

(4310-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Reconsidered Final Determination to Decline to Acknowledge the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut

Agency: Bureau of Indian Affairs, Interior.

Action: Notice.

SUMMARY: Notice is hereby given that the Associate Deputy Secretary (ADS) has determined that the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut do not satisfy all seven criteria for acknowledgment as an Indian tribe in 25 CFR § 83.7. This Reconsidered Final Determination (RFD) is final and effective upon the date of publication of this notice, pursuant to 25 CFR § 83.11(h)(3).

EFFECTIVE DATE: The procedures defined by this notice are effective on [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, MS: 34B-SIB, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, phone (202) 513-7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Associate Deputy Secretary by Secretarial Order 3259, February 8, 2005, as amended on August 11, 2005.

This notice is based on a determination that the Eastern Pequot Indians of Connecticut (EP) and the Paucatuck Eastern Pequot Indians of Connecticut (PEP) do not satisfy all seven mandatory criteria for acknowledgment in 25 CFR § 83.7.

A notice of the proposed finding to acknowledge the EP was published in the Federal Register on March 31, 2000, together with a notice of the proposed finding to acknowledge the PEP (65 FR 17294-17304). The original 180-day comment period on these proposed findings was extended twice at the request of the State of Connecticut (State). The actual closing of the comment period, August 2, 2001, was established as part of a scheduling order entered by the Federal District Court for Connecticut in *Connecticut v. Dept. of the Interior*, (No. 3:01-CV-88-AVC) (D. Conn. 2001).

The Department published final determinations (FDs) to acknowledge the two petitioners, EP and PEP, as one group, known as the Historical Eastern Pequot Tribe, in the Federal Register on July 1, 2002 (67 FR 44234).

On September 24, 2002, a group known as the "Wiquapaug Eastern Pequot Tribe" (WEP) filed a request for reconsideration of the FDs with the Interior Board of Indian Appeals (IBIA), and on September 26, 2002, the State and the Towns of Ledyard, North Stonington, and Preston, Connecticut (Towns) also filed requests for reconsideration of the FDs with the IBIA under the provision of 25 CFR § 83.11.

On May 12, 2005, the IBIA vacated and remanded the FDs for reconsideration pursuant to 25 CFR § 83.11(d)(2) and (e)(10). The IBIA ruled that the FDs incorrectly relied on "the State's continuous relationship and implicit recognition of the Eastern Pequot as a political entity as 'additional evidence' in support of demonstrating criteria 83.7(b) and 83.7(c) when the other

evidence for a particular time period was insufficient” (41 IBIA 17). The IBIA concluded: “that the State and Towns have satisfied their burden of proof to show that a substantial portion of the evidence relied upon in the Assistant Secretary’s determination was unreliable or of little probative value” (41 IBIA 23).

The IBIA decision identified items and issues to be addressed on reconsideration. In the first three issues (IBIA items 1-3), the use of “state recognition” generally as evidence for criterion 83.7(b) or 83.7(c), the use of “implicit” state recognition in the FDs, and the non-citizenship status of the Eastern Pequot, the IBIA rejected the use made in the EP and PEP FDs of the historically continuous state relationship with the Eastern Pequot as evidence for criteria 83.7(b) and 83.7(c). The IBIA decision described the bases on which the state relationship could provide probative evidence, requiring a more specific articulation of how the state relationship reflected community and political influence as defined in 25 CFR § 83.1 within the petitioners (41 IBIA 18).

The IBIA also referred items outside its jurisdiction as possible grounds for reconsideration. Item 4 referred by the IBIA, the State claim that absent the state relationship there was insufficient evidence to satisfy criterion 83.7(b) “community” in the 20th century. The RFD determined that the FDs had already evaluated and rejected the claims made by the State concerning this evidence. Therefore, Item 4 was not grounds to reconsider criterion 83.7(b) for community in the 20th century.

The RFD accepted Item 5 concerning evidence of a single political entity post-1973 as grounds for reconsideration. This item also affected the evaluation of the evidence under criterion 83.7(b) during the period 1973 to 2002 when the general conclusions about the state

relationship were a factor in the FD. The RFD evaluated the specific state relationship with the Eastern Pequot after 1973 and concluded that it did not provide evidence concerning bilateral political processes within the Eastern Pequot as a single entity. The RFD concluded that a the Eastern Pequot as a single entity meets 83.7(b) and 83.7(c) from 1973 to the early 1980's. The RFD further found that EP and PEP had become separate groups in the early 1980's. It is the Department's policy not to encourage splits within recognized tribes, a policy equally applicable to groups that may be acknowledged. Here, the separation occurred after the petitioning process had started and was in the lifetimes of the adult membership. Because of the recentness of the split, EP and PEP neither separately or together demonstrate existence as a community, nor the exercise of political authority or influence from historical times until the present.

The RFD evaluated the arguments and evidence presented by the parties before the IBIA concerning two 1873 documents (Item 6). Based on this evaluation, the RFD modified the analysis in the FDs on the issue of the two 1873 documents, but otherwise confirmed the FDs. As to Item 7, the RFD corrected an erroneous reference in the FDs concerning evidence of residence on the reservation in the 19th century, but did not change the ultimate conclusion of the analysis in the FDs, that the historical tribe met criterion 83.7(b) for the colonial to 1873 period.

Item 8 concerning acknowledgment of a single tribe based on two acknowledgment petitioners, and Item 9, concerning tribal membership, raised issues that were addressed fully in the FDs and did not merit reconsideration.

Item 10 concerned due process and notice concerning the PFs' conclusions regarding the post-1973 period. The RFD concluded that the parties received actual notice and all due process required in order to submit argument and evidence in response to the proposed findings.

Therefore, Item 10 was not a ground for reconsideration. Item 11 concerned the February 11, 2000 notice, which limited BIA research to that necessary for verification and evaluation, and alleged procedural irregularities. The RFD concluded, as litigated in *Connecticut v. Dept. of the Interior*, that the notice concerned internal agency procedures that did not affect the regulations or any parties' substantive or procedural rights. Item 11 was not a ground for reconsideration of the FDs.

Numerous courts have upheld the Federal acknowledgment regulations and the Department's authority to issue them. Therefore, Item 12 was not a ground for reconsideration of the FDs.

The RFD reviewed the various arguments of the WEP referred by IBIA as outside its jurisdiction and found that none was a basis for reconsideration of the FDs.

The RFD reevaluated and reweighed the evidence in the record in accordance with the IBIA decision and the above conclusions concerning the other items referred by IBIA. On the mandatory criteria, the RFD revised the evaluation of criteria 83.7(b) and 83.7(c).

Criterion 83.7(b) "community": The RFD reviewed the evaluation of criterion 83.7(b) from colonial times through the twentieth century (until 1973) in the FDs, and found that the FDs did not rely on state recognition as evidence in concluding that there was sufficient evidence for criterion 83.7(b). There was more than sufficient evidence to demonstrate criterion 83.7(b) for that time period without the use of the state relationship. There was no reason to reconsider that portion of the FDs, which is, therefore, affirmed in the RFD.

The RFD reconsidered the post-1973 evidence concerning community. The historical Eastern Pequot tribe, including the families antecedent to the EP and PEP petitioners, met the

requirements of criterion 83.7(b) from colonial times through the early 1980's as a single community. The petitioners were not separate communities in this time period. The loss of the Jackson family, who bridged the divide between the various family lines, the formation of two separate organizations that encompassed the membership, and the lack of social interaction and cohesion between those families in the EP membership and those in the PEP membership, demonstrated that there were two separate groups, represented by the EP and PEP petitioners, had formed in the early 1980s. In addition, as discussed in criterion 83.7(c), the state relationship did not provide evidence of a single political system. Therefore, the FD incorrectly relied on a single political system as evidence for a single community post-1973. The Eastern Pequot separation was a recent one and occurred within the lifetime of most of the adult members of the two groups. The two separate communities that existed after 1983 were not the same community as existed previously, although they shared a common origin.

The two groups did not demonstrate existence as a community from historical times to 2002. The RFD concluded that EP and PEP separately or together did not meet criterion 83.7(b) from historical times until the present, notwithstanding that as a single group, the historical Eastern Pequot from which the petitioners derived, met criterion 83.7(b) from early colonial times until the early 1980s.

Criterion 83.7(c) "political authority or influence": The RFD reviewed the evidence for political authority and found that the FDs did not rely on the state relationship as evidence for criterion 83.7(c) before 1913. Criterion 83.7(c) was demonstrated by other evidence for the colonial to 1913 period. Consequently, the conclusions in the FDs that the historical Eastern Pequot tribe, including the families antecedent to the EP and PEP petitioners, met criterion

83.7(c) until 1913 as a single group is affirmed. The petitioners did not separately exercise political influence in this time period because only a single community existed within which political influence was exercised and the evidence for political influence encompassed the entire community.

The RFD concluded that the petitioners did not meet criterion 83.7(c) from 1913 to 1973 as one group. Whereas the FDs relied on state recognition in general as evidence during this period, based on the reasoning in the IBIA decision, the evidence for this period was reevaluated. The RFD concluded that there was insufficient evidence that there was political influence or authority within the group as a whole or in any portion of it between 1913 and 1973. This reevaluation concluded that there was insufficient evidence for Atwood I. Williams's leadership of all or a part of the group, and of interactions with the State that showed political activity within the group. The state relationship did not provide evidence in this time period.

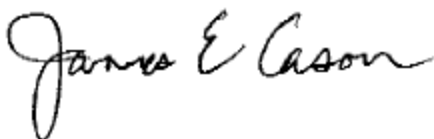
The FDs relied on the state relationship as evidence and concluded that historical Eastern Pequot met criterion 83.7(c) from 1973 to 2002 as one group. Based on the reevaluation in accord with the IBIA decision, without reliance on the state relationship, the RFD concluded that the two petitioners meet criterion 83.7(c) as one group from 1973 to the early 1980's, and did not exercise political authority and influence as one group after that time. The two separate groups did not meet criterion 83.7(c) because of the recentness of the evolution and split into two separate groups, represented by the EP and PEP petitioners. No evidence was submitted concerning the petitioners after the date of the FDs to the IBIA, and the RFD did not evaluate them after that date.

Criteria 83.7(a),(d),(e),(f), and (g): The reevaluation of the post-1973 period in the

grounds described in Item 5 resulted in the conclusion that the two petitioners formed separate communities after the early 1980's, rather than a single group. The evaluations of criteria 83.7(a),(d),(e),(f) and (g) have been revised to reflect this conclusion. The evaluations of criteria 83.7(a),(d),(e),(f), and (g) were not otherwise affected because they did not rely on the state relationship as evidence. Both petitioners met these criteria as separate groups.

The RFD is final and effective upon the date of publication of this notice in the Federal Register, pursuant to 25 CFR § 83.11(h)(3).

Date: OCT 11 2005

A handwritten signature in black ink that reads "James E. Cason". The signature is written in a cursive style with a large, looped initial "J".

James E. Cason
Associate Deputy Secretary