



THE SECRETARY OF THE INTERIOR
WASHINGTON

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Memorandum

To: Assistant Secretary – Indian Affairs

From: Secretary *Sally Jewell*

Subject: Request for Reconsideration of Determination Against Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana

The Little Shell Tribe of Chippewa Indians of Montana (Little Shell; petitioners) petitioned for federal acknowledgment via the regulations at 25 C.F.R. part 83. The Department published a Final Determination against acknowledgment. Little Shell asked the Interior Board of Indian Appeals (IBIA) for reconsideration of the Final Determination. The IBIA denied the petitioner's request for reconsideration with respect to grounds over which the IBIA has jurisdiction. *In re Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana*, 57 IBIA 101. The IBIA also identified five alleged grounds for reconsideration over which it does not have jurisdiction pursuant to the regulations, and referred those issues to me in accordance with 25 C.F.R. § 83.11(f)(2).

On July 16, 2013, the Department received the Petitioner's submission setting out arguments in support of these five points, and also arguing for "suspension" of any further assessment of the petition pending enactment of revisions to the part 83 regulations. The regulations at 25 C.F.R. § 83.11(f)(5) provide that I must determine whether to request a reconsideration of the Final Determination by the Assistant Secretary, and notify all parties of my determination, within 60 days of receiving all comments. The Department received comments submitted by Little Shell on July 16. No other comments were submitted. The 60 day deadline for my determination is Monday, September 16, 2013.

Based on the nature of the five alleged grounds, particularly with regard to the due process concerns and questions regarding burdens of proof, I am exercising my discretion to request that you reconsider the Little Shell Final Determination.

The IBIA referred five grounds to me that are beyond its jurisdiction:

1. Should reconsideration be granted based on the allegation that due process required that Petitioner be provided with an opportunity to review and comment on the interviews of 71 individuals conducted by OFA during 56 interview sessions, and other materials obtained by OFA after Petitioner's last filings and prior to the issuance of the Final Determination?
2. Should reconsideration be granted based on the allegation that application of criterion § 83.7(a) in this case is arbitrary, capricious, and contrary to law?

3. Should reconsideration be granted based on the allegation that the Final Determination erred in requiring Petitioner to demonstrate that the Federal actions relied upon by Petitioner to obtain the benefit of § 83.8 were clearly premised on Petitioner's ancestors being a tribal political entity with a government-to-government relationship with the United States, and that the Final Determination applied an incorrect burden of proof to the evidence that Petitioner provided to show five instances of previous federal acknowledgment?
4. Should reconsideration be granted based on the allegation that the Final Determination imposed upon Petitioner a burden of proof greater than that required by § 83.6(d), and failed to take into account the complexity of Petitioner's historical circumstances as required by § 83.6(e)?
5. Should reconsideration be granted based on the allegation that it was arbitrary and capricious, or contrary to law, for the Final Determination to reverse the favorable Proposed Finding, when no substantial negative comments were received regarding the Proposed Finding and Petitioner submitted evidence strengthening its petition?

In re Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana, 57 IBIA 101, 128-31 (2013).

The allegations in these grounds suggest that further review by your office would ensure that the Department's final decision in this matter benefits from a full analysis and comports with notions of a full and fair evaluation of the Little Shell petition.

In addition to addressing the five matters referred by the IBIA, please consider the petitioner's request that the Department suspend consideration of the petition pending the enactment of revised acknowledgment regulations.

The current deadline for reconsideration of these matters is 120 days from the receipt of this request. *See* 25 C.F.R. § 83.11(g)(1).

Thank you for your attention to this matter.

cc:

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