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DEPARTMENT OF THE INTERIOR

Indian Affairs Bureau

NOTICE: NOTICES

DOCID: fr03no09-79

DOCUMENT ACTION: Notice of Final Determination.

SUBJECT CATEGORY:

Final Determination Against Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana

**DATES:** This determination is final and will become effective 90 days from publication of this notice in the Federal Register on February 1, 2010, pursuant to 25 CFR 83.10(1)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

**DOCUMENT SUMMARY:**

Pursuant to 25 CFR 83.10(1)(2), notice is hereby given that the Department of the Interior (Department) has determined the Little Shell Tribe of Chippewa Indians of Montana, P.O. Box 1384, Great Falls, Montana 59403, is not entitled to be acknowledged as an Indian Tribe within the meaning of Federal law. This notice is based on a determination the petitioner does not satisfy all seven mandatory criteria set forth in 25 CFR 83.7, and thus does not meet the requirements for a government to government relationship with the United States.

**SUMMARY:**

Final Determination Against Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana

**SUPPLEMENTAL INFORMATION**

This notice is published in the exercise of authority delegated by the Assistant Secretary Indian Affairs (ASIA) to the Acting Principal Deputy Assistant Secretary Indian Affairs. This notice is based on a determination the Little Shell Tribe of Chippewa Indians (LS), based on the complete record of available evidence, does not meet all seven of the mandatory criteria for acknowledgment in 25 CFR 83.7. Specifically, the LS petitioner does not meet criteria 83.7(a), (b), and (c).

On July 21, 2000, the ASIA published notice of a proposed finding (PF) to acknowledge the Little Shell petitioner in the Federal Register. 65 FR 45394 (July 21, 2000). The PF concluded that, in a departure from certain practices and precedent related to how to weigh the available evidence at the time, the petitioner met all seven mandatory criteria under the acknowledgment regulations. The notice and PF invited public comment on these proposed departures. The LS petitioner was also strongly encouraged to provide additional evidence during the comment period to demonstrate that it met all the mandatory criteria. The notice and PF stated that additional evidence from the LS could create a different record and a more complete factual basis for the FD, thus eliminating

or reducing the scope of the proposed departures from precedent.

Publishing notice of the PF in the Federal Register initiated a 180day comment period during which time the petitioner, interested and informed parties, and the public could submit arguments and evidence to support or rebut the PF. The petitioner requested, and the Department provided, a series of extensions for good cause that eventually extended the deadline for the comment period to February 5, 2005. The time period for the petitioner to respond to the comments closed on April 13, 2005.

The petitioner requested and received six informal technical assistance (TA) meetings from the OFA during the comment period and received a copy of OFA's 2000 recommendation. It also received comments on the PF from two third parties, one known as the "Lineal Mikisew Asiniwiin Ojibwa Clan Council," in May 2004, and one from Terry Long Fox in September 2004. The OFA received the petitioner's response to these third party comments on April 13, 2005. This FD is made following a review of the evidence in the record for the PF, comments on the PF, petitioner's response to the comments, and on evidence the Department researchers developed during their verification research.

The Department began consideration of the Little Shell petition for the FD on August 1, 2007. The ASIA established July 27, 2009, as the due date for the issuance of the FD following two 180day extensions for good cause. Subsequently, the Solicitor was granted first a 60day, and then a 30day extension, to complete her legal review.

The PF concluded that, in a departure from precedent and looking at the evidence as a whole, external observers had identified the petitioner as an American Indian entity on a substantially continuous basis since 1900 despite there being no specific evidence that external observers identified the petitioner's ancestors as an American Indian entity from 1900 to 1935. The Department concludes that, based on the current available evidence, a 35year period of nonidentification by external observers is too long to meet the criterion under the reasonable likelihood standard of proof and is inconsistent with the language of the regulations which require substantially continuous external identification since 1900. There was no evidence that the lack of identification between 1900 and 1935 was a fluctuation in activity. Applying the standards of the regulations, the evidence proved too limited even when taking into account 83.6(e) concerning historical circumstances and fluctuations in group activity.

The PF proposed to depart from precedent by allowing the petitioner to meet criterion 83.7(b) without requiring "specific evidence showing the continuity of Tribal existence substantially without interruption." LS was strongly encouraged to provide additional evidence to meet this criterion in order to uphold the proposed finding. The regulatory standards of proof provide that a criterion "is not met if the available evidence is too limited to establish it, even if there is no evidence contradicting facts asserted by the petitioner." The regulations provide that either the lack of evidence of social interaction or evidence of little or no contact would mean the petitioner has not met criterion 83.7(b)

(59 FR 9280). LS did not provide sufficient evidence during the comment period to meet this criterion.

A conclusion that the limited interaction in a minority portion of the petitioner is sufficient for the petitioner as a whole would be inconsistent with the plain meaning of a "predominant portion" of a group having to be engaged in social interaction. Further, such an assumption does not work for purposes of defining the boundary of the petitioner's community, which is a significant part of the evaluation done by the Department researchers.

Criterion 83.7(b) requires a demonstration of continuous existence (meaning substantially without interruption) by a distinct community since historical times by a predominant portion of the petitioning group. When considered against the lack of additional evidence, the plain language, the intent, regulatory standards of proof, and precedent established in other findings both before and after the PF, the PF's proposed departures from precedent cannot be supported.

The acknowledgment regulations require for purposes of criterion 83.7(c) that a petitioner maintain political authority or influence over its members as an autonomous entity from historical times until the present. Political influence or authority means some mechanism that the group has used as a means of influencing or controlling the behavior of its members in significant respects, or making decisions for the group which substantially affect its members, or representing the group in dealing with outsiders in matters of consequence (83.1). A petitioner needs to demonstrate continuous existence of a political entity substantially without interruption.

The PF proposed to depart from precedent by accepting "as a reasonable likelihood that patterns of social relationships and political influence" among the petitioner's ancestors in their "settlements in North Dakota and Canada during the mid-19th century persisted among their descendants who migrated to Montana and appeared on the Federal census records of Montana for 1910 and 1920." Regulatory standards of proof and Department precedent have not accepted "patterns" of political influence among a petitioner's ancestors in the middle 19th century would persist among their descendants 50 years later to meet this criterion without contemporary evidence of actual, significant political leadership among the group. To do so would be to base a conclusion of continuous political influence on supposition rather than evidence, and would be contrary to the standards of proof in the regulations. LS was again encouraged in the PF to provide additional evidence during the comment period to support meeting this criterion. The evidence provided by LS, however, was insufficient to satisfy the regulatory standard of proof.

The standards of proof in the regulations provide that the Department shall deny acknowledgment if there is insufficient evidence the petitioner meets one or more of the seven mandatory criteria 83.10(m). Accepting as a reasonable likelihood that patterns of political influence persisted among a group of descendants for over 50 years while

simultaneously acknowledging the available evidence did not show such persistence is inconsistent with the regulatory standards of proof and cannot be justified.

The PF proposed to depart from acknowledgment precedent by accepting "descent from the historical Indian Tribe by 62 percent of the petitioner's members as adequate" for satisfying the criterion, although every previous petitioner had met the criterion with "at least 80 percent" of its members descended from a historical Indian Tribe.

The review of the petition is to be conducted by a team of professional researchers working in consultation with each other, using its expertise and knowledge of sources to evaluate the accuracy and reliability of the evidence submitted (70 FR 16515). The PF found a "reasonable probability that a strong majority" of a group's members have descent from the historical Tribe based on assumptions not in keeping with professional genealogical standards or the regulatory standards of proof.

The available evidence does not demonstrate the petitioner meets the requirements of previous unambiguous Federal acknowledgment in the regulations. The evidence concerning an appropriations act, treaty negotiations in 1851 and 1863, and actions in 1934 were not clearly premised on petitioner's ancestors being a Tribal political entity with a government to government relationship with the United States. Therefore, the petitioner was not evaluated under the provisions of section 83.8(d) that modify the mandatory criteria for Federal acknowledgment.

Criterion 83.7(a) requires external observers have identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. For the period from 1900 to 1935, the available evidence did not show external observers identified the petitioner's ancestors or an antecedent group as an Indian entity. Generally, the evidence demonstrates external observers only described some of the petitioner's ancestors as individuals of Indian or mixed Indian ancestry, living mostly among the general population. For these reasons, the petitioner does not meet criterion 83.7(a), which requires substantially continuous identification since 1900.

Criterion 83.7(b) requires that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present. The Department finds, as detailed in the Summary under the Criteria for this FD, that the evidence did not show the petitioner's ancestors evolved from a distinct community in the 19th century or that they migrated to Montana as a group by the early 20th century. For the period since the early 1900's, the evidence did not show the petitioner's ancestors constituted a distinct community with significant social relationships and social interactions.

The combined evidence does not demonstrate a predominant portion of the petitioner had demonstrated community since historical times. The evidence for this finding did not demonstrate the petitioner's ancestors formed a community which had evolved from a historical Indian Tribe or Tribes. The available evidence did show a large majority of the petitioner's current members have ancestry from Pembina Band of Chippewa Indians of

North Dakota. Yet the available evidence showed that although a small number of the petitioner's earliest ancestors were part of the Band, a much larger percentage of the petitioner's ancestors composed some of the population of multiple settlements along the Red River in Canada which were not part of Indian Tribes, but populations of individuals descended from a variety of Indian European marriages.

Before 1870, many of the petitioner's ancestors were part of the Métis populations along the Red River at the settlements of St. Francis Xavier, St. Boniface, and St. Norbert Parishes in Canada and at Pembina and St. Joseph in North Dakota. Many of the Métis in these settlements were not the petitioner's ancestors, or part of the group's claimed historical community. The evidence does not demonstrate the petitioner's ancestors were a distinct community or communities within these Métis populations.

About 89 percent of the petitioner's members descend either from individuals who received land scrip in the 1870's as "mixed blood" relatives of the Pembina Band of Chippewa Indians, were identified as "mixed blood" relatives of the band on various land scrip treaty schedules, or received treaty annuities as members of the band from 1865 to 1874. The scrip evidence does not demonstrate these "mixed blood" relatives were politically part of the Pembina Band at that time. The available evidence does not show the "mixed blood" Pembina documented on scrip records formed a distinct community at the time of the treaties, or at the time they received or applied for the scrip, either as a part of a treaty Tribe or as a separate community.

Some of the petitioner's ancestors who received annuities, however, were members of the Pembina Band of Chippewa at the time of their receipt. Yet the available evidence also shows these ancestors and their children dispersed widely soon after they received annuities. After the 1870's, some became part of the Turtle Mountain Band of Chippewa in North Dakota, where they maintained social and political affiliation rather than with any claimed historical group of the petitioner's ancestors that migrated to Montana. Others migrated gradually to settlements in Saskatchewan, Alberta, Manitoba, and northern Montana where they lost any possible social and political cohesion. A similar dispersal process took place among the petitioner's ancestors who received or were identified on treaty scrip, and there is no available evidence that showed these two groups of ancestors ever combined to form a distinct community during or after their migration.

In Montana, some of the petitioner's ancestors who came from the various settlements of Canada and North Dakota originally settled in two geographically separate areas, each of which covered a large expanse of territory the Highline and the Lewistown area, and the other, the Front Range. The available evidence does not indicate the petitioner's ancestors who migrated to Montana and elsewhere from Dakota or Canada moved together as a group or in a pattern that maintained ties to places of origin. The evidence does not show that individuals from the petitioner's ancestral families at the Red River settlements in North Dakota or Manitoba, those identified as having Pembina Band ancestry through treaty scrip schedules or annuities, or those who appeared on Turtle Mountain Band censuses, migrated to Montana, or elsewhere, at the same time or to the same location.

Rather the evidence demonstrates the migration was individualistic, gradual, and dispersed widely in a manner that did not maintain social cohesion. The available information does not demonstrate the petitioner's ancestors who settled in Montana had previous social ties with each other and evolved, as communities, from predecessor communities. In sum, the available evidence does not demonstrate that the petitioner's ancestors comprised a distinct community from the middle of the 19th century to the beginning of the 20th century.

The available evidence does not indicate that the petitioner's ancestors formed a distinct community or communities in the areas of Montana where they first settled. In reviewing the petitioner's residential analyses based on homestead and Federal census data, the Department found evidence of residential proximity of the petitioner's ancestors only for those in Lewistown from 1900 through the 1920's. In reviewing the petitioner's marriage data and analysis, the Department found a number of errors, the most fundamental being the petitioner did not establish a baseline community for the group. Neither has the petitioner delineated a social group for subsequent periods.

For the period of 1900-1930, the petitioner also submitted limited interview data on social relationships and social interactions. This information was mostly limited to social interactions between family members within specific geographic areas. There were no interviews in which an individual mentioned a distinct community comprised of the ancestors of Little Shell members. The Department did not find evidence of community in witnessing at baptisms data since it only described witnessing events between family members. The petitioner's data and analyses do not provide sufficient evidence of community for the period from 1900-1930.

From the 1930's through the 1950's, the evidence for the PF showed some of the petitioner's ancestors and current members in Montana moved from rural areas into segregated Indian M[acute]tis neighborhoods on the edges of towns. There they intermarried with Indian and M[acute]tis residents, participated in a culture distinct from non Indians, and endured negative social distinctions and discrimination from nonIndians in the area. However, this evidence did not demonstrate the extent to which its population was distinct from other Indians and M[acute]tis residents in these neighborhoods. Nor did the petitioner show how its members were socially tied to each other across regions.

In response to the PF, the petitioner submitted new interview information as well as Federal and school census data identifying a greater number of its members residing in Montana during this time, which it claimed showed its population clustered residentially in "enclaves" on the edges of towns. However, the Department did not find evidence of residential clustering. Rather, the petitioner's ancestors and current members lived interspersed with other individuals who were neither Indian nor M[acute]tis. In addition, the Department found the petitioner's ancestors dispersed widely throughout other locations outside of the segregated neighborhoods. None of the data provided evidence of a distinct community comprised of the petitioner's ancestors and or current members. For the period from 1930-1950 the petitioner has not provided sufficient evidence demonstrating a distinct community.

From 1950-1992, a large number of the petitioner's members began moving to urban centers, such as Great Falls and Helena, as well to cities outside of Montana. The PF noted the petitioner had not demonstrated the extent to which its members in Great Falls comprised a community or were socially connected to members living elsewhere in Montana or out of State.

In comments on the PF, the petitioner did not submit new evidence for this specific period indicating how group members were socially connected within Great Falls, across regions, and with members residing out of the State of Montana. Neither did the petitioner indicate the extent to which members living outside of the State maintained community interactions among themselves. In the PF, the Department noted that strong patterns of discrimination declined in the 1950's through the present. However, in comments on the PF, the petitioner again claimed strong patterns of discrimination against group members persisted into this period. In examining the petitioner's combined interview material for the period from 1950-1992, the Department did not find evidence of discrimination against Little Shell group members. Rather, the evidence indicated negative social distinctions against members from nonIndians for being Indian as well as from reservation Indians for not being Indian enough, but not against them as Little Shell. The petitioner has not provided sufficient evidence of community for this period.

For the period from 1993 through 2007, the petitioner's ancestors continued to live primarily in Great Falls as well as in locations throughout Montana and out of State. The PF requested further information demonstrating how the petitioner's members comprised a community within and across Montana and with members out of State. In response, the petitioner did not present any new information on social interactions indicating it comprised a distinct community during this period. The new data on Joe Dussome Day indicated that the numbers of Little Shell attendees were low in comparison to the overall size of the petitioner's group.

In an attempt to show social interactions for modern community, the petitioner also submitted a number of analyses and models. These models did not provide evidence for distinct community for the following reasons. First, they were primarily based on statistical correlations between individuals without demonstrating actual community events and interactions. Second, they did not provide the social and economic contexts for interactions and how they pertained to Little Shell events, issues, or activities. Third, without a clear description of the group's community over time it is not possible to calculate percentages of various social activities such as in group marriage. Fourth, in each of its analyses the petitioner aggregated like units of analyses without proving connections. The petitioner has not provided sufficient evidence of community for this period.

Overall, the available evidence shows Little Shell is an organization of individuals of shared ancestry from the Pembina Band of Chippewa. They share some cultural traditions and historical experiences as M[acute]tis. While the membership includes large extended families, the evidence does not show these are or were in the past linked to each

other by kinship or other social ties into one or several communities. The evidence also does not indicate how the current organization evolved from a historical community or communities. The large extended families in the 20th century are not and have not been connected by regular social interactions and obligations, community events, internal disputes, or by common issues that unite them as a group.

Many Little Shell ancestors, and some older current members, shared the experience of homesteading in Montana, and, subsequently, living in segregated neighborhoods on the edges of towns. In the past, many experienced negative social distinctions from nonIndians, as well as from reservation Indians as not being Indian enough. However, these common experiences do not demonstrate there was social interaction and social relationships that bound them together into a community. Therefore, for the above reasons, the petitioner does not meet criterion 83.7(b) for any period.

Criterion 83.7(c) requires the petitioner has maintained political influence and authority over its members as an autonomous entity from historical times until the present. The Department concludes the available evidence is insufficient to support the conclusion that a significant portion of the petitioner has demonstrated political influence over its members since historical times under this criterion. Specifically from 1850 to 1900 the evidence did not reveal political continuity from a historical Indian Tribe. Most of the petitioner's ancestors were some of the population of various M[acute]tis settlements along the Red River in Manitoba and North Dakota early in this period. The available evidence showed these M[acute]tis settlements had political leaders and systems separate from the historical Pembina Band of Chippewa Indians that inhabited the area. While some of the petitioner's ancestors provided limited forms of leadership within some of these settlements, these ancestors did not amalgamate and evolve as a political group into the petitioner in Montana or elsewhere.

Many of the petitioner's ancestors who resided in these M[acute]tis settlements before 1880 later dispersed in a gradual, individualistic migration process that brought them to new settlements throughout the Northern Plains by the early 20th century. The available evidence did not demonstrate the petitioner's ancestors maintained any significant form of group leadership, formal or informal, as part of these new settlements. Thus, the available evidence does not demonstrate the petitioner met the requirements of criterion 83.7(c) before 1900.

From 1900 through 1930, the petitioner claimed group members were under the authority of both Turtle Mountain leadership as well as local leaders located in both the Front Range and Highline regions of Montana. The petitioner's claimed political ties to Turtle Mountain were based on the receipt of allotments by some of the group's ancestors. Information on local leadership in Montana consisted of a limited number of descriptions of a few local M[acute]tis leaders located in Highline and Front Range communities.

In comments on the PF, the petitioner submitted additional information on allotments for 233 individuals it claimed were part of its ancestral population during this period. However, the Department did not consider this submission to supply adequate evidence

of political influence for the following reasons. First, only a small number of the claimed allotment recipients have descendants in the modern membership. Second, the number of allotment recipients was only a very small percent of the population of the claimed size of the Little Shell group at the time. Third, a large number of allotment recipients were living outside of Montana at the time of receipt indicating they were not part of a group of the petitioner's ancestors in Montana.

In comments on the PF, the petitioner submitted additional information on alleged local leaders it claimed served as "labor brokers" from the 1900's through the 1950's. Based on its analysis, the Department did not find evidence the petitioner's ancestors functioned as "labor brokers" for its members. While a few local people of M[acute]tis ancestry living in the Front Range and Highline did obtain work contracts, interviews indicated that these individuals did not specifically hire other Little Shell group members.

While the petitioner claimed Joe Dussome was the leader of its first formal political organization in 1927, the evidence did not show that this organization encompassed the petitioner's ancestors across regions. In its comments on the PF, the petitioner claimed that Dussome had interregional support based on the fact that six of the 51 attendees at the organization's 1927 meeting were from the Front Range. In analyzing the petitioner's data, the Department found that none of the six individuals or their spouses was living in the Front Range at the time of the meeting. Most were part of one large family, the Doney family from the Highline, or intermarried with them.

During the middle 1930's, a second organization claiming to represent the Landless Chippewa Cree Indians of Montana developed in competition with the Dussome organization. This group was lead by Raymond Gray whose supporters came mostly from the Front Range. Without a clear description of the Little Shell community at this time as well as in earlier periods, it was not clear the extent to which these organizations represented two political factions within the same group or were political organizations representing two different populations and, or, communities.

From the period of the middle 1950's through the publication of the PF in 2000, the petitioner provided evidence of a unified political organization that extended to a substantial portion of its membership. However, without a description of the group's community, it was not possible to determine whether the group's political organization represented the group as a whole. The petitioner did provide further updates on conflicts surrounding the group's elections and political leadership. While the evidence showed some conflict among opposing political leaders, it did not show active participation or widespread knowledge of political activities among a significant percentage of the membership. Thus, the petitioner does not meet criterion 83.7(c) since 1950. Based on the foregoing reasons, the petitioner does not meet criterion 83.7(c) for any period.

Criterion 83.7(d) requires a copy of the group's present governing document including its membership criteria. The PF found that the petitioner satisfied the requirements of criterion 83.7(d) by submitting a copy of its 1977 constitution and a 1987 resolution that clarified the membership criteria in Article V of the constitution. The petitioner did not

submit any new evidence for the FD concerning the governing document or the group's membership requirements. This FD confirms that the LS petitioner has satisfied the requirements of criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's membership consist of individuals who descend from a historical Indian Tribe or from historical Indian Tribes which combined and functioned as a single autonomous political entity. The PF proposed to depart from acknowledgment precedent and find that descent by 62 percent of the group was sufficient to meet this criterion. The Department did not apply the PF's lower standard to any subsequent finding. Further, for this criterion, additional evidence submitted during the comment period has eliminated any need to rely upon the departure from precedent stated in the Little Shell PF.

The Department's analyses for the FD are based on its determination that there are 4,332 members in the group. The LS petitioner submitted a certified membership list on July 18, 2006, with the names and birthdates for 4,336 individuals. After eliminating some duplicate entries, the Department determined that list represents 4,332 members. With the exception of about 1,100 cases where the only address was a post office box number rather than a residential address, the list includes all of the elements required by the regulations.

The LS petitioner submitted its genealogical data in an electronic format that linked the parent child connections between the generations from the present back to the group's claimed ancestors. This new evidence included many new names and family connections that were not in the record for the PF. The petitioner also submitted a genealogical report and considerable new evidence that the group used to document their claims, including Lake Superior Chippewa and Pembina and Red Lake Bands treaty schedules and the Pembina annuity lists (1864-1865, 1868-1874). The Department investigated each of these claims and verified that 99 of the 123 claimed ancestors were descendants of the historical Pembina Band. In some of the remaining cases, the evidence showed that the petitioner's claimed ancestor, who was not a Pembina Band descendant, had the same name as the individual identified in the historical records as "Pembina mixed blood." Therefore, Pembina Band descent was wrongly attributed to the petitioner's ancestor of the same name. In some other cases, reliable evidence identified the claimed ancestors as Cree, Sarsee, Saulteaux, or Assiniboine Indians, but the Department did not find other contemporary evidence that also identified the individuals as Pembina Band descendants. The Department's analyses finds that about 89 percent of the LS petitioner's members have at least one ancestor who was identified in the historical records as a descendant of the Pembina Band of Chippewa Indians.

Ten percent of the members have not demonstrated descent from a Pembina Band descendant. About 6 percent descend from an Indian on one of the censuses of the Chippewa Cree of Rocky Boy's Reservation, about 3 percent descend from other Tribes in Canada, Montana, or elsewhere, and less than 1 percent descends from a member of the Turtle Mountain Band of Chippewa Indians. Less than 1 percent of the LS members

did not have ancestry charts or were not in the group's genealogical database and the Department could not determine their ancestry.

The more complete record of the petitioner's ancestors and the additional evidence in the record for the FD demonstrates that about 89 percent of LS petitioner's members (3,865 of 4,332) descend from at least one ancestor who was a descendant of the historical Pembina Band. This FD finds that the petitioner has satisfied the requirements of criterion 83.7(e).

Criterion 83.7(f) requires that the membership of the petitioning group be composed principally of persons who are not members of any acknowledged North American Indian Tribe. The Department's research for the FD finds that less than 1 percent of the petitioner's members (19 of 4,332) are enrolled in Federally acknowledged Tribes. This FD confirms the findings in the PF that the LS petitioner is principally composed of persons who are not members of any acknowledged Indian Tribe and therefore meets the requirements of criterion 83.7(f).

Criterion 83.7(g) requires that neither the petitioner nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. A review of the available documentation showed no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian Tribe. Therefore, the petitioner meets the requirements of criterion 83.7(g).

A report summarizing the evidence, reasoning, and analyses that are the bases for the FD will be provided to the petitioner and interested parties, and is available to other parties upon written request and will be posted on the Bureau of Indian Affairs Web site. After the publication of notice of the FD, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. The IBIA must receive this request no later than 90 days after the publication of the FD in the Federal Register. The FD will become effective as provided in the regulations 90 days from the Federal Register publication unless a request for reconsideration is received within that time.

The regulations state that when the Department declines to acknowledge a petitioner it shall inform the petitioner of "other means through which the petitioning group may achieve the status of an acknowledged Indian Tribe or through which many of its members may become eligible for services and benefits" as Indians (Sec. 83.10(n)). Congress has plenary power over Indian affairs and, considering two historical factors, could recognize this petitioner as an Indian Tribe. First, the Department initiated action under the Indian Reorganization Act of 1934 that affected the ancestors of a significant majority of the petitioner's members. And, second, Congress passed the Act of December 31, 1982 (96 Stat. 2022) conditionally allocating certain trust funds to "the Little Shell Tribe of Chippewa Indians of Montana" petitioner.

In the 1930's, the Department considered using appropriations available under the Indian Reorganization Act of 1934 to buy land for, and then to reorganize as a Tribe, Indians in Montana of one half degree or more Indian blood. The Department prepared the Roe Cloud Roll of these Indians, many of whom are among the Little Shell petitioner's ancestors. Seventy four percent of the Little Shell petitioner's current members descend from an individual on the roll. Lands purchased by the Department at that time, however, were added to the Rocky Boy's Indian Reservation.

In the 1982 Act, which provided for the distribution of the funds awarded by the Indian Claims Commission to the Pembina Chippewa Indians in the Turtle Mountain decision of 1978, Congress allocated a portion of those funds to the "Little Shell Band." Eighty percent of the allocated funds were distributed per capita to the Pembina Chippewa descendants who were members of the Little Shell Tribe of Chippewa Indians of Montana and otherwise met the general qualifications to participate in the distribution as descendants. The other 20 percent of the award allocated to the Little Shell Tribe was to be held in trust and invested until the Secretary acted on its petition for recognition. If the Secretary failed to recognize the Band, the 20 percent was to be distributed per capita when the action on the petition was final. See Sections 2 and 6.

Those funds remain in trust and now total more than \$3 million. Congress could direct that they be used to purchase land for the group, as contemplated in the 1930's, should Congress choose to recognize the Little Shell petitioner. The funds set aside in 1982 may be considered for the use of the current petitioner because calculations at the time of the proposed finding on the Little Shell petitioner indicated that 51 percent of the petitioner's 1987 membership was on the Department's 1994 judgment roll prepared under the 1982 statute, and because there is continuity between the petitioner's 1987 membership and the current membership.

Dated: October 27, 2009.

George T. Skibine,

Acting Principal Deputy, Assistant Secretary Indian Affairs. [FR Doc. E926373 Filed 11/20/09; 8:45 am]

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