



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20245



IN REPLY REFER TO:

Tribal Government Services-AR

OCT 21 1986

Mr. John Barnett

Dear Mr. Barnett:

This is in further reply to your letter of March 22. In accord with our June 28 reply to that letter and recent conversations between yourself and George Roth of the Acknowledgment staff, the Branch of Acknowledgment and Research has conducted a review of the revised Cowlitz petition submitted in February 1987. Your letter requests a detailed written report. This letter outlines the results of our review to determine if the revised petition has adequately responded to the concerns raised in the initial obvious deficiency letter of June 15, 1983. We provide this review in the spirit of maximizing technical assistance to your researchers and appreciate your willingness to provide additional data.

You have the option of asking us to proceed with the petition materials we presently have. However, based on our preliminary reviews, if we were to place this petition on active consideration and issue a proposed finding based solely on the evidence submitted to date, we would probably conclude that there is not sufficient information regarding the modern community and present political system to meet the mandatory criteria for Federal acknowledgment (see discussion of items which are listed as ESSENTIAL). The specific deficiencies discussed below as CRITICAL might also preclude the meeting of one or more of the criteria.

In order to facilitate your response, we have organized our comments to correspond with the seven mandatory criteria listed under Section 83.7(a-g) of the Acknowledgment regulations. Under each separate criterion we have further subdivided our requests, if any, for more information and/or documentation into three categories, according to their relative importance to your case as indicated by this preliminary review: 1. ESSENTIAL (criterion cannot be met without it); 2. CRITICAL (criterion possibly may not be met without it); and 3. IMPORTANT (necessary to clarify and/or strengthen the petition but not necessarily critical to meet the criterion).

Criterion BESSENTIALDescription of Modern Community

The revised petition contains almost no description of the modern community of the Cowlitz from the point of view of demonstrating that the Cowlitz meet criterion b. The June 15, 1983 obvious deficiency letter stated that the description of the modern community in the original documented petition was not sufficient to evaluate the petition in relation to criterion b. This was further discussed with your researchers in a follow-up conversation to the letter and examples of treatment of this subject in other cases were provided at that time.

The description of the modern community should include a systematic discussion of how, and to what extent, the Cowlitz members maintain relationships and interact with each other, and in what social contexts. This description should address contact between extended families and different family lines as well as within them. Especially important are informal contexts such as family gatherings, weddings, funerals, parties, etc. How is contact maintained between the different geographical areas in which the Cowlitz presently cluster? You may be able to use some of the same information in describing the community as requested, in subsequent sections of this letter, to describe the flow of information and opinion in political processes.

Please describe activities and events which tend to bring the membership together. For example, the introduction to the petition refers to semi-annual meetings as an event which even distant members attended, but the text of the petition does not mention these meetings. As an example of how social contact is maintained within the group, you may wish to describe a typical wedding or funeral of a member in terms of who attended the event or associated social functions.

There are a variety of ways and kinds of evidence that may be used to demonstrate the maintenance of significant contact and interaction among the Cowlitz membership. Your researchers may wish to discuss this with the Acknowledgment staff before proceeding to develop this information.

Please describe as far as possible any local geographical concentrations and settlements that may still exist. The description of the modern community should include a brief description of the kinds of distinctions and divisions that are recognized within the group today. Possible examples of such distinctions include, but are not limited to, family, geography, social class, political alliances, and historical bands within the tribe (e.g., Upper and Lower Cowlitz). The petition does not address the request in the obvious deficiency letter for a description and documentation concerning the Sovereign Cowlitz and other subgroups discussed in the 1975 Cowlitz petition.

Please also describe how members are considered a distinct community from non-Indians in the area. That is, what kinds of positive or negative social distinctions are made, beyond simply identifying individuals as Indians?

CRITICALHistorical Community:

The specific information and documentation concerning community between 1890 and 1950, requested on page two of the 1983 obvious deficiency letter, were intended to provide the basis to strengthen the petition in the historical description relating to community.

The narrative in the revised petition concerning the historical Cowlitz Tribal Community, while improved, requires additional strengthening. It appears to reflect the outlines of important analyses, especially of the pre-1900 period, not fully presented in the petition. If elaborated on and documented, these analyses would also help in the evaluation of succeeding periods of change in the Cowlitz.

We are presenting a number of specific questions as suggestions for strengthening the treatment of historical community in the 19th and 20th centuries based on the revised petition. It is especially important to improve the description of the post-1900 period.

The present narrative indicates very briefly that certain villages, which existed before extensive non-Indian settlement, survived throughout the later 19th century. There is also an equally brief discussion of the reasons why certain areas were conducive to survival of these villages. Can more information be provided concerning these villages and how long they survived into the 20th century? The maps of residence patterns are significant, in historical context, but require some additional supporting data and analysis of the social patterns they appear to represent.

What is the relationship between the villages, the "Cowlitz Homesteaders" (those who got trust land), and the families mentioned on the basis of census data? The petition also refers to communities forming along extended family lines (page 177). The description of historical community should provide some discussion of these latter communities, indicating the periods during which they existed. It should also clarify the historical relationship between the petitioning group and the "Yakima Cowlitz," including the nature of the latter group and the effect on the Cowlitz of the migration of some Cowlitz to the Yakima Reservation around the turn of the century.

Criterion CESSENTIAL AND CRITICAL

It is essential that, as part of the description of the modern community, materials be presented to show that the Cowlitz meet criterion c. It is critical that additional evidence be provided for tribal political authority during the historical period after 1900. For the sake of clarity and convenience, all of the discussion concerning meeting criterion c is presented together in this section.

The 1983 obvious deficiency letter stated that additional information was necessary for the period from 1960 to the present to complete the description of the modern community in relation to criterion c. It also noted that there

was little documentation concerning the exercise of political influence and governmental functions for the past 30 years. In addition, specific information and documentation was requested to strengthen the treatment of political organization between 1890 and 1950. This request included documentary information or oral history, particularly concerning political leadership and organization between 1935 and 1950.

The present petition section dealing with criterion c, although revised, does not provide an adequate description of the historical political processes since the turn of the century or those of the modern community. The description provided presents little information beyond the fact that there were named leaders at all periods, and only limited description of what is characterized as the tribe's main activity, "pursuit of its land claims and fishing rights." The description does not fully utilize the data available in the exhibits provided.

Presented below is a discussion of different types of evidence and argument that may be used to demonstrate that the Cowlitz meet criterion c, taking into account the specific character of the Cowlitz and the present, revised petition. While it may not be possible or necessary to provide all of these kinds of data, especially for the earlier historical periods, it is important to add to the limited information already provided. The Acknowledgment staff would be pleased to discuss possible approaches to this question with your researchers.

It is necessary to provide some description and data demonstrating that the leaders and the activities described represent or result from the maintenance of tribal political authority or other influence over the membership. The present description focuses largely on indirect evidence, with little direct discussion of internal decision-making processes, or the exercise of political authority. For example, the petition suggests, without elaboration or description, that the claims and fishing efforts resulted from the mobilization of community support and resources, and the discussion of the ease of adoption of the 1950 constitution suggests similar mechanisms. It is important to have whatever possible data there is to support and elaborate on these statements.

To the extent possible, the treatment of tribal political authority should describe or provide evidence of the exercise of authority and how such authority is gained (i.e., the bases for leadership, such as family, age, knowledge, wealth or other). It should describe the influence of leaders on the membership in as broad a context as is possible, i.e., outside as well as within the context of events such as pressing land or other claims. Examples include, but are not limited to, dispute resolution, influence on what is considered correct behavior, and allocation of group resources. It is important to describe how leaders communicate with members and are influenced by membership opinion and by influential groups or individuals within the Cowlitz. How are community efforts mobilized and consensus developed (e.g., along family lines, by means of social pressure, etc.)? Demonstration of the existence of a cohesive community provides an important supporting context for demonstrating that tribal political processes exist now and previously have existed within the Cowlitz.

Actions by external authorities in dealing with the Cowlitz and their leaders may be significant evidence of tribal political processes where there is evidence that these authorities regarded the Cowlitz leaders as exercising authority in a general sense or regarded the Cowlitz as a political entity. While a few such examples have been presented in the revised petition, it is important to make clear the basis of such actions.

As background to the tribal political process, it would be useful to describe politically significant divisions within the group now or in the past, such as families or geographical groupings, and how they have affected political processes. Description of political conflicts and how they have been dealt with can be important in demonstrating the exercise of political authority. Another approach is to describe political transitions, i.e., how leaders are replaced and new individuals gain status as leaders (beyond the simple fact of elections).

### Documentary Materials

#### IMPORTANT

The following documentary materials are important to complete the documentation of the petition. They reflect a few materials requested in the 1983 letter that were not provided as well as materials of apparent importance cited in the revised petition but not provided as exhibits. We appreciate the submission of the other requested materials and the extensive additional documentation of the revised petition.

Previously requested materials not already provided:

1. Sample of council and/or meeting minutes for 1968 to 1972.
2. The minutes of the November 2, 1974, general membership meeting.
3. Lists of council members since 1960 and committee members for the past five years.
4. Relevant testimony and oral history from the Halbert and Indian Claims Commission cases. (Please provide a list of other available materials from these sources).
5. A sampling of newsletters since 1950, if available.
6. The 1953 roll submitted to the BIA in connection with the "Blue Cards."
7. The roll or rolls referred to in the 1975 Senate hearing on the Cowlitz Claims fund distribution.
8. Petition submitted to 1975 hearing by Joseph Cloquet and Roy Wilson.
9. Yakima Cowlitz petition submitted to the 1975 hearing if available.
10. Petition submitted by Frank Mesplie and others to the 1975 hearing, if available.
11. Page two of exhibit 17.

Works cited in the text:

1. Jacobs 1934, pp. 231-42 (on page 174).
2. McClelland 1953 (on page 171 and elsewhere).
3. Irwin 1973 (on page 191).

## OTHER COMMENTS

### Criterion a

The section referring to criterion a has been extensively rewritten and enlarged, drawing on a larger body of sources. While questions concerning criterion a may arise during the course of active consideration, this section of the original version of the documented petition had no immediately obvious deficiencies and was adequate for active consideration. As revised, this section is improved, and more than sufficient for active consideration of the petition. The section contains some discussion and considerable reference to materials relating to criteria b and c that the latter sections of the petition do not appear to fully utilize. We would be happy to provide more detail concerning this to your researchers.

### Possible Additional Sources

In revising the petition, it may be possible to draw on work already accomplished by various scholars. We have briefly reviewed the recent dissertation by Darlene Fitzpatrick concerning the Cowlitz. This indicates that she conducted some of the research for the Cowlitz petition and the petition refers to some conclusions by Fitzpatrick relating to demonstration of criterion b, community. You may wish to consult with her concerning further information she may have that would help demonstrate that the Cowlitz meet the Acknowledgment criteria.

Another possible source of information is Dr. Verne Ray. Since he conducted fieldwork among the Cowlitz in the 1930's and again in the 1960's, and has concluded the Cowlitz have remained a tribe, he may be able to provide important data concerning the Cowlitz for those specific periods.

### Suggested Format

We strongly suggest that in revising the petition the materials pertaining to criteria b and c (i.e., the history of the Cowlitz community and tribal, political authority) be treated in a single, unified narrative. Although not mandatory, it is our experience that this is preferable for ease of analysis and presentation. The historical materials presented in section a concerning identification and Federal and other relationships need not be repeated. It would be helpful, however, if, where relevant, these materials were cross-referenced in the narrative covering the social and political history. The modern community may also be dealt with in a single narrative concerning criteria b and c.

### Previous Federal Recognition

Much of the petition is directed at establishing, on the basis of past Federal actions, that the Cowlitz are now, and have continuously been, a federally recognized tribe. In particular, much of section a is a description and analysis of past Federal actions treating or appearing to treat the Cowlitz as a recognized tribe. Previous recognition is only considered under the Acknowledgment regulations, 25 CFR 83, as one of several

kinds of evidence that may be used to demonstrate that the petitioner meets criterion a. The regulations make no provision for a petitioner to be acknowledged based solely on past Federal actions. However, a detailed factual examination of previous Federal policies and actions dealing with the Cowlitz will be made as part of the acknowledgment study. The Department's position on this question, as expressed in testimony at the May 1988 Senate hearings, is that past recognition actions do not carry with them the presumption of continued recognition, absent a showing of continued tribal existence. A copy of this testimony is enclosed for your information.

Some past Federal actions indicating recognition or identification of a group as a tribe may provide useful direct or supporting evidence concerning the existence of a community and of tribal political processes. Not all actions dealing with an entity, however, are premised on the existence of a tribe. Bureau actions taken in relation to organizations pursuing a tribal claim were not necessarily taken on the basis that the organization was considered to be tribal in character. In the case of claims under the Indian Claims Commission Act, "identifiable groups" other than recognized tribes were authorized to bring claims before the Commission. Such groups were dealt with by the Federal government on that basis while the claim was being pursued. They were also dealt with on the same basis after an award was made, during the process of determining which persons and Indian entities were successors in interest to the historical tribes which had sustained the loss on which the award was based. Actions may also be taken because of individual trust responsibility, e.g., where public domain lands are held for an individual, without it being clear that they are premised on the continued existence of a tribal political entity. It is necessary, therefore, in presenting evidence of Federal actions to clearly establish the character of, and the basis on which, these actions were taken.

#### Updating the Membership List

We suggest that the group keep its membership list current by recording new births and deaths which take place in the interim between the date when your complete list is submitted to us and the date when the group's petition is placed on active consideration. When the group is notified that the petition is being placed on active consideration, a supplemental list can be submitted to be attached to your previous list. This list would include additions to the membership, such as newborn infants, who are considered to be members, and individuals who were inadvertently omitted from the former list. The supplemental list should also note members on the former list who have since died. We appreciate the offer to provide updated addresses at the time the petition is placed under active consideration. As stated above, if the group is acknowledged, the updated list of members will become the group's base roll for Bureau purposes and, as such, will be binding on the group for some time to come, except for minor corrections.

The obvious deficiencies letter is a requirement which is provided for in the regulations to insure that a petitioner is not rejected because of technical problems in the petition and that the group's status will be considered on its merits. The obvious deficiency letter, and this letter reviewing your response to the obvious deficiency letter, do not constitute any evidence that a positive conclusion has been or will be reached on the petition, or on the portions of it not discussed in the letters. Nor does the fact that a

petitioner responds to the letters imply that the group meets the seven mandatory criteria by simply submitting additional data. The obvious deficiencies review, and the follow-up preliminary review of the response, merely provide the petitioner the opportunity to submit additional information or clarification prior to active consideration. It is during active consideration that the petition will be thoroughly reviewed and evaluated to determine whether or not the group meets the requirements to be acknowledged as an Indian tribe.

The staff's research during the active consideration period is for the purpose of verifying and/or elaborating on an already complete petition. The staff's caseload no longer permits them to do the research necessary to fill in gaps in the petition on behalf of the petitioner to the extent that they have done in the past. Therefore, it is important that your researcher provide us with as much data as possible regarding those areas in the petition which we have noted as being deficient.

The Acknowledgment staff will be in touch with you by telephone to discuss the information requested above. They will be happy to answer any questions you may have at that time. Should additional data be needed or questions arise in the future as a result of on-going research during active consideration, we reserve the right to request this information.

If you have any questions regarding this letter and the information that has been requested, please contact George Roth, the Acknowledgment staff member responsible for Washington State petitioners. You may call him at (202) 343-3592, or write him c/o Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627-MIB, 18th and C Streets, N.W., Washington, D.C. 20240. Please note that there has been a change in our mailing address and telephone number.

Sincerely,

**Hazel E. Elbert**

Deputy to the Assistant Secretary -  
Indian Affairs (Tribal Services)

Enclosure



cc: Portland Area Office (Tribal Operations)  
Puget Sound Agency  
Tulalip Tribes  
Bell and Ingram  
Forrest Gerard  
STOWW  
Senate Select Indian Committee  
Sen. Brock Adams  
Congr. Lowery  
Congr. Bonker  
Evergreen Legal Services  
Dennis Whittlesey  
Stephen Beckham  
Yakima Tribe  
Quinault Tribe  
Administration for Native Americans (Dennis Gray)