussion of Frank Iyall's 1920 testimony before the House Committee on Indian Affairs in which he asked that the Cowlitz not be included in an omnibus claims bill because they can afford to hire their own attorneys, etc., which included the statements that, "[w]e have a very intelligent people among the Cowlitz tribe," and "most of them [Cowlitz] you can not distinguish from white men and women." (Quinault Revised Memorandum 1998, 19). One congressman, "concluded that because they were business people, farmers, and merchants they wanted their own opportunity to take their claim before the Court of Claims," while another "described the Cowlitz Indians as an educated and advanced people who operated independently of the government" (Quinault Revised Memorandum 1998, 19).

Quinault cited a series of external descriptions of the Cowlitz in the 1920's in connection with the claims initiative,¹⁴⁹ noting that in 1921, "Secretary of the Interior Fall informed Congress that the Department's records indicated that as early as 1895 the Cowlitz had become scattered, that they hardly formed a distinct class, and that they 'are without any tribal organization. . . and have been mostly absorbed into the body politic.' NRA 1921-9" (Quinault Revised Memorandum 1998, 20; Quinault Memorandum 1997, 12-13),¹⁵⁰ while in 1922, "Representative Johnson of Washington was asked if the Cowlitz had a tribal organization. He responded; 'They maintain an organization of some kind, but I doubt if you would call it a tribal organization. It is a society.' 1922-8" (Quinault Revised Memorandum 1998, 20; Quinault Memorandum 1997, 13). Quinault referred to further statements made by Secretary of the Interior Work from 1924 through 1927¹⁵¹ to the effect that "the Cowlitz lacked any tribal organization and that they had been so thoroughly assimilated that they hardly formed a distinct class" (Quinault Revised Memorandum 1998, 20; Quinault Memorandum 1997, 13; citing NRA 1924-1, 1924-12, 1924-35, 1927-5, CIT PF 1997 HTR, 126). Quinault concluded this series of descriptions with one made by COIA John Collier in 1933 (Quinault Revised Memorandum 1998, 20-21; Quinault Memorandum 1997, 13; citing CIT PF 1997, HTR, 131; NRA 1933-13). Further, the report submitted by Quinault stated in numerous places that the fact that the Cowlitz were not organized under IRA by the Federal Government indicated that the CTO "existed for the purpose of pursuing a land claim" (Nicklason 1998, 165).

¹⁴⁹"[T]he overwhelming number of documents in the record show that external contacts with the organization, or direct actions taken concerning it, were overwhelmingly claims connected and that the group existed for the pursuit of claims rather than self government. . . correspondence about the Cowlitz claim came from Cowlitz leaders, Cowlitz individuals, local residents, newspapers, other Indian tribes, attorneys, agency superintendents, the Commissioner of Indian Affairs, the Secretary of the Interior as well as members of the United States Congress" (Nicklason 1997, 147).

¹⁵⁰The Secretary in 1921 was relying on a direct excerpt from the 1895 COIA Report, considered above in its chronological context. There is no indication that Fall was in possession of additional or independent corroborative evidence.

¹⁵¹Again apparently based solely on the 1895 COIA Report.

ii. CIT Comment. CIT stated:

The Quinault brief quotes tribal claims attorneys as denying the existence of a tribal entity as they prosecuted their case both administratively and judicially. However, the fact of tribal existence was irrelevant to their actions since the "taking" of land was from the historic tribe and no modern tribal entity was essential to their ability to pursue their case. Moreover, many attorneys were ignorant of, or even unconcerned with, the current tribal existence and had little reason to defend the continued existence of a political entity.

The comments of lawyers and politicians do not prove or disprove the fact of tribal existence for any tribe (CIT Response 1998, 7). [emphasis in original]

iii. BIA Analysis. Neither intelligence and education nor working as businessmen, farmers, or merchants, either in the past or in the present, are evidence of such complete assimilation so as to preclude Federal acknowledgment under 25 CFR Part 83. The descriptions cited by Quinault may also have contained a certain element of hyperbole, given that Quinault also quoted a letter written in 1934 by the president of the CTO "noting that the 'Cowlitz Tribe' had once been powerful but had lost their lands and a ' . . . great many are old helpless and are diing [sic] off in isolation and misery.' NRA 1934-20" (Quinault Revised Memorandum 1998, 21).

The descriptions in the historical record, however, may not be dismissed as cavalierly as CIT advocates. Rather, they must be evaluated carefully in the historical context. The precise statements made must be evaluated in context. For example, COIA John Collier's statement, as quoted by Quinault, that, "[t]here are, of course, a number of Indians of Cowlitz descent in that part of the country, but they live scattered about from place to place and have no reservation under government control," (Quinault Memorandum 1997, 13; citing NRA 1933-13) was a literally accurate description of the situation. The statement occurred in a letter written by Collier to Lewis Layton¹⁵² of Tacoma, Washington,

who had wanted for some time to enroll his family with the "Cowlitz tribe of Indians,"[sic] Commissioner Collier stated that: "No enrollments are now being made with the remnants of the Cowlitz tribe which in fact, is no longer in existence as a communal entity." He added: There are, of course a number of Indians of Cowlitz descent in that part of the country, but they live scattered about from place to place and have no reservation under government control."

¹⁵²Layton was from Oregon. Later, in the 1940's and 1950's, he served as head of the Steilacoom organization headquartered in Pierce County, Washington.

[1933-13] (Nicklason 1998, 55).¹⁵³

The statement, as such, was in the context of government jurisdiction over property and does not permit such sweeping further inferences as made in the Nicklason Research Associates report: "It is clear that Commissioner Collier understood that the 'Cowlitz Tribe' was not a communal entity but a scattered remnant composed of Cowlitz descendants" (Nicklason 1998, 155), particularly without the full content of the incoming letter to which Collier was replying.

It is not surprising that, "there is no evidence that the central offices of the Office of Indian Affairs or the Department of the Interior ever discussed organizing Cowlitz under the Indian Reorganization Act" or that the Federal Government never "considered the 'Cowlitz Tribe' to be eligible for the benefits of the Indian Reorganization Act" (Nicklason 1998, 163; see also Nicklason 1998, 254-255). Reorganization under § 16 of the IRA applied only to Indian tribes with a land base. An absence of IRA reorganization efforts does not constitute negative evidence of the existence of a tribal entity outside of the reservation context and does not preclude a positive finding under 25 CFR Part 83.¹⁵⁴

In addition, there are references to the Cowlitz tribe as having a tribal organization in 1928, see discussion above concerning Halbert. And, as made clear in Roblin's testimony before the district court in Halbert, and in the district court and Supreme Court decisions, allotments on the Quinault reservation were made to "tribal members," not just persons of Indian ancestry. The testimony in Halbert is significant in that it specifically addresses "membership in a tribe" for purposes of allotment.

d. Nature of the CTO in the 1920's and 1930's Based on Other External Records.

i. Quinault's Position: The Nicklason Research Associates report argued that:

First, between 1920 and 1929, none of the BAR record non-claims documents show the existence of a political "Cowlitz tribe" because they were all written to individuals. In addition, these documents do not show John Ike as a "Cowlitz" tribal political leader. Since he was the leader of the Cowlitz claims group and a long time resident of the area, John Ike would have been familiar with where people lived. Therefore, it made sense that Superintendent Sams would ask Ike

¹⁵³For full text of the letter, resubmitting a document that was in the record at the time of the proposed finding see Quinault Ex. 7:1933-13. It acknowledged receipt of Laytons letter of October 5, 1933 "making application for enrolment with the Cowlitz tribe of Indians; and stating that several of your relatives would like to be enrolled therewith" (Collier to Layton 10/25/1933).

¹⁵⁴For example, there was no evidence in the record that the Federal Government ever considered the Mohegan Tribe of Connecticut for organization under the IRA.

to help locate school age children and heirs in probate matters . . . Only two of these letters involved another matter -- problems with the Gam[e] wardens over fishing in the Cowlitz River (Nicklason 1998, 175).

The Nicklason Research Associates report interpreted the limited presence of documentation in the BIA files for this period as indicating that CIT members were not relying on their leaders:

The fact that individual Cowlitz members wrote the Western Washington Agency, the Portland Area Office, the Bureau of Indian Affairs in Washington, D.C., Congressional Representatives, the President of the United States, and others concerning the status of their claims case, and not the group's leaders, shows a lack of centralized authority and leadership, as well as a lack of bilateral political relationships" (Nicklason 1997, 200-201).

ii. BIA Analysis. Correspondence from the BIA with individual members of a tribe or concerning individual members of a tribe is not evidence that the tribe does not exist. See the next section for further discussion of other activities.

e. Nature of the CTO in the 1920's and 1930's Based on Internal Records.

i. Quinault's Position. The historical report submitted by Quinault also stated that in addition to the external descriptions discussed above, internal CTO records indicated that it was solely concerned with claims,¹⁵⁵ and argued that the minutes of CTO meetings were not good evidence for the existence of a Cowlitz tribal entity in the 1920's and 1930's,¹⁵⁶ because: "A limited voluntary organization such as a claims group does not exercise political influence and

¹⁵⁵"Except for claims, the record contains no adequate description of other political processes between 1921-1949. . . while leaders are named, they are only involved in the limited activity of the pursuit of land claims. The Cowlitz group had no other significant political issues. . . no evidence of leaders with other agendas" (Nicklason 1997, 145).

¹⁵⁶In regard to 1921-1949, the Nicklason Research Associates report wrote somewhat inconsistently: "Meeting minutes, to the extent that they exist (the record, refers [*sic*] to only eight meetings), often do not report attendance numbers. In addition, attendance lists do not exist for any of those meetings . . . The same is true for meetings that are mentioned in documents as having been held, but for which no other record exists" (Nicklason 1997, 144).

"The evidence in the record describing group meetings during this period (there is evidence of only eight meetings), mostly describes administrative housekeeping (i.e. [*sic*] roll calls, election of officers, setting meeting dates), or the group's claims. While some meeting minutes report attendance figures, the minutes are not accompanied by attendance lists. In addition, where no meeting minutes, or other external or internal descriptions of a meeting exist in the record, there is no way to determine what issues were discussed" (Nicklason 1997, 148).

For more extensive discussion of the use of CTO minutes, see section IV.E.2.c. above.

authority over its membership” (Nicklason 1997, 149).¹⁵⁷ The report stated that: “For the years between 1921 and 1949, there is no evidence of leaders with other agendas” (Nicklason 1997, 145), and “Between 1935 and 1949, there are no internal documents in the record that were generated by the group. . . only four references to, or letters generated by Cowlitz individuals. These letters dealt with matters relating to the claims and wardship status” (Nicklason 1997, 149).

The Nicklason report also stated, in connection with internal political processes from 1921 through 1949: “Most significant, in terms of social community, is the fact that Cowlitz membership, during this period, is not even defined. For example, no official roll exists in the record” (Nicklason 1997, 145; see also Nicklason 1998, 164), and asserted that: “Discussion concerning enrollment, to the extent that it was an issue between 1921 and 1949, is discussed in the record only as a means to determine individuals eligible to participate in a Cowlitz claim award” (Nicklason 1997, 145).

Quinault stated:

An isolated or occasional action like the adoption of a resolution protesting state regulation of individual Cowlitz fishing activities is not sufficient to establish the substantially continuous existence of political leaders for the period 1904 to

¹⁵⁷ Again for this period, much of the Nicklason Research Associates report’s argument was based on the lack of discussion of a historical social community in the proposed finding, which is not required for petitioners proceeding under 83.8, e.g., “There is no evidence that most of the peripheral individuals maintained social ties and interacted with a social core, an essential requirement to show social community” (Nicklason 1997, 145), or: “Furthermore, there is no significant evidence that any socialization occurred outside the context of claims discussions. For example, there is no evidence that social gatherings involving significant numbers of the membership and significant numbers of kinship lines took place before or after any claims meetings” (Nicklason 1997, 144-145).

However, the Nicklason Research Associates report’s statements were also broader and encompassed a discussion of evidence for criterion 83.7(c):

Also important, there is no evidence describing how the leaders communicated with the members, or how the leaders were influenced by public opinion and influential groups or individuals within the Cowlitz group. There is no important evidence showing how community efforts were mobilized and or [sic] consensuses developed because no community existed (Nicklason 1997, 146).

Evidence existing in the record for the years between 1921-1949, shows a lack of communication between the group and its leaders. For example, Cowlitz inquiries about the progress of the claim were not addressed to the group leadership but to the Taholah Superintendent the Commissioner of Indian Affairs, the Secretary of the Interior and others in the government. There is no evidence of the existence of bi-lateral political relationships during this period (Nicklason 1997, 147-148).

1950 (Quinault Revised Memorandum 1998, 43; Quinault Memorandum 1997, 29).

According to the Quinault comments, subsistence fishing was not a life-style issue for the group; only a monetary compensation issue:

As to hunting and fishing rights, the record contains only isolated discussions concerning hunting and fishing rights. In addition, the issue almost exclusively involved individuals or was clearly tied to the group's claim. For example, evidence in the record between 1921-1949 shows that the group's leadership sought, within its land claim, monetary compensation for the value of lost hunting and fishing rights. While a 1934 petition signed by sixty-three members of the "Upper and Lower Cowlitz Tribes," asked for a law protecting fishing rights in the aboriginal area, the fishing activities described were individual in nature and nothing resulting from the submission of the petition. Also, during the years between 1921-1949, the record shows few people living in the Cowlitz river valley and fishing in the Cowlitz River. In addition, the evidence clearly shows that group was widely scattered and that most lived away from the Cowlitz River. The Agency superintendent, the Commissioner of Indian Affairs and congressional representatives understood, or were informed of this fact (Nicklason 1997, 146; see also discussion of Thelma Adamson (Quinault Revised Memorandum 1998, 21)).

ii. BIA Analysis. Quinault seems to imply that undertaking claims activities of any sort is negative evidence that a petitioner was a tribe. Other petitioners recognized under 25 CFR Part 83 have prosecuted claims, for example, the Mohegan. Many federally acknowledged tribes also maintain claims organizations. Although many claims organizations are not tribes, in the case of the Cowlitz during this period, the AS-IA found that claims activities were just one part of a larger list of activities undertaken by the Cowlitz, some of which were non-claims related.

There can be no question that the Nicklason Research Associates overstated the issue in stating that "for the years between 1921 and 1949, there is no evidence of leaders with other agendas" than claims (Nicklason 1997, 145). The exhibits in the Quinault submission, while external documents rather than CTO-generated documents, contributed to the record a substantial amount of new information concerning leaders and leadership activity in the context of fishing rights during the later 1920's which confirmed recollections that Judith Irwin collected (Eyle 1975) to the effect that the Upper Cowlitz were holding meetings in the 1920's in addition to the annual CTO gatherings:

"Cowlitz River Indians Elect New Officers." Lewis Castona of Cinabar was elected president of the Cowlitz Indian tribe at their annual meeting held at the home of Chief John Ike at Harmony. Eam Eyley [*sic*] of Nesika was chosen

vice president; Peter Thomas of route 2, Chehalis, secretary-treasurer. Another meeting will be held July 15. This organization is composed of Cowlitz Indians living in the Cowlitz river valley (*Cowlitz County Advocate*, 30 June 1927 (Castle Rock, WA), Vol. XLL, NO. 4; Quinault Ex. 7:1927-30).

"Indians Will Protest — State Imposes Fishing Laws that Chafe Cowlitz Tribe." Chehalis, Wash.-A meeting has been called to be held in Chehalis October 31 of members of the Upper Cowlitz Indian tribe of which John Ike is chief. Purpose of the gathering is to formulate an organized protest against the hunting and fishing regulations that have been imposed on the Indians as being contrary to agreements made originally with them by Governor Stevens in the early days.

The Indians are chafing under the license and license fee restriction. They feel that by previous right of possession the regulations are not fair to them. Lewis Castoma of Cinnebar is president of the council, Sam Eyley of Nesika vice-president, Peter Thomas of route 2, Chehalis, secretary (*Cowlitz County Advocate* (Castle Rock, WA), Vol. XLI, October 20, 1927; Quinault Ex. 7:1927-44).

These reports show that the Upper Cowlitz meetings were being held in coordination with John Ike, the president of the CTO. They also demonstrate that the 1934 fishing rights petition by the CTO (CIT Pet. 1987, Ex. A-551; resubmitted as Quinault Ex. 7:1934-15) discussed in the proposed finding (CIT PF 1997, HTR 139-140) was (1) not something new; (2) not just an individual initiative by Frank Wannassay of Kelso, who was a Lower Cowlitz Indian living at the mouth of the Cowlitz River; and (3) may indicate that other groups within the CTO organization were responding to concerns of the Upper Cowlitz subsistence fishers.

Some activities concerning fishing rights during this time were not properly characterized by the Quinault. The fact that the 1934 petition was signed by both Upper and Lower Cowlitz and protested fishing regulations by the State of Washington demonstrates that those who signed felt a personal interest in this subsistence issue and had joined with other tribal members to voice their opposition to the state regulations. The fact that the petition was not responded to¹⁵⁸ is completely unrelated to the fact that Upper and Lower Cowlitz made a joint effort to voice their opinion on an issue of immediate importance to them. Unlike during later periods, when the Cowlitz requested monetary compensation, the earlier subsistence rights activities appear, on the basis of Quinault's own exhibits from 1927 and 1928 which provide a context for the 1934 petition, to have been of immediate importance to those involved. They were not

¹⁵⁸"While a 1934 petition signed by sixty-three members of the 'Upper and Lower Cowlitz Tribes,' asked for a law protecting fishing rights in the aboriginal area, the fishing activities described were individual in nature and nothing resulted from the submission of the petition" (Nicklason 1997, 146).

requesting monetary compensation for rights which had been lost generations before and had little importance to peoples' everyday life. They were requesting a change in fishing regulations that affected their use of the resources at that time. This was confirmed by another Quinault exhibit, a letter from the superintendent of the Tenino, Washington, public schools, District No. 203, to the Honorable Albert Johnson, Congressman:

Sorry to bother you with this petty matter, but I know no one else to whom to appeal.

Briefly, one of our old friends of the Cowlitz tribe has been in difficulties over netting salmon in the Cowlitz river... Old Sam Eyley.

They had him in jail in Chehalis awhile but have now turned him loose.

Old Sam is one of five or six of those old Indians who have never learned any better than that it is necessary to have salmon in order to live, and I doubt whether they will live long enough to learn better from the whites.... and I doubt whether they should ever learn better!

Old Sam has been netting salmon in the Cowlitz for nearly ninety years (He says). Anyway, it[']s a long time.

I just want to make an appeal for a few of these old fast dying old timers. The injustice of the white man's law in this case. Even if they have no treaty rights on that particular. (I wonder if they have).

...

The best we can do to preserve the rights of the Indians, will avail little against some of the destructive methods of our handling the Indian question.

However, I wonder whether anything could be done to protect these half dozen old Indians in their tribal rights of fishing on the Cowlitz- not for selling but for their own use (Martin to Johnson 4/4/1928; Quinault Ex. 7:1928-16; citing RG75, Taholah 1351-28-115).

Johnson forwarded this letter to the COIA (Johnson to Burke 4/9/1928; Quinault Ex. 7:1928-16), receiving a response to the effect that the Cowlitz River did not flow through or border upon any reservation, but that:

There are only a few Indians living in the Cowlitz country and in so far as their rights to fish in the Cowlitz River are concerned, they are in the same position as the white people, with the exception that they are permitted to take fish for their own use at any time they so desire. The Superintendent of their agency was instrumental in securing this right for them and other Indians living off the reservation after making several appeals to the State board of Game and Fish Commissioners, and there is an understanding between the Board and the Superintendent that the outside Indians will be permitted to take fish for their

own use, but are required to abide by the laws of the State in regard to the open and closed seasons in so far as selling fish is concerned (Burke to Johnson 4/17/1928; Quinault Ex. 7:1928-17)

The lack of an "official roll" is also a false issue. No petitioner acknowledged through the 25 CFR Part 83 regulations has had an "official roll" in the sense of a BIA-approved roll, and most did not maintain well-structured membership lists. During the 1920's, the BIA was considering the issue of Cowlitz membership only in the context of the possible need to prepare a claims roll if legislation authorizing the Cowlitz claim succeeded: "Should the claims of these Indians be referred to the Court of Claims, or any other method of settlement be decided upon later, it will probably be necessary to make a roll of this tribe to determine the persons entitled to participate in any moneys found to be due them from the United States" (Burke to Johnson 5/1/1929; Quinault Ex. 7:1929-6).¹⁵⁹

Additionally, many acknowledged tribes had have irregular procedures for maintaining rolls until recently. In the late 1940's, Yakima, for example, purged their rolls, excluding descendants of a number of Cowlitz (among other tribal origin) families who had been allotted there. This removal of some Cowlitz from the Yakima roll is unimportant except in so far as it indicates that Yakima's rolls were in a state of flux as late as the early 1950's. The existence of fluctuations and irregularities on rolls has characterized many other tribes as well. Even today, some tribes are unclear about what their "official" roll is and a few have been and are even involved in litigation to clear up discrepancies and disagreements.

Throughout this portion of its comments, Quinault insists that the proposed finding should have made a showing of historical community even though under the 83.8 regulations, none was required. Then, because the technical reports and Summary under the Criteria did not deal with historical community, Quinault concludes that there was none, which, it argues, would make political influence or authority impossible. This is a process of circular reasoning.

f. The CTO from the Later 1930's through 1950.

i. Quinault's Position. Quinault stated: "From the Later 1930s until 1950, There Is No

¹⁵⁹In so far as this correspondence addressed the nature of such a roll, it focused upon dual enrollment. The COIA stated:

Should the Cowlitz Indians obtain a jurisdictional act and have their claims adjudicated by the Court of Claims none of those who are of the blood of that tribe will be permitted to assume tribal membership now with the Cowlitz Indians if they have become affiliated with some other tribe and receive tribal benefits therewith. Nor will any one be permitted to go into the Cowlitz Tribe unless the tribe approves an application to have the Secretary grant authority for them to participate (Burke to McCoy 5/3/1929; Quinault Ex. 7:1929-8).

Evidence of Activity by the Cowlitz Group" (Quinault Revised Memorandum 1998, 21). The Revised Memorandum argued that "as the proposed findings concede¹⁶⁰ there is no evidence of political activity between 1939 and 1950" (Quinault Revised Memorandum 1998, 43; Quinault Memorandum 1997, 29). [footnote added]

The comments also criticized the BIA's discussion concerning the loss of certain important Cowlitz papers which had long been held by the descendants of Cowlitz attorney and member James E. Sareault, stating: "The unavailability of papers that may be in the possession of the Sareault family does not explain the absence of documentary evidence during this period in government files or other external sources" (Quinault Memorandum 1997, 29n16).

The report submitted by Quinault referenced a newspaper notice by James Sareault dated May 31, 1940, calling a Cowlitz annual meeting (Nicklason 1998, 165). It also mentioned a 1942 letter written by Sareault (Nicklason 198, 166).

ii. BIA Analysis. Because the Cowlitz are being evaluated under the provisions of § 83.8, the BIA did not fully evaluate their historical community and is not required to do so. Any discussion concerning community before the present made in the technical reports for the proposed finding was included to provide context and perspective. The proposed finding's statements concerning the CTI political organization indicated that the evidence reflected an apparent low ebb in activity during the 1940's. However, there were indications that some of the leaders were meeting during this period. For example, on December 2, 1946, Clifford Wilson wrote a letter requesting information on the settlement bill, and he received a response from the Taholah Superintendent dated January 31, 1947. Marjorie Okfen Croft recently wrote a letter detailing specific events in 1947 (CIT Response 1998). Mrs. Croft remembers 1947 well because it was the same year she married her husband Frank Smith. She says that M. L. Forrest, Maude Snyder, and Robert Peterson were involved in meetings in 1947, held at Chehalis and at Maude Snyder's home.¹⁶¹ This new information corroborates other copies of correspondence between Cowlitz individuals and the president of the organization in the mid-1940's which was referenced in the Proposed Finding. (CIT PF 1997, Summ Crit. 38) By May 13, 1950, 200 people met and elected Forrest president of the "Cowlitz Tribe."¹⁶² As mentioned in the HTR, a newspaper article indicated that this meeting was the first one held

¹⁶⁰The word "concede" implies that the proposed finding was admitting error in response to criticism, and possibly implies that the proposed finding was admitting to some form of wrong-doing. The proposed finding did not "concede" any point, but made a straightforward statement concerning the evidence that had been found in the record.

¹⁶¹ Letter from Marjorie Okfen Croft, dated Jan 1, 1998 to BIA. Submitted with Cowlitz Response.

¹⁶² Minutes of the CTI meeting of 5/13/1950, Maude Snyder, Secretary Treasurer, May 13, 1950.

since 1941.¹⁶³

The lack of annual meetings doesn't necessarily mean that the group did not continue to socialize in other ways, as indicated in the evidence that did survive and is now in the Cowlitz record. The Proposed Finding Summary also makes the important point that the individuals involved in the Cowlitz organization before 1941 and those involved afterward were the same individuals:

The leaders who initiated the 1950 Cowlitz reorganization effort were the same as those who had held office at the time the prior organization ceased to hold regular meetings, and to whom individual Cowlitz directed correspondence as tribal officers during the interval when no meetings were held. Newspaper coverage of the 1950 meeting stated that the newly elected president and vice-president had "traded the positions they had held since 1941." The minutes of the post-1950 CTI also referred to the participation of many non-officers who had been named in the organizational minutes from the 1930's. This information is evidence of continued leadership, whose activities during the 1950's were discussed in the paragraphs above. (CIT PF 1997, Summ Crit, 38)

In addition, the large number of individuals attending the first meeting reasonably supports a finding that a level of interest and some contact among members was maintained by many, even when meetings were not held. Quinalt presented no data concerning whether the group had dispersed more than had been its traditional residential pattern or where they lived. It is not clear where people were living at this time. It would not be surprising to find that they had migrated during WWII to work in war industries. However, since they are proceeding under 83.8, the provision for previously recognized tribes, historical community need not be demonstrated, and petitioner met 83.7(c) as modified by 83.8.

The BIA researchers have written more than 30 acknowledgment findings. The history of unrecognized groups indicates that generally the 1940's are the least documented decade for petitioners. The historical context indicates that during WWII few petitioners were able to bring together the resources needed to pursue their tribal interests. Gas rationing made travel difficult and many of the petitioners' members migrated to growing urban areas such as New Orleans, San Francisco, Brooklyn and Seattle in order to participate in war industries located in those cities. Not only is documentation rare during this decade, but also activity was at a low ebb among many petitioners. The regulations permit these historical situations to be taken into account, 25 CFR § 83.6(e). Some unrecognized groups never recovered; while others, like the

¹⁶³ Newspaper Article, (clipped without paper identified), May 15, 1950.

Cowlitz, were able to revive what social and political organization continued to exist.¹⁶⁴

F. Nature of the Cowlitz Tribe of Indians (CTI) 1950-1973 as Predecessor Organization of the Cowlitz Indian Tribe (CIT).

1. The Nature of the CTI.

a. Quinault's Position. Quinault stated: "The Existence of Leaders Exercising Political Influence Between 1950 and 1974 Must Be Considered in the Context of the Nature of the Cowlitz Organization" (Quinault Revised Memorandum 1998, 45; Quinault Memorandum 1997, 31).

By the "context of the nature of the group," Quinault was referring to its position that the CIT, like the CTO, was only a claims organization. The Nicklason Research Associates historical report submitted by Quinault asserted that, based on the 1950 constitution, the CTO was a claims organization,¹⁶⁵ was perceived as a claims organization,¹⁶⁶ and was the continuation of

¹⁶⁴The Mohegan of Connecticut and the Snoqualmie of western Washington are good example of petitioners with a low ebb in documentation and activities occurring during the 1940's. Both tribes have since been recognized through the 25 CFR Part 83 regulations.

¹⁶⁵"[T]he overwhelming number of documents in the record show that external contacts with the organization, or actions taken involving the group, were overwhelmingly claims connected. The record shows that external authorities understood that the Cowlitz group existed for the pursuit of claims and not self government" (Nicklason 1997, 198).

"As there is no evidence of social community, there can be no existence of political influence and authority" (Nicklason 1997, 199).

"This lack of political leadership is clearly shown in the renegotiation History of the Cowlitz attorney contract during the decade of the 1960's. For example, for a period of five years, no one in the group took direct action on the only issue of real Historical importance to the group" (Nicklason 1997, 201).

"A limited, voluntary organization such as a claims group does not exercise political influence and authority over its membership" (Nicklason 1997, 201).

"Evidence existing in the record for the years between 1950-1973, shows a lack of communication between the group and its leaders. For example, Cowlitz inquiries about the progress of the claim were not addressed to the group leadership but to the Taholah Superintendent the Commissioner of Indian Affairs, the Secretary of the Interior and others in the Federal Government. Also, there is no evidence of the existence of bi-lateral political relationships during this period" (Nicklason 1997, 200).

¹⁶⁶"During these later years, the Federal government including the Agency superintendent, the Commissioner of Indian affairs, the Solicitor's Office of the Department of Interior, the Office of the Secretary of the Interior, the United States Congress, Newspapers, the Cowlitz claims attorney, as well as the Cowlitz group itself, did not define the Cowlitz Tribe as a social/political tribal entity. For example, the group was referred to in a variety of ways including a society, a voluntary organization, an unorganized descendance group and a [sic] organization that pursued claims. Others concluded that it was not a community successor tribe" (Nicklason 1997,

an earlier Cowlitz claims organization.¹⁶⁷ The report submitted by Quinault stated that, "[t]he new claims organization history began on April 20, 1950, when the Portland Area Office received a letter from a Mrs. E. R. Goulter stating that her husband and son were Cowlitz descendants" (Nicklason 1998, 183).¹⁶⁸ Quinault stated:

The proposed findings note that the annual meetings remained the "primary political center" of the group during this period. Again, the extant minutes and reports of those meetings provide the best evidence of the nature of the group's political activities which are largely, if not exclusively limited to claims related issues. Again, there is simply no evidence that the group's leaders exercised political influence broadly across the group on nonclaims matters (Quinault Memorandum 1997, 32; no citation to CIT PF 1997).

b. BIA Analysis. The formal organization established in 1950 was to pursue an ICC claim (CIT PF 1997, HTR 142), and did pursue an ICC claim. Many recognized tribes, including Quinault, pursued claims during the 1950's (see CIT PF 1997, HTR 144). This did not per se make the Cowlitz tribe just a claims organization. Again, Quinault disagrees with the weight given by the Assistant Secretary to other tribal issues indicating political activity between 1953-1974, including fishing rights, cemeteries, litigation and enrollments. See discussion below, "*5. Evidence Concerning Non-Claims Activities, 1950-1974.*"

2. *The Existence of Community in the CTI, 1950-1974.*

a. Quinault's Position. Quinault asserted, based on the Nicklason Research Associates historical reports that it submitted (Nicklason 1997, Nicklason 1998),¹⁶⁹ that there was no

197).

¹⁶⁷"Some of the individuals involved in the reorganization of the Cowlitz group in 1950 were active in the earlier Cowlitz organization before it ceased meeting. SUCPF at 38. The proposed findings treat both the reorganized group and its leadership as a continuation of the earlier group. Thus it is fair to infer that the description of the nature of the group reflects not only the nature of the group while the constitution and bylaws remained in effect between 1950 and 1974, but also reflects the prior character of the group" (Quinault Memorandum 1997, 31).

¹⁶⁸ This was presumably the wife of Edwin Goulter (Roblin Roll, p. 13), whose mother was Maggie Cloquette, b.c. 1874 (Roblin Roll p. 13), 3/8 Cowlitz, 1919 res. Oysterville, Washington (Roblin 1919, 13), though the Nicklason Research Associates report elsewhere gave the surname as Coulter (Nicklason 1998, 183-184).

¹⁶⁹"The evidence in the record between 1950 and 1973, describing group meetings, mostly describes administrative housekeeping (i.e., roll calls, election of officers, setting meeting dates), or claims. In addition, were no meeting minutes, or other external or internal descriptions of meetings exist in the record, there is no way to determine what issues were discussed" (Nicklason 1997, 200).

"Except for claims, the record contains no descriptions of other Cowlitz political processes between 1950-

social community¹⁷⁰ within which the leaders of this period could assert political authority or influence,¹⁷¹ and argued:

The fact that this group [the CTI] may have had a series of individuals identified as leaders is of no more significance than [*sic*] the fact that other voluntary tribal claims organizations, the Sierra Club, or any other voluntary organization has had a series of individuals identified as leaders (Quinault Revised Memorandum 1998, 39; see also Quinault Memorandum 1997, 26).

Quinault also referred to the lack of an "official roll" for the period 1950-1973¹⁷² and emphasized that documents for this period provided little information concerning attendance¹⁷³ and provided no indication that socialization occurred "outside the context of claims discussions" (Quinault Revised Memorandum 1998, 24).¹⁷⁴

1972. For example, while leaders are named, they are only involved in the limited activity of pursuit of claims. The group had no other significant political issues or leaders with other agendas. Therefore leadership continuity during this period was only tied to claims" (Nicklason 1997, 198).

¹⁷⁰ Again, the overwhelming weight of the evidence for this period demonstrates a lack of social community for the group as a whole in which leaders might exercise political influence beyond the group's primary stated purpose, the pursuit of claims (Quinault Revised Memorandum 1998, 45; Quinault Memorandum 1997, 31).

¹⁷¹ "[T]here is nothing in the record to show that leaders exercised political influence over the whole membership or significant numbers of the membership and kinship lines. For example, there is no evidence in the record of dispute resolution, use of influence to correct behavior, or the allocation of resources within a community. . . . there is no evidence describing how the leaders communicated with the membership, or how leaders were influenced by public opinion and influential groups or individuals within the Cowlitz group. . . . no important evidence showing how community efforts were mobilized and consensus developed because no social or political community existed" (Nicklason 1997, 198).

¹⁷² Most significant, in terms of social community, is the fact that the Cowlitz group's membership between 1950 and 1973, is not even defined. For example, no official roll exists in the record. A community cannot be described if there is no information specifically defining the individuals who made up the community (Nicklason 1997, 197).

¹⁷³ Meeting minutes, to the extent that they exist often do not report attendance numbers. In addition, attendance lists do not exist for any of the meetings that are documented in the record. As a result, it is impossible to determine who attended these meetings and whether or not they represented a significant number of the group's total membership and kinship lines. The same is true for those meetings mentioned in documents as having been held, but for which no other record exists. In addition, where no meeting minutes, or other internal or external descriptions of a meeting exist in the record, there is no way to determine the issues that were discussed (Nicklason 1997, 196; see also (Quinault Revised Memorandum 1998, 25).

¹⁷⁴ "F. There is no significant evidence that any socialization occurred outside the context of claims discussions. For example, there is no evidence that social gatherings involving significant numbers of the membership took place before or after the meetings" (Nicklason 1997, 196-197). [see 1974 statements by Don

b. BIA Analysis. Analytically, the approach that Quinault took to the events of this period was to assert that there was no community and that therefore there could be no political authority or influence. Because Quinault denied the eligibility of the petitioner to proceed under the provisions of 83.8, the comments assumed that the petitioner and the BIA reports were subject to a prerequisite of showing community at a date where none is required to be shown under the regulations.

If by "official roll" Quinault means one approved by the BIA, several other groups with positive final determinations for acknowledgment under 25 CFR Part 83 have not had such rolls (see discussion above, where Quinault raised the same issue at an earlier date).¹⁷⁵ The CTI did have several mailing lists which were in the record at the time of the proposed finding (which were discussed in the PF GTR at considerable length), and Quinault has placed additional lists in the record for the final determination (see section VI).

The persons on the lists compiled by the CTI between 1952 and 1973, the extreme dates of the various lists, may or may not have been members of the tribal entity. Some of the available lists were simply mailing lists rather than membership lists, and there is no reason to presume that they were complete rosters. None of them included, for example, the name and address of the CTI secretary, Maude (Wannassay) Snyder, presumably because she did not mail items to herself. During this period the CTI was pursuing claims activity, and at least two of the lists appear to have been prepared in anticipation of the claims award (see discussion in section VI). The proposed ICC settlement was to descendants of the Cowlitz Indians as the tribe had been constituted in 1855 (later modified to 1863),¹⁷⁶ not for the members of the tribe as it existed as

Cloquet and Susan Pratt].

¹⁷⁵This may be another aspect of Quinault's overriding assumption that no tribe that has not been organized along the pattern of reservation tribes can make a showing of acknowledged ability. Some of those tribes which did have a reservation and were subsequently organized under the IRA in 1934 have certain characteristics that are considered now to be "tribal" such as "official rolls." But they did not have many of these characteristics before their organization under the IRA. The 25 CFR Part 83 regulations do not require that petitioners have maintained these kinds of attributes, such as official rolls and a land base, common in recognized tribes. The regulations were specifically designed to allow those tribes which have not benefitted from certain Government Indian policies such as the IRA, to be acknowledged if they have maintained significant levels of social connection among their members and political authority over their members.

¹⁷⁶Finalization of the ICC case occupied four years. On June 25, 1969, the ICC awarded the Cowlitz a settlement, based on a taking date of March 3, 1855 (21 Ind. Cl. Comm. 143; CIT Pet. Ex. A-1044 - A-1045). The Cowlitz sought and on December 10, 1969, obtained a rehearing on the issue of the effective date of taking. On June 23, 1971, the ICC issued the opinion on rehearing, establishing the effective date of taking as March 20, 1863 (25 Ind. Cl. Comm. 442; CIT Pet. Ex. A-1054)(CIT PF 1997, HTR 152).

a socio/political entity in 1973.¹⁷⁷

The lack of a certified membership list, which would not have been an "official roll" if the CTI itself had prepared and maintained it, became a problem when the Cowlitz had to vote whether to accept the ICC judgment award in 1973. Voter eligibility, which expanded to include enrollment eligibility, became a major issue (see below).

3. *The 1950 CTI Constitution and Bylaws.*

a. Quinault's Position. Quinault asserted that the proposed finding did not sufficiently take into account the nature of the 1950 CTI constitution:

In 1950 after an extended period of inactivity the Cowlitz group "reorganized" and adopted a written constitution and bylaws. Significantly, the constitution and bylaws formally describe the nature of this group. Equally significant, the proposed findings and technical reports all but ignore the group's own description of its nature (Quinault Memorandum 1997, 31).

Quinault quoted a description of the formation of the 1950 constitution and bylaws by a lawyer representing the Cowlitz in 1973: "Many of the Cowlitz Indians did get together and form a voluntary unincorporated organization and in 1950 they adopted a Constitution and By-Laws for such an organization" (Quinault Revised Memorandum 1998, 23; citing NRA 1973-7 15 6), adding that, "[t]he attorney, who had been active in representing Indian groups, undoubtedly knew the difference between an Indian tribe and a voluntary unincorporated organization when he described his client to the I.C.C." (Quinault Revised Memorandum 1998, 23; Quinault Memorandum 1997, 15).

Quinault quotes Article 1, §2 of the 1950 Constitution concerning the "objectives of the organization" (Quinault Revised Memorandum 1998, 21; Quinault Memorandum 1997, 14, 31),¹⁷⁸ and provides further description of the 1950 Constitution (Quinault Revised

¹⁷⁷Cf. Roy Wilson's rather pragmatic statement about the distinction between the CTI membership and the upcoming claims roll, namely: "We've no way of knowing the roll we've got today will be anywhere near what that roll is because we do not know what the terms are going to be on that roll. Congress is going to have a word to say in this as to whether or not we go by descendency or blood quantum . . . is no way in this world any Cowlitz could design the roll today. The only way it could be done is after we receive the determination and the delineation as to what the roll is going to consist of" (Wilson 4/10/1973; Quinault Ex. 1973-7, 110-111). He had further discussion of tribal intermarriage and that given the 1863 date, the CTI had felt obliged to send notices as widely as possible to Cowlitz descendants, no matter where enrolled (Wilson 4/10/1973; Quinault Ex. 1973-7, 111-112).

¹⁷⁸The 1950 Cowlitz constitution described the Cowlitz group as a voluntary claims organization of lineal Cowlitz descendants. Nowhere in the document is there evidence that a bi-lateral political relationship was intended or that the group's leaders were expected to exert significant political influence and authority. The 1950 Cowlitz

Memorandum 1998, 22; Quinault Memorandum 1997, 31).

Section 7 of the Bylaws to the 1950 constitution to the effect that "the principal interest of the Tribe at this time is the pressing of its claim against the United States Government" (Quinault Revised Memorandum 1998, 22; Quinault Memorandum 1997, 15; citing A-1018-1022; Quinault Memorandum 1997, 31).

The "Cowlitz Tribe of Indians" self-characterization is fully consistent with prior descriptions of it as a voluntary association formed for the purpose of pursuing claims on behalf of scattered Cowlitz descendants (Quinault Memorandum 1997, 14).

b. BIA Analysis. The PF did not "all but ignore" the contents of the 1950 CTI constitution (see CIT PF 1997, HTR 141-147; GTR under governing documents). The incorporators of the CTI were not forming a tribe. The Cowlitz tribe was forming the CTI, an implement intended primarily for a fairly specific tribal purpose.¹⁷⁹

While Quinault quoted the CTI lawyer's description of the CTI, they did not analyze it in light of the contemporary 1951 description by BIA Superintendent Bitney, in which he indicated that while the Cowlitz were eligible to submit an ICC claim, there was more to its existence than being a claims group, even though it was not federally acknowledged:

... the group has always and still do maintain their tribal organization for the mutual welfare of its members, holding semi-annual and annual gatherings where problems of the tribe are discussed ... While this tribe is landless and without Official recognition of its tribal status, it nevertheless is, and has been an existing and identifiable group within the meaning of the Act of August 13, 1946, supra (see CIT PF 1997, HTR 145; CIT Pet. Ex. A-1449, Bitney 1951).

4. *External Descriptions of the CTI.*

a. Quinault's Position. Quinault stated:

In 1959 the Portland Area Assistant Solicitor for Indian legal Activities commenting on the government's obligations to Indian tribes noted that the

Constitution was a statement by the Cowlitz group that it perceived itself as a claims organization composed of lineal descendants" (Nicklason 1997, 201).

¹⁷⁹The regulations state specifically: "The fact that a group that meets the criteria in 83.7 (a) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary's final decision" (25 CFR 83.2(c)).

Cowlitz Indians were, "no longer a separate tribal entity." NRA 1959-4 (Quinault Revised Memorandum 1998, 22; Quinault Memorandum 1997, 15).

A few years later [1962] the government's view of the Cowlitz group remained unchanged. The BIA Chief of the Division of Tribal Operations wrote; "The Cowlitz Tribe has no status as a federally recognized tribal band and a majority of the tribal members, therefore, are not eligible for Bureau Services. This tribe became active after the passage of the Indian Claims Commission Act in 1946 and a group of Indians believed to be the descendants of the Cowlitz Tribe as it was aboriginally constituted are recognized as the petitioners in docket numbered 218." NRA 1962-2" (Quinault Revised Memorandum 1988, 22; Quinault Memorandum 1997, 15).

b. BIA Analysis. In the 1997 Memorandum, Quinault placed this material under its argument that the 1950 CTI was just a claims group. However, the specific statements that Quinault made here seem to apply to a different issue: namely, whether there was previous unambiguous Federal acknowledgment of the Cowlitz tribe as of the termination era.

These BIA descriptions quoted by Quinault were not meant to go to the issue of "tribal entity" as defined in 25 CFR Part 83. Rather, they were statements made in the context of the ICC Docket 218 claim, indicating that the Cowlitz tribe did not, at the dates they were written, have the legal status of being federally acknowledged. While they would constitute negative evidence as to the issue of federal acknowledgment as of 1959 and 1962, they do not provide directly applicable evidence under 83.7(a), 83.7(b), and 83.7(c) as such.

5. Evidence Concerning Non-Claims Activities, 1950-1974.

a. Quinault's Position. Quinault argued that the record showed only claims-related activity during the quarter-century from 1950 through 1974,¹⁸⁰ whether the issue was protection of

¹⁸⁰"Between 1950 and 1973, internal documents generated by the group and external documents describing it, overwhelmingly characterize the Cowlitz as a claims group not engaged in self-government. The only conflict resolution illustrated in the record related to claims" (Nicklason 1997, 200).

fishing and cemeteries,¹⁸¹ or litigation, or enrollment.¹⁸² Quinault argued that the former two were interrelated. In connection with the 1955 lawsuit, Quinault contended that the Cowlitz were seeking monetary compensation rather than subsistence rights and therefore it was a claims case and not a community supported action (Quinault Revised Memorandum 1998, 34).

b. CIT Comment. CIT asserted that, "The action in the 1950s concerning grave site protection was a prelude of some 45 years of spirited efforts by the Cowlitz Tribe to protect aboriginal and post-aboriginal burial grounds, villages and spiritual sites" (CIT Response 1998, 14). "Contrary to Quinault arguments, such efforts are strong evidence of tribal activity, for they demonstrate the community concern for preservation of the tribal cultural heritage" (CIT Response 1998, 14-15).

c. BIA Analysis. Quinault argued that the 1955 lawsuit against the City of Tacoma was "consistent with the claims focus of the Cowlitz petitioner through the 1950s. The available evidence indicates that the suit sought monetary compensation, rather than protection of ongoing fisheries of interest to the Cowlitz general membership" and therefore "does not provide evidence of social community" (Quinault Revised Memorandum 1998, 34; Quinault Memorandum 1997, 23), and, on the other hand, that 1955 lawsuit fell outside the time frame for modern community and therefore should not have been considered (Quinault Revised Memorandum 1998, 34).

For petitioners proceeding under the provisions of 83.8(d)(2), there is no obligation to analyze community historically. This has been addressed at length elsewhere in the technical report. The burial sites directly affected by the dams in question had been primarily used by the Upper Cowlitz. Although the leadership of the CTI at this time was primarily from the Lower Cowlitz and Cowlitz metis subgroups, the organization nonetheless proved responsive to the concerns of its members, and such prominent Upper Cowlitz as Mary Kiona and Sarah Castama testified in connection with the case. Its efforts obtained the relocation of the graves from a number of the sites — a result quite different from a simple request for financial compensation.

¹⁸¹"The evidence in the record indicates that few individuals remained in the Cowlitz valley or fished in the Cowlitz River. The issue almost exclusively involved individuals or was clearly a claims issue. For example, evidence in the record about the group's 1955 suit against the City of Tacoma, and attempts to resurrect it again in 1964, indicated that the Cowlitz were not interested in stopping construction of the Cowlitz River dams to protect their fishing rights and family cemeteries. Instead they sued the City of Tacoma for \$80,000,000 to compensate them or the loss of fishing rights and Indian cemeteries" (Nicklason 1997, 198)

¹⁸²"Discussion concerning enrollment, to the extent that it was an issue between 1950 and 1972, is discussed in the record only as a means to determine who would be eligible to participate in any claim award" (Nicklason 1997, 198).

From the perspective of criterion 83.7(c), the lawsuit against the City of Tacoma was initiated by a decision of the Cowlitz tribe as a whole at an annual meeting, was regularly reported upon, and involved testimony by a number of tribal members. That it was formulated as a suit for compensation, or damages, does not negate the information contained in the litigation files that it showed bilateral efforts on the part of the group's leadership and members and is a form of evidence in 83.7(c).

The major alteration in enrollment practices between the CTI and the CIT occurred in 1973-1974, as a consequence of a dispute over the terms for accepting the ICC judgment award on the Cowlitz claim. The technical report to the proposed finding discussed this issue comparatively briefly:

On March 3, 1973, the CTI held a special meeting to consider the proposed ICC settlement. It was chaired by Roy I. Wilson who, as vice-president, had served as executive officer since the death of Clifford Wilson the preceding September. The overall vote was 172 in favor of accepting the settlement and 36 opposed (Irwin 1995, 221; [see also Quinault Ex. 9:1973-7, 9, 11]). Among the opponents, however, were influential members of the group, including Donald Cloquet and John Barnett, which would lead to the formation of the short-lived "Sovereign Cowlitz Nation" (SCN) (see below) (CIT PF 1997, HTR 152).

This meeting was held March 3, 1973, 11:00 a.m., Cowlitz Grange Hall, Toledo, Washington (Quinault Ex. 9:1973-7, 15). The CIT executive committee was Roy I. Wilson, Chairman; Evelyn Bashor, Secretary; Archie Eill [Iyall], Roy King, Tanna Beebe; one member was deceased (Wilson 4/10/1973; Quinault Ex. 9:1973-7, 16). The officers did not present a united front in favor of one side of the argument, because Tanna Beebe, the Vice-Chairman, was opposed to accepting the proposed terms of the settlement (Quinault Ex. 9:1973-7, 20-21, 30-31), as was Joe Cloquet, Chairman of the Tribal Council, who was appointed as one of the vote-counters (Quinault Ex. 9:1973-7, 22). The proposed finding summarized:

In March 13 [*sic*], 1973, "250-275 people were in attendance and 208 voted" to approve the Indian Claims Commission settlement.¹⁸³ On July 1, 1973, Congress appropriated funds, and in October 19, 1973, Congress passed the Judgment Funds Act (PL 93-134) to authorize fund disbursement through the BIA. Within less than a year there were problems (CIT PF 1997, ATR 89).

¹⁸³Report on Cowlitz Tribal Meeting - Proposed Compromise Settlement. Enclosure 7, "Resolution of Cowlitz membership approving the compromise settlement, signed by the Chairman, witnessed by the Secretary, and signatures certified by Agency Tribal Operations Officer (Enrollment). 8. Minutes of membership meeting signed by the Cowlitz Chairman, Roy I. Wilson, and witnessed by the Cowlitz Secretary, Evelyn Bashor. . . ." (Superintendent to Area Director, Portland 3/6/1973; Quinault Ex. 9:1973-6). Quinault Ex. 9: did not have copies of these enclosures.

[footnote added]

The CTI attorney later stated at the ICC hearing that:

Objection was made that only members of the existing Cowlitz organization should have been permitted to attend the meeting and vote on the proposed settlement.

It was explained that, as a matter of fairness and law, and in order to conform to the procedures established by the commission, it was considered appropriate and advisable to give notice to all Cowlitz Indians and to permit all persons present at the meeting who claimed to be descendants of Cowlitz Indians to vote.

The general meeting continued for several hours. No challenge was made as to the eligibility of any particular person to cast a vote (Weissbrodt 4/10/1973; Quinault Ex. 9:1973-7, 10).

However, in spite of Weissbrodt's statement that no one challenged the right of any specific attendee to vote, the CTI members who opposed accepting the settlement terms immediately took assertive action.¹⁸⁴ Donald John Cloquet, as leader of the dissenting group, wrote to the ICC chairman that: "Due to the cloud of confusion arising from the outcome of today's [sic] meeting, we the undersigned members of the Cowlitz Indian tribe do hereby declare the meeting null and void, . . . We declare the March 3, 1973 meeting of the Cowlitz Tribe of Indians illegal for the following reasons: . . ." (Cloquet to Kuykendall [sic] 3/5/1973; Quinault Ex. 9:1973-3). Quinault submitted a list of the signers of this objection (Quinault Ex. 9:1973-3). Slightly over a month later, April 6, 1973, a meeting was held at Donald J. Cloquet's house for the purpose of forming a Cowlitz organization in opposition to the CTI leadership. The attendance list for this group consisted of 26 persons, including Cloquet himself signing on behalf of his six minor daughters (Quinault Ex. 9:1973-7; ICC Hearing 4/10/1973, Exhibit S-14). Four days later, at the ICC hearing, he described the April 6, 1973, meeting at his house as a "tribal general meeting" (Cloquet 4/10/1973; Quinault Ex. 9:1973-7, 50). The proposed finding stated:

The group's energetic letter-writing and petition campaign to the ICC and BIA

¹⁸⁴The membership of the CIT did not vote unanimously to accept the ICC compromise settlement (Fitzpatrick 1986, 85). In the view of Joseph Cloquet and John Barnett, people were permitted to vote at the April 18, 1973, [sic] meeting who did not have the right to vote (Fitzpatrick 1986, 101). In 1973, one group of opponents formed the Sovereign Cowlitz Nation, a splinter group (Fitzpatrick 1986, 101). The resolution objecting to the settlement was signed by 46 persons (CIT Pet. 1975)" (CIT PF 1997, HTR 155).

concerning Docket 218 distribution¹⁸⁵ was for a time a contributing factor to the delay in distributing the award, as were the protests of the Yakima Cowlitz. However, the SCN was much less long-lived than the Yakima Cowlitz. It went out of existence in late 1974, with its members reabsorbed into the CIT (Irwin 1995, 227)(CIT PF 1997, HTR 155).

One contributory cause of the dispute was the undefined nature of voter eligibility (see also Section VI of this report). Donald Cloquet, the head of the Sovereign Cowlitz, "gave the [CTI] membership as 238 (Irwin 1995, 222). By contrast, his brother, Joseph Cloquet, gave the CIT [CTI] membership at the time as 1,801" (Irwin 1995, 222).¹⁸⁶ According to one historian of the Cowlitz:

In addition to the payment being too small, some members objected to the fact that the BIA called this meeting, not the CIT. They also objected to the BIA's allowing attendance by those whom today's petitioner did not consider actively participating members. As John Barnett explained.

At that meeting on the approval I might add there was no roll taken, no membership cards shown. I mean you [i.e., the BIA researcher] could have walked in there, and voted to accept our compromise settlement. And that was one of the complaints we had, at the District Court in Tacoma. There was no record of who voted. It was just a hand vote. No sign-in sheets. Nothing. (John Barnett, BIA Interview 8/4/1995) (CIT PF 1997, ATR 89).

The uproar led to a special hearing held April 10, 1973, before ICC Commissioner Jerome K. Kuykendall (Quinault Ex. 9:1973-7).¹⁸⁷ The provision was that the counsel "for the Plaintiff tribe" presented the evidence concerning what happened at the meeting recently where a vote

¹⁸⁵See, for example: April 28, 1974. Plan for Use or Distribution of Indian Judgement Funds Pursuant TO Part 60 to 25 CFR (Public Law 93-134; 87 Stat. 466, 467, 468). Funds Arising from Docket No. 218. Approved by the Council of Chiefs, SOVEREIGN COWLITZ TRIBE (BIA Claims File, Docket No. 218 #1).

¹⁸⁶"The association has kept only a loose membership roll accepting anyone who appeared to have a claim to being a descendant from the aboriginal Cowlitz . . . Mr. [Joseph] Cloquet asserted at the hearing yesterday that there were 1,801 Cowlitz Indians, but his brother, Don Cloquet of Tacoma, testified that the association's membership roll has only 278 names" (Coast Indians Reconsider U.S. Offer, The New York Times, Monday, April 9, 1973; Quinault Ex. 9:1973-9; newspaper article giving the date of the controversial meeting as March 30 rather than March 3, 1973).

¹⁸⁷Plaintiff's witnesses: Roy I. Wilson, Evelyn Bashor, Donald John Cloquet, Robert J. Ryser, John R. Barnett, Rudolph Ryser, Joseph E. Cloquet, Wow-Dea, Eleanor Monahan, Vera E. Andrews, Roy Wilson, John Cloquet.

was taken on the proposed settlement, while the counsel for the government was present and permitted to cross-examine some of the witnesses" (Kuykendall 4/10/1999; Quinault Ex. 9:1973-7, 3). It was in the context of this hearing that the CTI council made the statements considered very important by Quinault that: "Many of the Cowlitz Indians did get together and form a voluntary unincorporated organization and in 1950 they adopted a Constitution and By-Laws for such organization. The Constitution and By-Laws were never approved by the Bureau of Indian Affairs" (Weissbrodt 4/10/1973; Quinault Ex. 9:1973-7, 6) (see discussion of the 1950 CTI constitution, above) and "No complete roll of all the members and descendants of members of the Cowlitz Tribe has ever been prepared and no roll has ever been approved by the Bureau of Indian Affairs" (Weissbrodt 4/10/1973; Quinault Ex. 9:1973-7, 7).¹⁸⁸ Weissbrodt, upon behalf of the CTI leadership, argued that meeting attendance and voting upon the claims settlement could not properly be limited to current tribal members:

In connection with the holding of the general meeting to consider and vote upon the proposed settlement, it was considered to be appropriate and necessary, and in conformity with the Commission's procedures, to give notice, so far as feasible, to all living descendants of Cowlitz Indians, and not solely to those who had joined the organization, or not merely to the members of said organization who had paid their dues and were in good standing (Weissbrodt 4/10/1973; Quinault Ex. 9:1973-7, 7-8).¹⁸⁹

Weissbrodt explained the procedure as follows:

¹⁸⁸"Because of the dispersion of Cowlitz Indians and descendants to various communities in the State of Washington and Oregon and other states, it is believed that there are an appreciable number of descendants of Cowlitz Indians who have not joined the said existing Cowlitz organization or have not maintained themselves in good standing with that organization" (Weissbrodt 4/10/1973; Quinault Ex. 9:1973-7, 7).

¹⁸⁹Donald J. Cloquet, indicating that he did not agree with the procedure adopted: "What I have here (indicating) is a membership card showing that I'm a bona fide member of the Cowlitz Tribe, Roll No. 128. When I arrived at the prairie Hall on March 3, 1973, no one of any authority or otherwise asked me to show my membership card prior to the meeting, and I thought at that time it was quite peculiar that such a meeting of this importance which was held on March 3, 1973, -- the importance of it, I felt certain that I'd be asked to show my membership card to some authoritative body or person. I was not even asked to show my card" (Cloquet 4/10/1973; Quinault Ex. 1973-7, 62-63).

Cf. Joseph Cloquet: "I feel that we should very definitely firm up our enrollment and that this meeting should be rescheduled, that all members, Cowlitz members who have proper identification of being enrolled be certified to vote and that we allow none other than Cowlitz members to participate" (Cloquet 4/10/1973; Quinault Ex. 1973-7, 97).

Cf. Donald J. Cloquet: "... somehow they arrived at some sort of a vote by majority of Indians who were present at this meeting, regardless of whether they were Cowlitz Indians, Yakima Indians, Quinault's, they could have been Makah's, Nisqually's, Snoqualmie. I would have been more than happy to have shown my membership card if I'd only been asked," (Cloquet 4/10/1973; Quinault Ex. 1973-7, 64).

First, a written notice, addressed to all Cowlitz Indians, concerning the time, place and purpose of the meeting, was mailed on February 21, 1973, to 384 persons. These 384 persons are Cowlitz Indians who were heads of households and adults on the membership list of the existing Cowlitz organization, and also all additional persons shown on the records of the Western Washington Agency of the Bureau of Indian Affairs who had inquired concerning the Cowlitz claims.

Second, copies of the written notice were sent to some 19 newspapers and radio and T.V. stations with a request that the notice of the meeting be publicized and broadcast.

Third, the Western Washington Agency of the Bureau of Indian Affairs sent copies of the notice to various tribal offices and organizations and to various Indian agencies" (Weissbrodt 4/10/1973; Quinault Ex. 9:1973-7, 8).

The CTI secretary confirmed that she had done this: "I sent out 384 notices. Of the 384, I had 50 of them returned to me with addresses unknown. They had moved and never notified me. So if anyone did not receive that notification, it was because I did not have their correct address" (Bashor 4/10/1973; Quinault Ex. 9:1973-7, 37).¹⁹⁰ A result of the wide publicity given the meeting was that there were many attendees who were not participating members of the CTI:

[Joseph Cloquet:] But I must state in all truthfulness that those people holding their hands up, whether voting for or against, I could not identify many, many of them, because many of them, even through my association with the tribe throughout the years, I had never seen before. Some I had, some not. The number I don't know, but there were many present that I did not recognize of having attended a meeting before (Cloquet 4/10/1973; Quinault Ex. 1973-7, 95).

[Joseph Cloquet:] It has been previously stated by several others that there were many Indian people there, Indians of various tribes, . . . any of these tribal Indian people could have been there at the meeting that day, and could have very easily voted on Cowlitz matters. This was a Cowlitz meeting. I am interested in the welfare as a Cowlitz member, and as a Cowlitz descendant I'm interested in the welfare of the Cowlitz tribe, today a landless tribe (Cloquet 4/10/1973; Quinault Ex. 1973-7, 96).

¹⁹⁰Robert R. Ryser made complaints about late notices: Mrs. Marie Salatino, a long-time member, had a notice mailed Feb. 21st, which did not arrive in time for her to make arrangements to attend; Mrs. Marjorie Taylor's letter was addressed to Mrs. M. Rogers, her maiden name, she is a non-Indian; Albert E. McBride [sic] Jr. of Olympia was not notified, though he had previously receive notices [n.b. should be Albert E. McBride]; he and his sister pay dues but aren't notified (Quinault Ex. 9:1973-7, 81-82).

There was not only no "official roll" of the Cowlitz tribe, but there was not, at this time, any complete descendancy or claims listing of all persons descended from the Cowlitz tribe as it existed at the defined time of the taking in 1863, and who would have been eligible to participate in the ICC award under the proposed settlement terms:

Because there is no complete roll or any official roll of Cowlitz Indians, all persons attending the meeting who claimed on their honor to be descendants of Cowlitz Indians were permitted to vote. A total of 208 persons who attended the meeting voted. It is estimated that this number comprises close to one-half of all living adult persons who are descendants of members of the Cowlitz Tribe (Weissbrodt 4/10/1973; Quinault Ex. 9:1973-7, 8-9).

At the hearing, Donald J. Cloquet submitted a mailing list of persons claimed to be members of the Cowlitz Tribe (for discussion of the list as such, see below, section VI).¹⁹¹ ICC Chairman Kuykendall, questioning Donald J. Cloquet, asked for a more precise description:

CHAIRMAN KUYKENDALL: What is the exhibit?

THE WITNESS: This is a list of names and addresses that personally have in regards -- that are claimed to be members of the Cowlitz Tribe.

CHAIRMAN KUYKENDALL: Do you know whether any of those names are among those to whom those notices were sent?

THE WITNESS: Yes.

CHAIRMAN KUYKENDALL: All of them?

THE WITNESS: A few, in fact, I'm sure some of the Indians here today are included in this list.

CHAIRMAN KUYKENDALL: I mean notices of this meeting to which you now object. Did any of them get notices of that meeting that are on that list?

THE WITNESS: I'm assuming some did, yes.

CHAIRMAN KUYKENDALL: You don't know?

THE WITNESS: I don't know. The only ones I've contacted were the Cowlitz Indians that are on this list and live in the immediate Tacoma area (Quinault Ex. 9:1973-7, 51-52).

As a result of the controversy over voter eligibility, the CIT in 1974 adopted a new constitution which much more precisely defined membership standards. The proposed finding stated:

¹⁹¹"Mailing List -- Cowlitz Tribe" submitted by Don Cloquet at April 10, 1973, ICC hearing before Chairman Kuykendall, (Quinault Ex. 9:1973-19; ICC Hearing 4/10/1973, Ex. S-15). Undated. Described by Cloquet as "a list of members who claim to be on the Cowlitz rolls of the Cowlitz tribe of Indians in the State of Washington" . . . "This is a list of names and addresses that personally have in regards -- that are claimed to be members of the Cowlitz Tribe" (Cloquet 4/10/1973, Quinault Ex. 9:1973-7, 51).

The major fluctuation in the size and composition of the petitioner is the contrast between the CIT's pre-1973 and post-1974 membership rolls. At the June 2, 1973, annual meeting, the CTI membership voted to exclude from receipt of judgment fund awards those persons who had up to that time been CTI members, but who fell into the following categories: (1) persons previously allotted land or receiving funds from other tribes; (2) persons currently enrolled elsewhere (these applied primarily to the "Yakima Cowlitz"); and (3) Cowlitz descendants with less than 1/16 blood quantum (because of provisions of Public Law 9358). These provisions were incorporated into the 1974 constitution, . . . resulting in a significant change in the enrolled membership (CIT PF 1997, GTR 39-40).¹⁹²

At the time, the BIA monitored the significance of the enrollment changes:

A special meeting of the Cowlitz Executive Board and the Cowlitz Enrollment Committee was held on October 13, 1973, with Chester J. Higman, BIA Tribal Operations Officer, Western Washington Office, Everett, Washington (Minutes October 13, 1973; CIT Pet. Ex. A-1877 - A-1879) to clarify the meaning of the resolution passed on June 2. These issues were further discussed with Higman and with BIA Portland Office representative Paul Weston at the March 23, 1974, meeting (Minutes March 23, 1974; CIT Pet. Ex. A-1880 - A-1883) (CIT PF 1997, GTR 40).

The discussions associated with these developments indicate that the matter was not how to distribute the claims award, but an issue of tribal membership (Barnett and the Cloquets) as compared to simple tribal descendancy (represented by the Chairman, Roy I. Wilson, and the legal counsel, Weissbrodt, who argued that the latter was mandated for claims purposes). This was clear from Joseph Cloquet's statement that he could not, in spite of his long history of tribal activity, identify many of the people who appeared and voted at the March 3, 1973, meeting.

The support for the CIT's plan for the judgment award in Docket 218 may have been considerably weaker than claimed by the CIT tribal leadership in the mid 1970's. The Nicklason Research Associates report (Nicklason 1998, 241-242; citing Quinault Ex. NSE 1975-5) mentioned testimony presented by Joseph Cloquet on April 17, 1975, and September 26, 1975, in connection with bills on distribution of the ICC award. While not discussing the testimony at length, the report mentioned that Joseph Cloquet emphasized the importance of

¹⁹²A newspaper article described this meeting (Jack Wilkins, Cowlitz Indians Seek Cash Payment, Reject Land Bid. Tacoma News Tribune, 6/4/1973; Quinault Ex. 9:1973-15).

the land set-aside (Nicklason 1998, 242), "submitted a petition signed by 423 enrolled members of the 'Tribe' which he estimated to be almost the entire adult population of the 1,407 members" and "also indicated that a recognition petition was submitted to the Department of the Interior on September 19, 1975 (Nicklason 1998, 242; citing Quinault Ex. NSE 1975-6).

The BIA research obtained a copy of the ICC petition as submitted by Joseph Cloquet from the BIA claims file on Docket 218 (Cloquet 9/26/1975). It was headed: "We, the following persons of Cowlitz descent, TOTALLY REJECT the plan for distribution of Cowlitz Judgement [*sic*] Funds submitted by the Secretary of the Interior, Nov. 4, 1974 . . ." (ICC Docket 218; dated March 1975). Analysis did not verify Cloquet's assertion that it represented nearly all the adult population (Cloquet 9/26/1975). Seventy-three of the signers did not include a membership number with the signature, but most could be identified (13 of the 73 had no membership numbers assigned on any Cowlitz membership list in the record; 17 now have "red cards"). The analysis indicated:

- 423 signatures
- 8 duplicate signatures
- 415
- 2 active spouses (Mary Cloquet and Beulah Wilson)
- 413
- 96 minors (under 18, born after March 1957)
- 317
- 6 non-members (unidentifiable, names never appeared before or since)
- 311
- 18 red card holders (not eligible to vote under the 1974 constitution)
- 283 actual adult signers (CIT members)

Compared to the March 1978 CIT membership list (see section VI. below), this indicates that at least 621 adult, voting members of CIT, after the introduction of the 1973/74 membership eligibility changes, did not sign the March 1975 petition. Therefore, Joseph Cloquet was overstating the level of support for the CIT's proposed distribution plan.

G. CIT 1974-1980.

1. *External Descriptions.*

a. Quinault's Position. Quinault cited 1975 descriptions in connection with ICC Award (Quinault Revised Memorandum 1998, 24; Quinault Memorandum 1997, 16), specifically noting that in discussions about the distribution of the Cowlitz judgment funds, AS-IA John Kyl stated that the CTI had not been federally recognized and was not considered the successor to the aboriginal Cowlitz Tribe. According to the Quinault 1997 Memorandum:

Kyl continued by stating that the "Cowlitz Tribe of Indians" was "recognized for the purpose of prosecuting the Cowlitz claim against the United States." He further stated: ["]Because the Cowlitz is an unorganized, non-recognized descendancy group, there is no tribal entity through which the judgment funds can be programmed.["] (Quinault Revised Memorandum 1998, 24; Quinault Memorandum 1997, 17.)

Quinault, also cited a 1973 *Tacoma News Tribune* article which reported on the annual meeting of the Cowlitz Tribal Organization, stating that the article noted that the group had voted to "reorganize itself from a mere association of persons with Cowlitz ancestry into a non-profit corporation." NRA 1973-15" (Quinault Revised Memorandum 1998, 23; Quinault Memorandum 1997, 16).

b. BIA Analysis. Quinault argues that the modern CIT is not tribal in nature. Quinault's arguments in response to the Department's proposed finding that the Cowlitz met the requirements for community at present primarily consist of references to written descriptions of the group's legal status, made in connection with ICC Docket 218. Quinault did not interpret these descriptions in the context in which they were created or analyze and weigh them against other evidence such as the petitioner's meeting minutes, oral history interviews, and the many other documents currently in the record which provide sufficient evidence of community at present. Rather, Quinault isolated them from the corpus of the data and presented and interpreted them without explaining them within the larger context and history of the petitioner and of Indian policy.

The Kyl statements have significance in regard to whether or not the CIT had unambiguous previous Federal acknowledgment as of 1975, indicating clearly that it did not. Claims awarded to descent groups which are not Federally recognized tribes, are awarded on a per capita basis by law. The Cowlitz have consistently refused to accept any per capita payments to date, preferring to wait until they are acknowledged in order to receive their judgment funds as a tribal award, at least in part. As a tribal award, the funds would be used for programs, the acquisition of land or other tribal purposes in accordance with the law governing distribution of claims awards, 25 U.S.C. § 1403(b)(5). Kyl's statement must be read in the context of this October 1973 law. The phrase "an unorganized, non-recognized descendancy group" referred to all claims organizations which were not Federal tribes at that time. Kyl's statement was not addressed to the question of tribal existence beyond the legal status of the organization *vis-a-vis* the Federal Government and is not based on an evaluation of the socio-political character of the Cowlitz organization. It merely means that the Cowlitz' official status was as an unrecognized tribe, at the time Kyl made the statement. Three years after Kyl made this statement, the acknowledgment process was established in 1978 to deal with the Cowlitz and many other groups, some of which were also claims recipients, who were at that time requesting recognition as Federal tribes.

A newspaper article such as the one from the *Tacoma News-Tribune* constitutes an external identification of an Indian entity under criterion 83.7(a), but is generally not considered particularly good evidence for determining the tribal character of petitioners. This one, however, dovetails with what was going on with the Cowlitz in 1973 when they formalized their governing organization by drafting and passing a new constitution. The discussion in the following section fills out the interpretation given to the events surrounding the acceptance of this Cowlitz constitution.

2. *The 1974 CIT Constitution.*

a. Quinault's Position. Quinault quotes a passage from the 1974 CIT constitution's preamble which "create[s] and adopt[s] the following constitution for the Cowlitz Indian Tribe for the purpose of creating a tribal government, establishing a tribal community organization, promoting the social and economic well-being of our people. . . and advancing our mutual welfare" (Quinault Revised Memorandum 1998, 23), asking why the petitioner would "create" a tribal government "if they believed one already existed" (Quinault Revised Memorandum 1998, 23; Quinault Memorandum 1997, 16).

b. BIA Analysis. Again Quinault questions the continuous existence of the Cowlitz Indian Tribe and argues that the petitioner is a recently created entity, which the government would be prohibited from recognizing. A sampling of the preambles to the constitutions of a number of federally acknowledged tribes indicated similar general statements of purpose.¹⁹³ This argument takes the 1974 events out of context.

Just as the 1934 Indian Reorganization Act (IRA) reorganized then existing tribes by providing a way for tribes to create formal tribal governments by writing constitutions, many petitioning groups have drafted constitutions in order to codify their governing processes, thereby changing from an informal, usually kin-based, mode of governance to a formal democratic one. In dealing with petitioners acknowledged under the regulations, we have found it common that the process of creating a constitution is often viewed and described as setting up a government, when in fact, a written constitution more correctly represents the formalization and democratization of an existing government.

¹⁹³"We, the members of the Texas Band of Kickapoo . . . do hereby organize as a Tribe separate and apart . . . for the well-being of the Band and its members, to direct and control our own affairs, to protect and develop our land and resources for ourselves and our children, and to ensure the political integrity and cultural identity of the Band, . . ." (<http://thorpe.ou.edu/constitution/kickapoo/index.html>).

"We the members of the Red Cliff Band of Lake Superior Chippewa Indians . . . in order to re-establish our tribal organization; . . ." (<http://thorpe.ou.edu/constitution/redcliff/CHI.html>).

"We, the native Wampanoag people of Aquinnah, . . . Our tribal government shall . . . promote the social and cultural well-being of our people" (<http://thorpe.ou.edu/constitution/wampanoag/index.html>).

The 1994 acknowledgment regulations accept that the mere fact that a group writes a constitution for the first time or becomes formally organized or incorporated for legal reasons, does not indicate a prior absence of autonomous political authority. The regulations read at § 83.3(c):

(c) Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations. *The fact that a group that meets the criteria in §83.7(a) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary's final decision.* [emphasis added]

3. *CIT Comment Concerning CTO, CTI, CIT, and Land Claims.* CIT stated that the Cowlitz Tribe pursued land claims — as did many tribes, including Quinault (CIT Final Submission 1999, 40-41 (issue IX)).

See also the general comment concerning the nature of constitutional preambles above and the discussion of the 1950 CTI constitution.

a. CIT Position. CIT stated:

The Quinault correctly notes that the Cowlitz Tribe pursued a land claim, but then argues that this is absolute proof that the tribe was nothing more than a claims organization. Many tribes -- including the Quinault -- pursued land claims, and such was consistent with their status as successors in interest to historic tribes which lost their lands without receiving compensation. Pursuit of a land claim does not make Cowlitz exclusively a "claims organization" but rather is still one more indicator that the tribe was functioning as a tribe, just as was Quinault and hundreds of other tribes (CIT Final Determination 1999, 40-41).

b. BIA Analysis. In this response, the CIT neither introduced new evidence nor presented new interpretations of evidence already in the record. Analysis of the CIT assertions has already been incorporated, essentially, into the BIA's analysis under sections IV.F.3. and IV.F.4. No further discussion is needed under this heading.

H. CIT Internal Political Activity, 1980's and 1990's.

1. *Quinault's Position.* Quinault's arguments in this section pertained to the construction of a sweat lodge on CIT property (Quinault Memorandum 1997, 32; see also for the same topic, Quinault Memorandum 1997, 23). Quinault argued that, "... the lack of a large land base is no excuse for the inability of the group as a whole to control the use of the little land it does own"

(Quinault Revised Memorandum 1998, 46; Quinault Memorandum 1997, 32). Quinault stated:

The actions of a self-selected faction of the petitioner in constructing improvements on group property and establishing rules for the use of the property without consultation with the group's 'leaders' or other authorization by the group as a whole, demonstrates a lack of broad social community and a lack of political influence and authority on behalf of the group and its leaders with respect to the group's small land base. . . It is noteworthy that neither the group as a whole or its 'leadership' have been able to resolve this issue. SUCPF at 29. The inability of the group as a whole to resolve differences over the use of the group's own property is not evidence of broad community or the existence of political influence within the overall group, but instead reflects a lack of such qualities (Quinault Revised Memorandum 1998, 35). For summary see (Quinault Memorandum 1997, 32).

2. *CIT Comment.* The CIT commented that ". . . the project was with knowledge and approval of the Cowlitz Tribal Council" . . . "Some tribal members may have opposed the sweat lodge activity, but . . . the governing body never opposed it" (Barnett to Reckord 1/2/1998; see also CIT Response 1998, 16).

3. *BIA Analysis.* Because the BIA has analyzed this issue already under criterion 83.7(b), discussion here will be limited to what was not covered in the PF. The acknowledgment regulations do not expect unrecognized tribes to be able to exert the kind of authority over their members and resources that a recognized tribe or other legal jurisdictions exercise. Unrecognized tribes are without police forces and formal judicial systems, and they often find it difficult to enforce actions. They rely on informal modes of political influence that include manipulation, gossip, behind the scenes maneuvering, influence, argumentation, cajoling, etc. While most political systems also use these informal modes of political influence, formal systems with access to real force to implement decisions characterize most recognized tribes. Analysis of the sweat lodge issue raised by Quinault illustrates the informal political processes used by Cowlitz to deal with conflicting interests and outright conflict and is a form of evidence under 83.7.

The Quinault assert that the Cowlitz sweat lodge on the Cowlitz property was built without the knowledge of the council, which they say opposed it. There is no evidence in the record that the council opposed the sweat lodge or that anyone other than Marsha Williams was not aware of its construction at the time it was built. Even after the sweat lodge had been built, it was three years before it was discussed in a council meeting, indicating passive support, or at least no direct antagonism. Even in the discussions about it, criticism was oblique, focusing on the lack of insurance and the possibility that it was unsafe, rather than on the existence of the sweat lodge or its use. There is some reason to believe that the sweat lodge was only raised as an issue in council as a substitute for other highly inflammatory issues that involved eligibility of

certain individuals to serve on council.

Finally, the Quinault state that the sweat bath issue has never been resolved. As stated below, it does appear resolved. Sweats are announced in the tribe's newsletter. Several council members not associated with the "traditional" wing of the tribe have participated in sweats.

The sweat lodge was built on the newly acquired tribal property in 1992 by a small group who want to follow what they consider to be a traditional spiritual path.¹⁹⁴ CIT's comment is technically correct. Nothing in the record shows that the council as a governing body ever took an official position to oppose the building of the sweat lodge. However, the sweat lodge is a flashpoint for several controversial issues not only concerning the control of the group's resources, but also concerning the emphasis the tribe's governing body places on cultural and welfare activities. Dealings with the sweat lodge in the council has highlighted the cleft between the followers of John Barnett, who focuses primarily on the business aspects of the tribe, and of another segment, whose present leader appears to be Randy Cottonware, who would like the tribe to put more emphasis on spiritual, cultural and welfare issues. Who knew about the building of the sweat lodge or if permission was sought and received is also not in evidence in the record. However, it was built when a power struggle was going on between John Barnett, the Chairman of the General Council, and Jerry Bouchard, the Chairman of the Tribal Council. The confusion caused by this struggle contributed to the claim by Marsha Williams in 1995 that she did not know the sweat lodge had been built. The PF pointed out that one of the underlying issues during this power struggle may have been disputes over blood-quantas of various individuals attached to Bouchard or to Barnett (CIT PF 1997, ATR 114).

However, the existence of the sweat lodge on tribal land became controversial in 1995, even though today it is fully accepted as a group resource by the tribal council and most members of the tribe. How this acceptance came about, provides a case that reveals how the tribe deals with conflict. The sweat lodge, became a controversial topic for the petitioner in the fall of 1995, after Randy Cottonware, a long-time tribal council member who originally built the sweat lodge, began a written campaign that questioned the eligibility of some of John Barnett's supporters (from the majority point of view) to serve on the tribal council. This letter documents a simmering feud between the petitioner's major political factions. Steve Barnett, a councilman who generally votes with John Barnett and is his brother's son, was one of those council members whose eligibility to serve Cottonware had questioned.

In a May 6, 1995, meeting, Steve Barnett raised the issue of insurance and liability for the sweat lodge since it is located on land owned by the petitioner. Others among Chairman John Barnett's closest supporters, such as General Council Vice Chairman Marsha Williams,

¹⁹⁴Holly Reckord's interview with Randy Cottonware on June 19, 1999.

expressed some negative feelings about the sweat lodge, particularly “feelings of being left out, since she and others had not been advised of its being built.” (Council Minutes, May 6, 1995). Next, the minutes show that Greg Grove, who said that he had questioned certain people’s eligibility to serve on council and apologized directly to those individuals for questioning their eligibility. After this apology, Michael Hubbs asked Greg to report on the “tribal sweat lodge.”¹⁹⁵ Finally, Roy Wilson, who for years had served as official spiritual leader to the council and recently described himself as a mediator between the two sides (Holly Reckord interview with Roy Wilson June 16, 1999), suggested that a sweat be planned and announced for the annual meeting (CIT Council Minutes, May 6, 1995). The order of this tit-for-tat discussion interweaves concessions from each side of two issues, the eligibility of certain individuals to serve on the council and the existence of the sweat lodge on tribal property.

These documented events represent only a small part of what occurred because most of the dealings with this issue occurred in unofficial settings, in part because the dispute concerned individuals’ blood quanta. Interviews indicate that events occurred behind-the-scenes. For example, the proceedings of the meeting appear staged, a fact confirmed in interviews. According to John Barnett’s interviews, he prearranged that Greg Grove would resolve the festering conflict between Grove and his supporters and the council, at the May 1995 council meeting.

One of the outcomes of this council discussion was to clarify publically that the council controlled the tribal property and could take credit for what occurred there. Council member Randy Cottonware helped build the sweat lodge. The builders had consulted with some of the older, widely respected tribal members such as Ike Kinswa. It would have been difficult to question the right of these members to build the lodge, not because the tribal council had no control, but rather because the council knows who is influential and who would be offended if the lodge had been closed or its right to be built on the tribe’s land had been publicly questioned.

The tribe’s political process flows with cross currents of political and social influence that occur both in and out of the tribal council. Although not involved in the original construction of the lodge, the tribal council majority, including John Barnett, has clearly taken control of the structure since it was built. Through a series of public actions¹⁹⁶ the tribal control of it was solidified between 1992 and 1995. As was discussed in the PF, the May, 1995, Cowlitz Newsletter Yooyoolah, announced to the tribe at large that the sweat lodge was under the direction of Roy Wilson, even though according to one persons whose family participated in its

¹⁹⁵John Barnett had appointed Greg Grove, Randy Cottonware and Michael Hubbs to be apprentices to Roy Wilson. However, religious differences have made this relationship impossible, as the P.F. discussed.

¹⁹⁶Individuals active in the tribal government who were interviewed by Holly Reckord recounted these events from their own perspective.

construction, Wilson was never present during its building:

Spiritual apprentices Greg Grove, Randy Cottonware and Michael Hubbs, under the direction of tribal spiritual leader Roy Wilson, have erected the sweat lodge on our tribal land. They initiated the lodge with a sacred sweat, and the sweat lodge will be available at the event of the June meeting. (Yooyoolah 5/1995, 2).

The sweat lodge is not the only issue where control and credit is debated by the same factions, who argued over the sweat lodge. For example, the elder's dinners begun in the 1990's were also controversial at one time. Many of the same self-described traditionalist wing of the tribe purposefully planned dinners for the elders and attempted to receive credit for them. The Barnett followers on the council first responded by disowning or expressing suspicion about the planned dinners. When the dinners were well attended, they took some of the credit by publicly congratulating those who did the hard work, etc., by announcing future dinners in the newsletter and by attending and participating themselves.

Contrary to Quinault's comments, the sweat lodge case is critical to understanding a number of intersecting and controversial issues within the tribe, and puts in high relief the modern Cowlitz political sub-groupings and political processes. These events show that the leaders were forced to pay attention to minority views. They did not act within a social or political vacuum. They are unable to take actions at will without paying attention to the general membership's opinions. Although John Barnett controls the Executive Committee (the officers of the General council), he spends time dealing with the minority traditionalist position and others who are sympathetic to them. He engages his backers in the community and on the council to resolve conflicts publicly. He utilizes the newsletter to reinforce council decisions. He places great emphasis on resolving conflicts before they make it impossible for his agenda to go forward.¹⁹⁷ He may alter his position, in this case supporting the sweat lodge as a community project, if he has to. He can not merely ignore the minority positions. The minority is vocal and has a degree of power and specific knowledge about other members that gives them leverage. They, like Barnett, harness their backers to take positions on issues, to run for office, to undertake activities they consider to be meaningful, and to lobby the tribal council. Finally, the issues they are dealing with are of immediate personal importance to members of the tribe.

In the summer of 1999, the BIA anthropologist found that a new issue had become important to a number of tribal members. This issue involved the tribe's official position to support the Quinault Allottee Association's (QAA) litigation against the Quinault Tribe in District Court.

¹⁹⁷During the 1992 power struggle between Barnett and Bouchard, the tribe lost its ANA funding. The council meetings were contentious. Files were lost. The Secretary was fired. Tribal initiatives such as acknowledgment were put on hold until the tribe could reach a point to deal with things other than its own organization and who was in charge.

The Cowlitz Tribe has taken an official position to support the Quinault Allottee Association's litigation even though relatively few Cowlitz members are part of the QAA, and the QAA has members from several tribes.

The Quinault are an active interested party in the Cowlitz acknowledgment case before the BIA. They have already engaged the BIA in litigation concerning a Freedom of Information Act request on the Cowlitz and Chinook acknowledgment cases, obtained an extension of time to the response period caused delay in the final determination on the Cowlitz. Further, they are threatening to appeal the Department's decision if it is positive.

A number of people who could be viewed as representing the traditionalist wing of the tribe questioned Barnett's (he is an allottee himself) vigorous linkage of the QAA litigation issue to the Cowlitz tribe in general and his selection of the QAA attorney to represent the Cowlitz Tribe on other issues such as acknowledgment. Others who had not been involved in the sweat lodge or elder's dinners also expressed concern because they believed that the allottee issue may be endangering the tribe's acknowledgment.

An unsanctioned group (perhaps two groups) of individuals, not authorized by the governing body, have visited the Quinault's tribal offices to attempt to learn more about the motives behind the Quinault's opposition to Cowlitz acknowledgment and to determine if Quinault would drop the litigation if the tribe changed its official position on the Allottees' Association. This delegation went to Quinault without the participation or knowledge of John Barnett and others who support the Allottees' litigation. The council members now know that these trips were made, but nothing in the evidence before the BIA indicates if any steps have been taken by the council to respond to these actions other than to discuss the litigation at length at the June Annual Meeting.

Behind the scenes coalition building appears to be a typical mode of operating for the members of this tribe. The leadership has generally been very strong and people interviewed believed that leaders have used genealogical knowledge against political adversaries so as to jeopardize their or their children's voting memberships. Those interviewed pointed to a specific case. (*cf.* James to Barnett 7/20/1999; see discussion in Section VI of this report) In that case involving a group of cousins who share common ancestry, blood quanta have been evaluated to the disadvantage of a member who was viewed as troublesome and to the advantage of members closely allied to people in positions of power.¹⁹⁸ There are also allegations that nominating and

¹⁹⁸Because so many of the members have blood quanta of 1/8 or 1/16th, even a small change in an ancestor's blood degree can have widespread repercussions (both in removing persons from eligibility or in qualifying a group of descendants for eligibility). To be on the council and to vote, a member must have 1/16th blood degree. The threat that a slight change could do away with one's own or one's children's voting rights, is enough to discourage blatant public criticism of the people who control enrollment, according to several informants who talked to the BIA anthropologist in 1999. Clearly, blood quantum allegations were mixed into the arguments

voting procedures have been rigged and that the counting of ballots has been dishonest. No evidence in the record would allow the BIA to determine the veracity of these allegations, and it's not necessary for acknowledgment purposes. However, the fear of retribution itself, according to individuals interviewed, drives some minority discontent undercover, as in the case of the secret visits to Quinault. Those being interviewed often requested that the tape recorders be turned off when this issue was discussed.

VI. PRIOR MEMBERSHIP LISTS, 1950-1978.

A. Introduction. The proposed finding stated: "The past membership records of the petitioner are comparatively extensive, but not complete" (CIT PF 1997, GTR 33). At the time of the proposed finding, BIA researchers believed that they had obtained copies of all former membership lists known to the CIT council and officers (CIT PF 1997, GTR 33), and summarized: "The past membership records of the petitioner are comparatively extensive, but not complete" (CIT PF 1997, GTR 34). The BIA researchers prepared a comprehensive data base which compared all data on all the existing lists from 1910 through the present. The lists were compared, regardless of the circumstances under which an individual list was prepared, eg. whether prepared for claims purposes or membership purposes, etc. Because of the passage of some thirty years when these various lists were prepared during which natural deaths and births occurred and explain some differences among the lists, continuity had to be analyzed in stages as the discussion below indicates. By working backwards from the petitioner's current membership, in stages, it was clear that the same core families had comprised the great majority of the tribal, as opposed to the claims, during this period. The following sections detail this analysis.

B. The Record at the Time of the Proposed Finding and New Evidence in Quinault's Submissions. For the final determination, the Quinault submissions significantly supplemented the data available at the time of the proposed finding.¹⁹⁹ With the additional data provided by Quinault, the BIA has been able to distinguish between the elements on the various lists which represented the continuing membership of the Cowlitz tribal entity, the antecedent of the petitioner, and the listing of Cowlitz descendants who were merely interested in sharing in the claim.

For the proposed finding, the BIA had available the following:

about the sweat lodge and the role of traditionalists between 1992 to the present.

¹⁹⁹ The lists submitted to BIA Special Agent Charles McChesney by Peter Kalama and Frank Iyall in 1915, and in turn transmitted by McChesney to the COIA, which were not available for the proposed finding (CIT PF 1997, GTR 34-35), have been discussed above, section V.E.3.a.ii.

1952/53 mailing list. In 1987, the petitioner submitted a "Cowlitz Tribe of Indians - Mailing List" which was believed at that time to date to about 1945 (CIT Pet. Ex. A-1961 - A-1985). Investigation by the BIA researcher on the basis of internal evidence, with cooperation of the CIT office manager, was able to date the list more precisely to 1952/53. The purpose is unknown: it was perhaps a mailing list put together in connection with Docket 218, ICC Claims activity. The preparer is also unknown. One of the documents which assisted in dating the above list was a list of attendees at the Cowlitz Tribe of Indians annual meeting on June 5, 1954 (CIT Pet. Ex. A-1177 - A-1179) (CIT PF 1997, GTR 37-38).

This 1952/53 list contained 208 names. Of the 208 total, 15 could not be identified by the BIA researcher on the 1953/63 "Roll" submitted by Quinault and discussed below (Quinault Ex. 9:U-31).²⁰⁰ Of those 15, however, nine did reappear on the 1973, 1978, 1983, 1986, 1994, and/or 1998 Cowlitz lists.

Concerning the next set of Cowlitz membership records, the proposed finding stated:

The official membership records, maintained in a "ledger" which recorded the receipt of dues from at least the 1930's through the 1960's (possibly from ca. 1912-ca. 1973), were apparently destroyed in a fire at the house of one of the secretaries of the tribal organization, although she maintained that she had transferred the ledger properly to her successor (Hill 1986). In 1956, the tribal organization issued membership cards to all members, signed by tribal secretary (Tribal Minutes, CIT Pet. Ex. A-1183 - A-1184); see also statement of Emma Mesplie, 24 June 1986; BIA Claims File, Docket 218, #2).²⁰¹ There is no extant list of the individuals to whom these cards were issued, but some people still have their originals (CIT PF 1997, GTR 35). [footnote in original]

While the ledger mentioned in the above paragraph has not been located, Quinault found in the ICC records a "Cowlitz Tribe of Indians Roll" compiled by Jacqueline Hill.²⁰² It was undated, noted by the Quinault researcher at the top as "1950's" (Quinault Ex. 9:U-31). The date at

²⁰⁰Since these lists do not contain maiden names of married women or a tracking for prior names of remarried widows and divorcees, the tracking has not been complete.

²⁰¹"In 1956, they gave us enrollment cards and all the Northover family received their cards. My enrollment card No. is 783, and I received it on May 3, 1956. It is signed by Jackie Hill, the secretary and treasurer" (Statement of Emma Mesplie, 24 June 1986; BIA Claims File, Docket 218, #2).

²⁰² This photocopy was of pages from a three-ring binder, with the photocopy indicating that the paper of the original was lined notebook paper, with the edges somewhat wrinkled and bent.

which it was compiled can be defined with considerably more precision. The officers listed on the cover page are Manuel L. Forrest as chairman, James Elias Sareault as vice-chairman, and Jacqueline Hill as secretary. Jacqueline Hill was elected as secretary of the CTI in June 1953; Manuel L. Forrest left the chairmanship in June 1960. The starting date, therefore, must have been between 1953 and 1960. The membership number assigned on this roll corresponded to the 1956 membership card mentioned by Emma Mesplie (see footnote above); the numbers on this list also corresponded to the names on several other photocopies of old membership cards dated 1957 submitted as part of the record by various CIT members. Since the last page assigned membership numbers to two children born in December of 1963, the BIA estimates the ending date this list was compiled in the existing format as late 1963 or early 1964. The BIA researcher added a column for this list to the existing Cowlitz historical membership database. After elimination of duplicate entries, it contained 1,155 names.

The next list, chronologically, was available at the time of the proposed finding:

1966/69 list. Also included in the 1987 petition was a typed, undated list (CIT Pet. Ex. A-1986 - A-2116). The list was roughly alphabetical, with children listed under the name of the parent as well as, sometimes, independently. For the surnames beginning with "A" and "B", this list contained handwritten notes sorting out persons who were no longer qualified for membership after the 1974 constitutional changes. During the field work conducted by the BIA researcher in July 1995, with assistance of the CIT office manager, it was determined that this list was from records maintained by Mary Cloquet when she served as business manager for the Cowlitz Tribe of Indians. Internal evidence indicated that it must be dated between late 1966 and early 1969 (CIT Membership List 1966/69, BAR Files) (see CIT Pet. 1983 and CIT Pet. 1987) (CIT PF 1997, GTR 38).

After the elimination of duplicate entries, the 1966/69 list contained 1,673 names.

Quinault submitted in evidence a "Cowlitz Mailing List" submitted to the ICC by Donald John Cloquet at a hearing held April 10, 1973 (Quinault Ex. 9:1973-19). There was no information on the face of this list which indicated when it was compiled, by whom, or for what purpose. This list contained 272 names after the exclusion of duplicates.

The next list, which was available for use in the proposed finding, was compiled after the constitutional membership changes of 1973/1974:

1978 membership list. Additionally, during the field work undertaken in July 1995, former CIT chairman Roy I. Wilson furnished the BIA researcher with a typed list of "Cowlitz Enrollment" dated July 1978. This alphabetical list contained names and addresses, with numerous handwritten corrections, but no

genealogical information. Numerous addresses were missing (CIT Membership List 1978, BAR Files) (CIT PF 1997, GTR 38).

C. Analysis. As all of the lists are to some extent interrelated, there is overlap between the following two analytical sections which focus on the relationship of the Quinault submissions to the data in the record for the proposed finding. The material is of limited use for analysis of membership continuity, simply because the beginning date of 1953 is now 46 years old, while even the 1973 date is 26 years old. As a consequence, a substantial portion of the membership changes will have resulted not from the 1973/74 eligibility changes, but rather from natural attrition and accretion (deaths and births).

1. *1953/1963 "Roll" Compiled by Jacqueline Hill.* This appears to be a list of persons who had paid dues to the CTI.

Of the 1,155 total names on this list, 34 currently hold CIT "Red Cards." It may be presumed that these individuals were removed from voting membership as a result of the 1973/1974 provision for a minimum 1/16 blood quantum. The BIA was unable to determine a family line for only five of these 33 "Red Card" holders, the remainder of whom are of metis ancestry.

Overall, there were 330 of the 1,155 total names for whom the BIA could not determine an ancestral line on the basis of evidence in the record.²⁰³ Fourteen of the 330 were documented as Yakima Cowlitz, while the remainder shared surnames with known Yakima Cowlitz. Of the 330 names with unidentified ancestry, 30 had been on the 1952/53 Cowlitz mailing list; 27 would appear on the 1966/69 Cowlitz mailing list. However, only three "unidentified ancestry" persons appeared on all three lists (1952/53, 1953/63, and 1966/69).

Additionally, several specifically Yakima Cowlitz ancestral lines had numerous members on this list (Katell, 43 persons; Umtuch, 21 persons). Of the Katell descendants, three had been listed on the 1952/53 Cowlitz mailing list; 27 would appear on the 1966/69 list; only two were on all three of the lists. Of the Umtuch descendants, two had been listed on the 1952/53 Cowlitz mailing list; 19 would appear on the 1966/69 list; only one appeared on all three lists. One woman who listed the Dick ancestral line appeared on all three lists.

A number of Upper Cowlitz (Taitnapam) ancestral lines were still represented on this list who do not continue to have representation in the CIT as of 1999 (Castama (1), Eyle (13), Peter (2), Saterlick (7), Spearchachen (2)). These families had received Yakima allotments and were presumably removed from the CIT membership lists after 1973. The single member of the Castama family appeared on neither the 1952/53 nor 1966/69 lists. Of the Eyles, five appeared

²⁰³The BIA did not receive membership lists or of genealogical information for members of the "Yakima Cowlitz" organization for preparation of the proposed finding or final determination.

on the 1952/53 list; nine on the 1966/69 list; one on all three lists. The two members of the Peter family were on neither 1952/53 nor on 1966/69; one Saterlick was on all three lists, while five more reappeared in 1966/69; one of the Spearchachen was on the 1952/53 mailing list, but neither reappeared in 1966/69.²⁰⁴

These calculations indicate that of the dues-paying membership of the CTO between 1953 and 1963, the Yakima Cowlitz in the broadest definition, including those families allotted at Yakima but still residing in the Cowlitz River valley, were about 420, or 36 percent.

There were two ancestral families on the 1953/63 "Roll" which were not Cowlitz (Cluchie, with four members, and Flett, with 22 members). Descendants of these family lines are not now eligible for CIT membership.²⁰⁵

The remainder of the ancestral lines on the 1953/1963 membership list, representing just under two-thirds of the CTO membership, continue to have descendants in the current CIT membership. While certain sub-lines of these ancestral families have lost eligibility as a result of the blood quantum requirements, other descendants of the qualifying ancestor continue to meet CIT eligibility standards.

2. *1973 Mailing List.* At the time of the "Sovereign Cowlitz" organization's objection to the vote on the ICC settlement taken at the March 3, 1973 meeting (see discussion above), the membership of the CTI, as given by Donald John Cloquet (who submitted the 1973 mailing list as being people who "claimed" to be Cowlitz) and Joseph Cloquet (about 1,801), varied widely. Analysis of the lists confirmed the analysis in the proposed finding²⁰⁶ which concluded that the 1966/69 list included a substantial number of Cowlitz descendants who were not members of the Cowlitz Tribe:

²⁰⁴The data in the record did not permit a determination of how many of the individuals listed in 1953/63 had died prior to compilation of the 1966/69 mailing list.

²⁰⁵While most Flett descendants were removed from the membership list in 1973, for some reason two Flett descendants continue to hold CIT green cards. The BIA has brought this to the attention of the CIT officers, council, and enrollment committee.

²⁰⁶"On the basis of comparison of data, it appears that this 1966/69 list had been compiled from the individual information forms and ancestry charts submitted to the CIT in the late 1960's for persons who wished to participate in the pending ICC judgment award to the Cowlitz Indians (see CIT Pet. 1983 and CIT Pet. 1987)" (CIT PF 1997, GTR 38).

1966/69:		
Persons never on any prior or subsequent Cowlitz membership list:		686
Persons who had appeared also on the 1952/53 or 1953/63 lists, but not on post-1973 lists		202
Persons listed for the first time in 1966/69 who also appear on post-1973 Cowlitz lists		426
Persons appearing in 1966/69, on prior lists, and on post-1973 lists		<u>359</u>
	Total	1,673

1973:		
Persons on neither the two prior nor subsequent Cowlitz membership list:		45
Persons on at least one of the 53/63 or 66/69 lists, but not on subsequent lists: (of these 94, 31 were on 53/63 but not 66/69)		94
Persons appearing for the first time in 1973 and again on subsequent lists:		16
Persons appearing both on prior and subsequent Cowlitz membership lists:		<u>117</u>
	Total	272

By adding the 1966/69 total of 1,673 with:

45 first-but-not-again in 1973
16 first-and-continuing in 1973
<u>31</u> previous members not on 1966/69

The Cowlitz lists in 1973 would become 1,765. Allowing for the possibility that some persons had been added to the 1966/69 list in the ensuing four years whose names were not on the mailing list submitted by Donald John Cloquet, and for possible natural attrition through deaths, the number of names on the Cowlitz claims list in 1973 would approximate the 1,801 mentioned by Joseph Cloquet at the ICC hearing (Quinault Ex. 9:1973-7). The members of the Cowlitz Tribe, the petitioning entity, were included on these claims lists, but there were also many names on these claims lists of persons who would have been eligible to share in an award, but who do not appear to have been part of the tribal entity.

VII. CIT MEMBERSHIP CHANGES, 1994-1999.

A. Introduction: Summary of CIT Membership at the Time of the Proposed Finding (1994 Membership List). The 1994 CIT membership list submitted to the BIA contained

1,410 entries. CIT described it as including all persons recognized as voting members ("Green Card"²⁰⁷ members), plus all persons under age 18 who would be qualified as voting members when they reached age 18. It provided the name of each member. For the great majority of members, it included the maiden name for women; the mailing address, and the date of birth (CIT PF 1997, GTR 33). After analysis which removed duplicate listings,²⁰⁸ deceased members, etc., the BIA determined the actual number of CIT "Green Card" members in 1994 to have been 1,314.

B. 1998 CIT Membership List. CIT submitted a revised membership list as of January 1, 1999, properly certified by the CIT council, received by the BIA on January 7, 1999. This list was not accompanied by copies of the applications, ancestry charts, or documentation for the new members. The BIA researcher obtained copies of all applications and ancestry charts for the new members and samples of the backup documentation during the site visit, June 24 and 25, 1999.

C. 1999 CIT Membership Revisions. During the site visit, CIT submitted additional updates to the membership list through May 1999 (CIT Green Card Updates May 1999). These updates were provided by the CIT office and were not certified by the council. Most consisted of items such as address changes, but included notification of several additional deaths. The CIT membership list, as of May 1999, used by the BIA for this final determination, contained entries for 1,536 "Green Card" members.²⁰⁹ As a result of questions posed by the BIA after the 1999 site visit, CIT reclassified 54 of those "Green Card" members as "Red Card" members (see discussion below, subsection D.3.b.), resulting in a current total for the final determination of 1,482 "Green Card" members. The "Green Card" eligibility of about five of these remains unresolved.

²⁰⁷"Green card" members are those with voting rights under the 1993 constitution or, in the case of minors, those who will be eligible to vote under the 1993 constitution upon reaching the age of 18 years (CIT PF 1997, GTR 29).

²⁰⁸The majority of these were for women carried under both a current married name and/or a maiden or prior married name. A few were for individuals who had been issued replacement cards under a new number, but whose prior number had not been deleted from the CIT computer.

²⁰⁹ There may still be some duplicate entries on this list: since the 1950's, different CIT secretaries have issued membership cards with several different number sequences. The resultant inconsistencies have not yet been completely reconciled by the BIA.

As of May 1999, the CIT also had 652 "Red Card" members, persons of documented Cowlitz descent who do not meet the 1/16 Cowlitz blood quantum membership requirement set out in the 1993 CIT constitution (CIT Red Card Members @[sic]5-17-99, as modified by BIA analysis to eliminate those persons now holding "Green Cards"). The CIT does not issue "Red Cards" to persons of Cowlitz descent enrolled in other tribes. The BIA has no basis on which to estimate the percentage of Cowlitz descendants at less than 1/16 blood quantum who have applied for "Red Cards."

D. Major Changes Between the 1994 and 1998 Revised Membership Lists. For the final determination, the BIA researcher converted the Cowlitz "Historical Membership" database that had been created in DataPerfect under DOS for the proposed finding into a Microsoft Access database.²¹⁰ The BIA researcher added new columns which showed address changes since 1994 and permitted sorting to show additions to and removals from the membership list as it had existed in 1994.

1. Removals.

a. Number Dropped. The preliminary analysis by the BIA researcher indicated 91 persons who had been on the 1994 membership list who were no longer on the 1998 membership list. The BIA faxed a copy of the list containing these names to CIT in April 1999. The BIA's preliminary analysis indicated that there was no pattern to the removals (they consisted of a random sampling across CIT family lines), and that most of the persons removed were elderly.²¹¹

b. Reasons for Removal. During the site visit, June 24 and 25, 1999, CIT provided information that showed the following explanations for the differences between the 1994 and 1998 membership lists: one erroneous entry (two persons combined into one, so that the name did not match to either); six invalid membership numbers (duplicate entries: these persons were on the 1998 list, but under other numbers), four persons removed because of enrollment in other tribes (three Quinault; one Chinook); three persons, no known reasons. The remaining 77 persons removed from the 1998 membership list were deceased.

After examination of the changes through May 1999 and elimination of one more invalid membership number, the BIA concluded that 93 members had actually been removed from the CIT list between 1994 and May 1999. This included a total of: two persons enrolled at Chinook; three persons enrolled at Quinault; 86 persons identified as deceased. There were two persons remaining, sisters born in the 1970's, for whom the enrollment files in the CIT office provided no explanation for the removal from the 1998 list.

c. Conclusion. The removals from the list overwhelmingly reflected normal enrollment

²¹⁰The "Historical Membership" database included not only current members as of 1994, but all persons who had appeared on prior CIT membership lists as well, permitting a tracking of consistency across time. In 1999, the BIA researcher retained all 1994 data fields but added numerous additional fields for purposes of analysis.

²¹¹Starting with the 10th person on the first page of the BIA's April 1999 computer printout of those no longer on the list, the birth dates were 1912, 1927, 1926, 1903, 1916, 1909, 1916, 1935, 1929, 1916. Starting with the 10th person on the second page, the birth dates were 1939, 1919, 1898, 1947, 1903, 1951, 1932, 1965, 1915, 1973. Of the total of 91 persons who had been CIT members in 1994 but were not on the 1998 list, only 18 were under age 50 (born since 1948) in 1998.

record-keeping processes and raised no significant questions. The CIT should review the remaining two anomalous cases and determine their actual status.

2. *Additions.* The BIA's preliminary analysis of the 1998 CIT membership list indicated that CIT had added 213 "Green Card" members since the 1994 membership list. The BIA faxed a copy of this list to CIT in April 1999, and a BIA researcher made a site visit on June 24 and 25, 1999, to examine each of these enrollment files and verify the data. During the site visit, the BIA researcher had obtained copies of the application forms, the ancestry charts, and in some cases the documentation contained in the files. After the site visit, BIA analysis indicated that CIT had added a total of 222 "Green Card" members from 1994 through May 1999.

a. *Analysis.* The BIA analyzed the data concerning the new CIT "Green Card" members to determine whether CIT was simply admitting more persons from existing family lines, whether it was accepting any new qualifying ancestral lines that had not been accepted as of Cowlitz descent at the time of the proposed finding, and whether there were any significant changes in family line proportions.

b. *Conclusions.* All of the new "Green Card" members descended from existing family lines that had been accepted as Cowlitz by the petitioner at the time of the proposed finding in 1994. However, there was a significant change in proportion: between 1994 and 1996, CIT admitted to membership 58 persons who descended from Elizabeth (LeGarde) Byrd, a daughter of Mary (Cottonoire) LeGarde Burston. Elizabeth (LeGarde) Byrd had married a man from Pierce County, Washington. The majority of her descendants had resided in Pierce County since the 1870's. The Roblin Roll had computed Elizabeth (LeGarde) Byrd's Cowlitz ancestry at 3/8 (Roblin Roll 1919, 3). The admission of such a large number of her distant descendants indicated a possible problem with the CIT's application of its membership requirements since the proposed finding. This issue is discussed in detail below in subsection 3b.

3. *Adherence to Membership Eligibility as Established in the CIT Governing Documents.* The genealogical technical report to the proposed finding stated that: "The membership requirements contained in the constitution are, in fact, enforced" (CIT PF 1997, GTR 28). As of 1999, based on analysis of new admissions, it is no longer clear that CIT is consistently enforcing its constitutional requirements for "Green Card" membership.

a. *Admissions Procedures.*²¹² The CIT requires that applicants for membership must complete and sign an application, have it notarized, and submit a processing fee. It is not clear whether, in the case of minors, CIT requires that the application be signed by the custodial parent: in some cases, it appeared that the application was signed by the Cowlitz parent, even when that parent was not custodial. The application is reviewed by the CIT enrollment committee, which

²¹²See also CIT PF 1997, GTR 28-32.

brings recommendations to the CIT council.²¹³ The council approves the applicants by vote; the record did not indicate that the council closely scrutinizes the committee's recommendations.

b. Computation of Cowlitz Blood Quantum in Accordance with the Provisions of the CIT Constitution.²¹⁴ As of 1994, CIT membership eligibility was based on a computation of Cowlitz blood quantum. In the majority of cases, this blood quantum was reckoned on the basis of the Roblin Roll, although occasionally CIT used other documents in the absence of a Roblin Roll listing. The BIA has received no notification from CIT that the 1993 CIT constitution's requirement of a 1/16 Cowlitz blood quantum to be eligible for "Green Card" membership has been amended.

Between 1994 and 1999, the CIT enrollment committee has begun to accept an applicant's total Indian blood quantum, if the applicant demonstrated any Cowlitz ancestry at all, as contributing toward membership eligibility. In some but not all cases, the non-Cowlitz blood quantum claimed was accompanied by actual documentation in the enrollment file. Documentation was most commonly present in instances where the non-Cowlitz ancestry was shown on charts prepared by enrollment offices at the Yakama Agency, Quinault Nation, Warm Springs, etc. The acceptance of non-Cowlitz Indian blood quantum has resulted in the admission, between 1994 and 1999, of approximately 90 "Green Card" members who do not appear to meet the petitioner's own membership eligibility standards. Additionally, the blood quantum of several new members who did meet the minimum eligibility standard of 1/16 was calculated as much higher than the actual Cowlitz blood quantum. If these errors remain uncorrected, they would significantly impact the eligibility of these persons' descendants for membership in subsequent generations.

After examination of the CIT enrollment files, the BIA provided a detailed letter to the CIT discussing this general issue (James to Barnett 7/20/1999, 2-4) and its applicability to specific admissions cases from 1994 through 1999 (James to Barnett 7/20/1999, 4-10). The CIT

²¹³During the site visit, June 24 and 25, 1999, the BIA researcher obtained copies of the material submitted by the enrollment committee to the council for action since 1996.

²¹⁴Membership eligibility requirements are an aspect of tribal sovereignty and are set by individual tribes. The Federal Government, specifically the BIA, does not impose any blood quantum requirement. Federally acknowledged tribes reckon eligibility for membership in a wide variety of ways: some set a relatively high blood quantum, while others establish a low one; some count only tribal blood quantum; some utilize a combination of specifically tribal and total Indian blood quantum; others reckon membership eligibility strictly according to descent.

As a legal matter, however, tribes are obligated to adhere to the eligibility standards which they have themselves adopted. Changes in eligibility require amendment of the constitution and/or enrollment ordinance. Inconsistency in the application of eligibility standards leaves a tribe open to serious membership disputes and to lawsuits and raises issues under the Indian Civil Rights Act.

responded with Cowlitz Indian Tribe Resolution 99-5, passed August 5, 1999, by a vote of 14 For and 0 Against, stating:

THEREFORE BE IT RESOLVED that the Cowlitz Tribal Council hereby amends the blood quantum of the individuals named on the attached list to conform to the membership criteria specified in our petition for federal acknowledgment,

AND BE IT FURTHER RESOLVED that the Cowlitz Tribal Council submits the revised blood quantum listings to the Bureau of Indian Affairs as part of our petition for federal acknowledgement (CIT Resolution 99-5, 8/5/1999).

While the attached listing in some cases indicated specifically that the revisions required an alteration from holding a "green card" to holding a "red card" (CIT Blood Quantum Revisions 1999, [1], 4 individuals recalculated at 1/32, 2 individuals recalculated at 5/128), the other pages figured the blood quantum as less than the minimum,²¹⁵ but did not indicate any change from "green card" to "red card" status (CIT Blood Quantum Revisions 1999, [1], 2 individuals recalculated at 3/64; CIT Blood Quantum Revisions 1999, [2], 28 individuals recalculated at 5/128, 8 individuals recalculated at 5/256; CIT Blood Quantum Revisions 1999, [3], 4 individuals recalculated at 1/32). Two individuals on the attachment were listed as having insufficient information (CIT Blood Quantum Revisions 1999, [1]). This was supplemented by a letter recalculating blood quantum for 16 additional individuals on September 28, 1999 (Hubbs to Fleming 9/28/1999). Of these, three already held red cards, so only 13 called for reclassifications. The petitioner corrected all questionable instances identified by the BIA. The BIA will make available to the petitioner a copy of the final corrected list for post-acknowledgment organizational purposes.

c. Adoptions. The BIA found no evidence of adoption of family lines into the CIT. The adoption records contained in the enrollment files pertained to persons born into Cowlitz family lines who had themselves been adopted as children, either by relatives or by unrelated families. Therefore, adoption was not an issue requiring analysis for this petition.

E. Dual Enrollment. The CIT constitution prohibits dual enrollment, whether with a federally recognized tribe or with a non-federally recognized Indian group (see CIT PF 1997,

²¹⁵A minimum blood quantum of 1/16 Cowlitz equates, with larger fractions, as 2/32, 4/64, 8/128, etc. The BIA notes here that the blood quantum is not a requirement imposed by the BIA nor is it required for Federal acknowledgment. The issue under consideration was whether the petitioner was conforming to the provisions of its own constitution.

The chairman of the CIT Enrollment Committee wrote formally to the BAR chief stating that the mistaken calculations were the result of statements made to him by a BIA staff member during preparation of the proposed finding (Hubbs to Fleming 8/3/1999).

GTR 32-33). Between 1994 and 1999, only five persons were removed from the CIT membership list because of dual enrollment, two with Chinook and three with Quinault (see above).

A significant number of persons admitted to CIT "Green Card" membership between 1994 and 1999 were formerly included on membership lists of the Steilacoom petitioner for Federal acknowledgment. While some of these persons had relinquishments of Steilacoom membership in their CIT enrollment files, this was not the case for all of them. The BIA has brought this issue to the CIT's attention (James to Barnett 7/20/1999, 4).

The BIA has not identified any current instances of Cowlitz dual enrollment with the Quinault Indian Nation. On April 11, 1996, Quinault submitted to the BIA 276 request forms asking whether the signer was on either the Cowlitz or the Chinook membership lists submitted to the BIA (including two duplicate requests and three requests from persons who marked that they were not enrolled at Quinault, for an effective total of 271 requests). No one who requested a report was on the CIT membership list. The BIA notified Quinault of this result (Reckord to Capoeman-Baller 10/3/1996).

F. Condition of CIT Membership Records.

1. *Summary of Comments in the PF GTR.* In the genealogical technical report to the proposed finding, the BIA discussed the CIT's need for complete documentation in enrollment files and for consistency in verification of Cowlitz ancestry²¹⁶ (CIT PF 1997, GTR 30) in addition to the need for consistency in computation of blood quantum (see discussion at CIT PF 1997, GTR 31-32).

2. *CIT Response to PF Recommendations.*

a. Birth Certificates. Since the proposed finding was issued, the CIT has instituted a requirement that a state-certified long-form birth certificate be submitted with new applications. The CIT has also requested by announcement at annual meetings (personal

²¹⁶While the computerized CIT membership list contains, for each member, a notation as to the qualifying ancestor (most commonly a Roblin Roll listing), the CIT is not consistent in reckoning this: sometimes a grandparent is listed; sometimes a great-grandparent. Sometimes when eligibility is reckoned through a female line, the woman's maiden name is listed; in other cases her married name. Additionally, the spelling of the name of the qualifying ancestor varies so widely in the CIT records (e.g. Scaneewa, Saneewah, Ska-dah-wah) that this field cannot be used to make a computer sort.

In order to make the estimates of descent through various family lines in the proposed finding, the BIA researcher had to make an independent verification of the qualifying ancestry for each individual CIT member. The need for precision is particularly urgent in cases where several modern families bearing the same surname (perhaps a common one, such as Smith or Johnson) trace to different qualifying Cowlitz ancestors.

communication, Barnett and Morris to DeMarce, 6/23/1999) and in the newsletter (Yooyoolah 1(19) May 1999, 2) that already-enrolled members submit birth certificates. The response to these requests has been minimal. CIT has checked each enrollment folder and produced a computerized list of those lacking a birth certificate (CIT Green Card Members 5-17-99). The petitioner is beginning the process of sending postcards to the members whose birth certificates are not on file.²¹⁷

b. Verification of Ancestry. Examination of the enrollment folders by CIT office staff in the spring of 1999 indicated that all but three folders contained an ancestry chart (CIT Green Card Members 5/17/99). However, the BIA researcher noted that many of these charts were not fully filled out to the qualifying ancestor.²¹⁸ Additionally, the majority of CIT enrollment files do not contain copies of the documentation from the applicant to the claimed Cowlitz ancestor, or even cross-references from the applicant's file to that of a parent or grandparent where the complete documentation is located.

This absence of a requirement for full documentation has resulted in at least one instance when a family (a woman, her children, and her grandchildren) was admitted to CIT membership between 1994 and 1999 on the basis of the woman's step-grandfather being claimed as her natural grandfather. In the same case, the ancestry chart submitted by the eldest applicant was not consistent with the ancestry charts submitted by her children and grandchildren. The enrollment files did not indicate that the CIT membership committee either noted the discrepancy or attempted to reconcile it. Additionally, this family's two actual lines of documentable Cowlitz ancestry were neither shown on the applicants' ancestry charts nor identified by the CIT enrollment committee during the evaluation process, even though both of the two actual lines have been used as qualifying Cowlitz ancestry by other CIT members.

c. Return of Files Stolen in 1992. Since 1994, all but 16 of the membership files (manila folders) removed from the CIT office in 1992 have been returned. CIT provided the BIA researcher with a list of the 16 "still missing" files (CIT, Missing Files returned 2/15/96, "still missing" highlighted in yellow).

3. *Current Situation.*

²¹⁷Sixteen of these files contained some form of birth record other than a birth certificate (e.g. hospital record, baptismal record, affidavit for Social Security) (CIT Green Card Members @ 5-17-99).

²¹⁸The CIT office manager stated that full ancestral chart information is maintained, but is located on the personal computer of the chairman of the enrollment committee rather than in the CIT office (personal communication, Morris to DeMarce, June 24, 1999). The BIA has recommended that printouts of the complete charts be placed in each enrollment file, and that the CIT office receive regularly updated backups containing the computerized genealogical information (James to Barnett 7/20/1999, 1-2).

It is highly recommended that the CIT focus on improving various aspects of their membership procedures before their acknowledgment becomes effective. For example, the CIT council is advised to formally determine which documents (possibilities would include the Roblin Roll; 1900 and 1910 Federal census, Special Indian Population Schedules; agency records; reservation census, etc.) the enrollment committee may use to compute blood quantum for membership eligibility (James to Barnett 7/20/1999, 3-4) in the future.

The membership list, itself, as of June 1999, is accurate. However, the CIT individual enrollment files are not sufficiently complete and documented for the BIA to use them efficiently as a basis for establishing the official, post-acknowledgment base roll. In spite of the efforts of the CIT officers and council to persuade members to submit such documentation as certified birth certificates, many files remain incomplete.

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²For the convenience of the user, the full contents of the submissions are listed, although not every item has been cited in the technical report.

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