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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGARET GREENE, in her capacity as Chairman of the Samish Indian Tribe of Washington; et al., Plaintiffs, v. MANUEL LUJAN, JR. in his capacity as Secretary of the Interior; et al., Defendants, TULALIP TRIBES OF WASHINGTON, Amicus Curiae.	NO. C89-645Z ORDER GRANTING FEDERAL DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER comes before the Court on the federal defendants' motion for partial summary judgment (docket no. 41). The Court took this matter under advisement following oral argument on September 7, 1990. Now being fully advised, the Court hereby GRANTS the federal defendants' motion and DISMISSES paragraphs 48(C) and (D) of the complaint.

Plaintiff claims to be the successor in interest to the

AO 72
(Rev.8/82)

aboriginal Samish Indian Tribe that was present and represented at the signing of the 1855 Treaty of Point Elliott. In 1975 and again in 1979, plaintiff petitioned the Bureau of Indian Affairs, U.S. Department of Interior, for federal acknowledgement of its status as an Indian tribe under 25 C.F.R. part 54, later recodified at part 83. Notice of an adverse determination was published in February 1987. That decision was affirmed on appeal to then-Secretary of Interior Donald Hodel. By this lawsuit plaintiff seeks to vacate that administrative determination and to declare federal recognition.

The federal defendants move for partial summary judgment dismissing plaintiff's claims for federal recognition. They contend that plaintiff is barred by principles of res judicata and collateral estoppel from litigating its tribal successorship claim in light of adverse findings entered in United States v. Washington, 476 F.Supp. 1101 (W.D. Wash. 1979), aff'd, 641 F.2d 1368 (9th Cir. 1981), cert. denied, 454 U.S. 1143 (1982). The federal defendants reserve for a later date plaintiff's claims relating to alleged deficiencies in the administrative process.[1]

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[1] As stated at oral argument, the Court declines the proposal by the Tulalip Tribes to dismiss all claims raised in the complaint. The Court granted the Tulalip Tribes amicus curiae status after denying their application to intervene in this phase of the litigation. The Court's ruling does not preclude the Tribes from reapplying to intervene in the second phase involving alleged defects in the administrative process.

I.

Statement of Facts

The parties do not dispute the essential facts. In June 1975, the Ninth Circuit upheld a ruling by U.S. District Judge George H. Boldt that the Stillaguamish and Upper Skagit Tribes, though not federally recognized, were tribal entities possessing fishing rights under the Treaty of Point Elliott. United States v. Washington, 384 F.Supp. 312, 378-79 (W.D. Wash. 1974), aff'd, 520 F.2d 676, 692-93 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976) ("Washington I"). Because treaty fishing rights are communal property rights pertaining to the tribe, not individual members, the Ninth Circuit indicated the proper inquiry was "[w]hether a group of citizens of Indian ancestry is descended from a treaty signatory and has maintained an organized tribal structure . . . ." 520 F.2d at 688, 693 (emphasis supplied). The court also made clear that nonrecognition of a tribe by the federal government "ha[s] no impact on vested treaty rights." Id. at 692-93.

In August 1974, plaintiff moved to intervene in the then-ongoing treaty fishing rights litigation. Plaintiff alleged it was the "successor in interest" to tribes participating in the Treaty of Point Elliott. Proposed Complaint in Intervention, at 2. The United States opposed the intervention. Judge Boldt appointed U.S. Magistrate Robert E. Cooper as special master and referred to him plaintiff's application to intervene and the applications by several other

tribes. Judge Boldt's order of reference included express instructions that Magistrate Cooper was to determine whether each of the intervenor tribes "constitute[s] a tribal entity at this time entitling each . . . to tribal treaty rights . . . ." Order Referring Treaty Tribal Status Issues, at 1.

On March 5, 1975, after five days of testimony and argument, U.S. Magistrate Cooper recommended against intervention by plaintiff and four other tribes. With respect to the Samish, Magistrate Cooper made the following findings:

> The Intervenor Samish Indian Tribe exercises no attributes of sovereignty over its members or any territory. . . .
>
> The members of the Intervenor Samish Indian Tribe and their ancestors do not and have not lived as a continuous separate, distinct and cohesive Indian cultural or political community. They have no common bond of residence or association other than such association as is attributable to the fact of their voluntary affiliation with the Intervenor entity.

Master's Report, at 6 (Findings of Fact XV and XVI). Magistrate Cooper concluded that plaintiff "is [not] at this time a treaty tribe or a political successor to a treaty tribe and ha[s] failed to make a prima facie showing of such political succession to a treaty tribe." Id. at 11 (Recommended Conclusions of Law).

In July 1975, one month after the Ninth Circuit's ruling in Washington I, Judge Boldt ordered a de novo evidentiary hearing to determine the rights of plaintiff and four other tribes to exercise treaty fishing rights. See Order Establishing De Novo Hearing, at 2. The parties were invited

to submit additional evidence. This action was taken at the request of the tribes, though it is not clear from the record provided whether the impetus for the review was the intervening decision in Washington I. See id. at 3.

A pretrial order was entered by Judge Boldt which defined the issues presented consistent with Washington I. Part Three of that order recited the agreed issues of law and fact:

> As to each of the Intervenors separately, whether it is a group of Indian people who have maintained an organized tribal structure entitling it to exercise treaty fishing rights pursuant to [Washington I] and other Decrees and rulings of this Court.

Pretrial Order, Part Three (emphasis supplied). Plaintiff and the other intervenor tribes declared that they would prove:

> Since treaty times each of the intervenors has continued to maintain a tribal organization. Although some members of the intervenor tribes moved to seceral [sic] reservations the intervenors have maintained on going and distinct organizations. Continuously since the signing of the treaties the intervenors met together and conducted vital business as often as necessary for the mutual aid and protection of the members of the tribe.

Id., Part Four (Intervenors' Positions) (emphasis supplied). The United States, in its opposition to intervention, alleged the tribes "as presently constituted are not political entities or political successors in interest" to treaty signatory tribes. Id., Part Four (Position of the United States). The United States further alleged "[t]hat these Intervenors exercise little or no governmental or other control over their members." Id.

Judge Boldt heard testimony and argument relative to all

five tribes on October 28, 29 and 30, 1975. An additional hearing was held in February 1976. In March 1976, Judge Boldt indicated he believed the tribes had submitted all available information pertaining to "organized tribal structure" but invited the parties to submit additional evidence bearing on the issues identified in Washington I. Judge Boldt ultimately received 87 written exhibits relative to the Samish Indian Tribe, five of which had previously been admitted by Magistrate Cooper. See Exhibit List. These materials included tribal meeting minutes and correspondences dating back to the 1920s and 1930s. The tribe also presented anthropological evidence in the form of testimony by Dr. Barbara Lane.

On March 23, 1979, Judge Boldt signed without substantive change proposed findings of fact and conclusions of law submitted by the United States in 1976. Judge Boldt found that the modern day Samish Indian Tribe, plaintiff herein, was composed primarily of persons who were descendants in some degree of the Samish Indian Tribe that participated in the Treaty of Point Elliott. This finding satisfied the first prerequisite to treaty fishing rights under Washington I. However, Judge Boldt denied the application to intervene on grounds that the tribe had not established the second element, which required proof that the tribe had "maintained an organized tribal structure." The relevant findings are as follows:

> 25. The Intervenor Samish Tribe exercises no attributes of sovereignty over its members or any territory. . . .
>
> . . .
>
> 27. The members of the Intervenor Samish Tribe and their ancestors do not and have not lived as a continuous separate, distinct and cohesive Indian cultural or political community. The present members have no common bond of residence or association other than such association as is attributable to the fact of their voluntary affiliation with the Intervenor entity. (Ex. USA-107; Tr. 10/29/75, 232-235).
>
> . . .
>
> 29. The Intervenor Samish Tribe is not an entity that is descended from any of the tribal entities that were signatory [sic] to the Treaty of Point Elliott.
>
> 30. The citizens comprising the Intervenor Samish Tribe have not maintained an organized tribal structure in a political sense.

Findings of Fact, Conclusions of Law, at 9-10, reprinted at, 476 F.Supp. 1101, 1106 (W.D. Wash. 1979). Findings 25 and 27 were taken virtually verbatim from Magistrate Cooper's findings. See Master's Report, at 6.

Judge Boldt identified six factors in his conclusions of law which apparently guided his determination that plaintiff had not maintained sufficient tribal relations and structure:

> In determining whether a group of persons have maintained Indian tribal relations and a tribal structure sufficient to constitute them an Indian tribe having a continuing special political relationship with the United States, the extent to which the group's members are persons of Indian ancestry who live and were brought up in an Indian society or community, the extent of Indian governmental control over their lives and activities, the extent and nature of the members' participation in tribal affairs, the extent to which the group exercises political control over a

> specific territory, the historical continuity of the foregoing factors, and the extent of express acknowledgement of such political status by those federal authorities clothed with the power and duty to prescribe or administer the special political relationships between the United States and Indians are all relevant factors to be considered.

476 F.Supp. at 1110. Judge Boldt also ruled that only recognized tribes were entitled to treaty fishing rights. 476 F.Supp. at 1111.

The tribes moved Judge Boldt to amend his order, arguing his factual findings were unsupported by substantial evidence and his conclusions of law were erroneous. Relevant to this litigation, plaintiff took exception to finding of fact number 27 that tribe members and their ancestors "do not and have not lived as a continuous separate, distinct and cohesive Indian cultural or political community." Plaintiff acknowledged the relevance of this finding under the Ninth Circuit's rubric in Washington I, but argued there was insufficient evidence to support the same. Memorandum in Support of Motion for Amendment, at 25-26. The motion was denied.

Plaintiff and the other intervenor tribes appealed to the Ninth Circuit. They again argued that the evidence did not support the adverse findings and that Judge Boldt erred in ruling federal recognition was a prerequisite to treaty fishing rights. Judge Eugene A. Wright writing for the majority agreed with the tribes on the latter point, but affirmed the decision on grounds that the evidence supported Judge Boldt's factual findings with respect to the lack of continuity of tribal organization. United States v.

Washington, 641 F.2d 1368, 1371, 1372-74 (9th Cir. 1981), cert. denied, 454 U.S. 1143 (1982) ("Washington II").

The majority prefaced its review by noting that some of the six factors identified by Judge Boldt were tainted by his erroneous conclusion that federal recognition was a prerequisite to treaty fishing rights. Rather, the single necessary condition to the exercise of communal treaty rights was continuity of an organized tribal structure. This required proof that "some defining characteristic of the original tribe persists in an evolving tribal community." Id. at 1372-73; see also United States v. Suquamish Indian Tribe, 901 F.2d 772, 776 (9th Cir. 1990).

In response to Judge Boldt's verbatim adoption of the proposed findings, a practice "disfavored" in the Ninth Circuit, the court "close[ly] scrutin[ized]" the record. 641 F.2d at 1371, 1373. The majority ultimately concluded the evidence supported Judge Boldt's finding that the tribes "had not functioned since treaty times as 'continuous separate, distinct and cohesive Indian cultural or political communit[ies].'" Id. at 1373 (quoting Finding of Fact No. 27). Judge William C. Canby, Jr., dissented, arguing the matter should be remanded to the district court. The tribes' petition for certiorari was denied. 454 U.S. 1143 (1982).

Simultaneous with these earlier judicial proceedings, plaintiff petitioned the Bureau of Indian Affairs, U.S. Department of Interior, for administrative recognition. That petition was ultimately denied in early 1987 on grounds that

the tribe had failed to establish the requisite social cohesion and community, continuity of political authority, and ancestry from the historic tribe. See C.F.R. § 83.7(b), (c) and (e). The agency's factual inquiry was independent of the judicial determination in Washington II. See Report on Final Determination Against Federal Acknowledgement, at 29-30.

The issue presented by the instant motion is whether plaintiff should be barred from litigating here its status as the political successor to the aboriginal Samish Indian Tribe decided in Washington II.

II.

Legal Analysis

The parties do not differentiate between the applicability of res judicata and collateral estoppel to the facts of this case. The judicial doctrine of res judicata "'bars "all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties . . . on the same cause of action."'" C.D. Anderson & Co. v. Lemos, 832 F.2d 1097, 1100 (9th Cir. 1987). Collateral estoppel, on the other hand, precludes "relitigation of all 'issues of fact or law that were actually litigated and necessarily decided' in a prior proceeding." Robi v. Five Platters, Inc., 838 F.2d 318, 322 (9th Cir. 1988).

The proposed subject of preclusion is plaintiff's assertion that it is the political successor in interest to the historic Samish Indian Tribe, and should be so recognized.

Though not denominated as separate causes of action, plaintiff alleges in this lawsuit that the United States wrongfully terminated or withdrew recognition of the tribe and improperly denied the tribe's petition for the same. While this Court is of the opinion that the question of preclusion is properly addressed to the doctrine of res judicata, the result is the same under the doctrine of collateral estoppel.

(1) Res Judicata

The elements of res judicata are (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between the parties. Blonder-Tonque Laboratories v. University of Illinois Foundation, 402 U.S. 313, 323-24, 28 L.Ed.2d 788, 796-97, 91 S.Ct. 1434 (1971). The identity of the parties in the two lawsuits is not disputed here.

a. Identity of Claims

The Ninth Circuit has developed four criteria governing the determination of whether successive lawsuits involve the same causes of action:

> (1) Whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action;
>
> (2) Whether substantially the same evidence is presented in the two actions;
>
> (3) Whether the two suits involve infringement of the same right; and
>
> (4) Whether the two suits arise out of the same transactional nucleus of facts.

C.D. Anderson, 832 F.2d at 1100 (citing Costantini v. Trans World Airlines, 681 F.2d 1199, 1201-02 (9th Cir.), cert.

denied, 459 U.S. 1087 (1982)). "The last of these criteria is the most important." C.D. Anderson, 832 F.2d at 1100.

Plaintiff argues that none of these requirements supports application of res judicata. The record does not support this position. Unquestionably, the relief sought by this lawsuit "would destroy[] or impair[]" the rights or interests established in Washington II. Recognition of plaintiff by judicial decree strikes at the heart of the treaty fishing rights established in that case and coordinate litigation.

Second, plaintiff complains that it limited its evidentiary showing in Washington II based on its understanding of the law as set forth in Washington I. That is not the issue. The question is whether substantially the same evidence underlies both actions. Clearly it does. Evidence of historic continuity, necessary to the exercise of treaty fishing rights in Washington II, underlies plaintiff's claims here that the United States improperly terminated recognition and denied the tribe's petition for the same. See 25 C.F.R. § 83.7(c) (requiring proof of tribal political influence or authority "throughout history until the present").

Third, plaintiff correctly points out that courts have distinguished between Indian treaty rights and federal recognition. See 641 F.2d at 1371. In a formal sense therefore the rights asserted here differ from those at issue in Washington II. But such a conclusion exalts form over substance. The rights sought to be enforced by plaintiff in

both lawsuits are those secured to the historic Samish Indian Tribe as a sovereign entity. This necessarily requires proof of tribal succession.

Finally, plaintiff's contention that the instant suit does not arises from the "same transactional nucleus of facts" is untenable. The determinative issue in Washington II was whether the tribe had maintained an organized tribal structure. In effect two courts have ruled that it had not. Plaintiff is not entitled to litigate anew this claim.

b. Final Judgment on the Merits

Citing a footnote in the United States' brief in opposition to certiorari in Washington II, plaintiff asserts there was an agreement by the parties that the judgment would not be binding. What in fact the United States said was that success in petitioning for federal recognition "might justify" reopening of the judgment entered in Washington II. See Brief for the United States in Opposition, at 12 n.7. This Court does not perceive its authority so easily constrained. Recognition was in any event denied following the agency's independent review. See also Arizona v. California, 460 U.S. 605, 75 L.Ed.2d 318, 103 S.Ct. 1382 (1983) (declining to reopen water rights judgment).

In all other respects the parties assume without discussing that the denial of intervention in Washington II was a final judgment on the merits. There is support for this result:

> Denial of intervention ordinarily leaves the would-be intervenor free to pursue his claims in another action. . . . Preclusion is appropriate, however, if the denial of intervention rests on the substance of the claims advanced. . . . [Thus] denial of intervention on the ground that the intervenor cannot claim the right asserted precludes a second action on the same claim.

18 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 4438, at 352 (1981) (citing in footnote Castro Convertible Corp. v. Castro, 596 F.2d 123 (5th Cir. 1979)).

(2) Collateral Estoppel

Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior action. Montana v. United States, 440 U.S. 147, 153, 59 L.Ed.2d 210, 217, 99 S.Ct. 970 (1979). Unquestionably, the issue of historic continuity was actually and necessarily determined in Washington II. Whether plaintiff was the political successor in interest to the Samish Indian Tribe that participated in the Treaty of Point Elliott was the penultimate issue to the determination of its treaty fishing rights. This same issue underlies the factual foundation of plaintiff's instant claims for recognition.

c. Equitable Considerations

Plaintiff argues that it would be unfair to bar it from litigating these claims in this lawsuit. Courts have long recognized the relevance of such concerns to the application of res judicata and collateral estoppel. See, e.g., Parklane

Hosiery Co. v. Shore, 439 U.S. 322, 330, 58 L.Ed.2d 552, 561, 99 S.Ct. 645 (1979); see generally 1B J. Moore, J. Lucas & T. Currier, Moore's Federal Practice ¶ 0.405[12], at 259-64 (2d ed. 1988). Balanced against such considerations is the need for finality of judgments. As the Supreme Court forcefully stated in Montana, "[a]pplication of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdiction." Montana, 440 U.S. at 153, 59 L.Ed.2d at 217.

Plaintiff argues that Judge Boldt and the Ninth Circuit significantly expanded the scope of inquiry established in Washington I. It complains that prior to Washington II there was no precedent for requiring proof of historic continuity of tribal structure and influence. As a result, plaintiff claims it limited its evidentiary showing to the question of the tribe's current form of organization. Binding the tribe to that judgment is, it argues, unfair under the circumstances.

Plaintiff's complaints are not well taken. The history of that prior litigation establishes that plaintiff had a full and fair opportunity to litigate the issue of tribal succession. The central inquiry at all stages of those proceedings was whether plaintiff "descended from a treaty signatory and ha[d] maintained an organized tribal structure." Plaintiff had ample notice of the scope of that inquiry; indeed, the record demonstrates that plaintiff was well aware of the burden under which it was litigating. Plaintiff cannot escape the results entered therein by recasting its claims

here.

In summary, the Court GRANTS the federal defendants' motion for partial summary judgment. Paragraphs 48(C) and (D) of the complaint are hereby DISMISSED. The parties are ORDERED to file a joint status report within thirty days describing what issues remain in this litigation and to propose procedures and a time frame for their resolution. The parties are directed to address in their report whether the Tulalip Tribes of Washington, amicus curiae herein, should participate in the remaining phase of this case. The parties are further directed to cooperate with the Tulalip Tribes in reporting to the Court.

IT IS SO ORDERED.

The Clerk of this Court is directed to send uncertified copies of this Order to all counsel of record.

DATED this 19th day of September, 1990.

Thomas S. Zilly

THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

Caution
As of: October 13, 2015 4:19 PM EDT

Greene v. Lujan

United States District Court for the Western District of Washington, Seattle Division

February 25, 1992, Decided

NO. C89-645Z

Reporter

1992 U.S. Dist. LEXIS 21737; 1992 WL 533059

MARGARET GREENE, in her capacity as Chairman of the Samish Indian Tribe of Washington; et al., Plaintiffs, v. MANUEL LUJAN, JR., in his capacity as Secretary of the Interior; et al., Defendants, TULALIP TRIBES OF WASHINGTON, Amicus Curiae.

Subsequent History: Subsequent appeal at, Sub nomine at *Greene v. United States, 996 F.2d 973, 1993 U.S. App. LEXIS 14830 (9th Cir. Wash., 1993)*
Affirmed by, Sub nomine at *Greene v. Babbitt, 64 F.3d 1266, 1995 U.S. App. LEXIS 23370 (9th Cir. Wash., 1995)*
Later proceeding at *Greene v. Babbitt, 943 F. Supp. 1278, 1996 U.S. Dist. LEXIS 15382 (W.D. Wash., 1996)*

Prior History: *Greene v. Lujan, 911 F.2d 738, 1990 U.S. App. LEXIS 14078 (9th Cir. Wash., 1990)*

Core Terms

tribe, benefits, treaty, tribal, Plaintiffs', summary judgment, eligibility, rights, acknowledgment, services, property interest, requirements, programs, gratuities, procedures, government benefits, cutoff, successor in interest, formal adjudication, statutory benefit, due process, deprivation, reservation, offsets, card

Case Summary

Procedural Posture

Plaintiff, the Chairman of Samish Indian Tribe, filed an action against defendants, the Secretary of the Interior of the United States. The Tulalip Tribes of Washington appeared as amicus curiae. The Chairman moved for summary judgment that the Samish tribe's right to due process were violated. The Government cross moved for summary judgment on the due process issue and for affirmance of the denial of a Freedom of Information Act request.

Overview

The Bureau of Indian Affairs (BIA) had determined under *25 C.F.R. § 83* that the Samish did not exist as an Indian Tribe. The determination was made through informal adjudication and the Samish were not afforded a hearing or an opportunity to cross-examine witnesses. The Chairman argued that the Samish had a right to formal adjudicatory procedures because they had a property interest in their status as a tribe. Upon consideration, the court had to grant the Chairman's motion for summary judgment. The informal administrative hearing held by the BIA did not meet the due process requirements. Due process mandated that the Samish had to be given a formal adjudication under the Administrative Procedures Act (APA), *5 U.S.C.S. § 554*. The Samish were not given an opportunity to cross-examine the BIA's experts or present their own experts, research materials relied on by the BIA were withheld from the Samish, and there was evidence that would have led an objective bystander to believe that some of the decision makers prejudged the case. The court noted that a

formal hearing was likely to minimize the chance of an erroneous decision.

Outcome

The court granted the Chairman's motion for summary judgment and the BIA was ordered to vacate its determination that the Samish were not a recognized tribe, and to hold a new hearing that conformed with the APA requirements for a formal adjudication.

LexisNexis® Headnotes

Governments > Native Americans > General Overview

HN1 Treaty rights and the loss of Government benefits due to non-recognition are two distinct issues. Treaty rights are determined by whether the party in question is a successor in interest of a treaty signatory. Government benefits are based on Government recognition of the party as a tribe. The Ninth Circuit, addressing this question, states that nonrecognition of a tribe by the federal government may result in loss of statutory benefits, but can have no impact on vested treaty rights. The United States acknowledges the distinction between these two issues.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary Judgment > Supporting Materials > General Overview

HN2 Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). Thus, the question is whether the evidence, together with permissible inferences drawn from that evidence, is sufficient to establish a genuine issue as to any material fact. Inferences may be drawn from underlying undisputed facts, such as background or contextual facts, as well as from disputed underlying facts which the judge must assume will be resolved at trial in favor of the nonmoving party.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN3 For the *Fifth Amendment* to apply, a plaintiff must be found to have a protected property interest. The hallmark of property is an individual entitlement. Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating to the whole domain of social and economic fact.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN4 The Supreme Court holds that continued receipt of Government benefits is a statutorily created property interest protected by the *Fifth* and *Fourteenth Amendments*. Under the Supreme Court's analysis, a person obtains a property interest in a benefit once it is acquired. While the legislature may elect not to confer a property interest, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards. The adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms.

Governments > Native Americans > General Overview

Governments > Native Americans > Property Rights

HN5 See *25 C.F.R. § 83.11(b)*.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN6 The aim of the *Fifth Amendment* is to protect those claims upon which people rely in their daily

lives, reliance that must not be arbitrarily undermined. Administrative agencies should not be allowed to cut off benefits to any or all recipients without procedural safeguards every time Congress alters the eligibility requirements of a Government program.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

HN7 Due process does not have a fixed content unrelated to time, place and circumstances. It is flexible and calls for such procedural protection as the particular situation demands. How much protection is required depends on a consideration of three factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Administrative Law > ... > Hearings > Right to Hearing > Due Process

Governments > Native Americans > General Overview

HN8 *25 C.F.R. § 83.7* requires the Bureau of Indian Affairs (BIA) to make inquiries into the social and political structure of the petitioning tribe. Such matters are inherently complex and prone to mischaracterization.

Administrative Law > ... > Hearings > Right to Hearing > Statutory Rights

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

HN9 Hearings compelled by reason of the due process *Fifth Amendment* requirements are treated for purposes of the Administrative Procedures Act (APA), *5 U.S.C.S. § 554*, as required by "statute."

Counsel: [*1] For Plaintiffs: Russel L. Barsh, LAW OFFICE OF RUSSELL L. BARSH, Seattle, WA.

For Defendants: Daniel G. Steele, U.S. DEPARTMENT OF JUSTICE, Environment and Natural Resources Div., Washington, DC.

For Intervenor-Plaintiff and Intervenor-Defendant: Douglas Lewis Bell, James H. Jones, Jr., BELL & INGRAM, Everett, WA.

Judges: ZILLY

Opinion by: THOMAS S. ZILLY

Opinion

ORDER

The Bureau of Indian Affairs (BIA) determined under *25 C.F.R. § 83* that the Samish do not exist as an Indian Tribe. The determination was made through informal adjudication, and the Samish were not afforded a hearing or an opportunity to cross-examine witnesses.

The Samish moved for summary judgment that the regulations violate due process on their face, and that the procedures followed by the BIA in making its determination violate due process. The Samish argue that they have a right to formal adjudicatory procedures because they have a property interest in their status as a tribe. The Government cross moved for summary judgment on the due process issue, and argues that formal agency adjudication is not mandated by the Constitution because the Samish do not have a vested property interest in their status as a tribe. The Government also moved **[*2]** for summary judgment affirming the Department of the Interior's denial of certain FOIA requests by plaintiffs.

The Tulalip Tribes, appearing as *amicus curiae*, argue that plaintiffs' administrative acknowledgment claim is precluded because it is based on the same argument rejected in *United States v. Washington, 476 F.Supp. 1101 (W.D.*

Wash. 1979), 641 F.2d 1368 (9th Cir. 1981), *cert. den. 454 U.S. 1143 (1982)*.

The Court, in a hearing on October 18, 1991, ruled that the regulations are not unconstitutional on their face. *See* Hearings on Motions, October 18, 1991, p.60. The Court also ordered the Government to produce all documents requested by plaintiffs within 30 days except the pre-decisional drafts of the Assistant Secretary's 1982 decision. *Id.* at 65-70. Plaintiff was ordered to treat the documents as confidential. *Id.* The Court deferred ruling on the constitutionality of the procedures followed in the administrative hearing. Additional briefing was requested on what benefits or rights, if any, the Samish received because of their status as a tribe which were subsequently denied. The Court **[*3]** specified four areas of inquiry: (1) litigation surrounding the failure of the Samish to receive a reservation; (2) actions of the Bureau of Indian Affairs which may estop them from arguing the Samish is not a tribe; (3) rights relating to Indian Schools; and (4) Indian health benefits. The Court concluded "if I'm satisfied that the plaintiffs have been receiving benefits and those benefits were cut off, and those benefits were resulting from the Government's dealing with them as a tribe, then I'm going to implicate the *Fifth Amendment* and we're going to determine what that means. If I'm satisfied that they were receiving benefits as others would receive and not because of their tribal status, I'm going to deny the plaintiffs' motion in its entirety . . . ." Transcript, October 18, 1991 Hearing, p. 16.

For the reasons stated below, the Court finds that plaintiffs have a property interest in their status as a recognized tribe, and are entitled to a formal adjudication under the Administrative Procedures Act (APA), *5 U.S.C. § 553*.

A. *Government benefits distinguished from treaty rights.*

HN1 Treaty rights and the loss of Government benefits due to non-recognition **[*4]** are two distinct issues. Treaty rights are determined by whether the party in question is a successor in interest of a treaty signatory. Government benefits are based on Government recognition of the party as a tribe. The Ninth Circuit, addressing this question, stated that "nonrecognition of the tribe by the federal government . . . may result in loss of statutory benefits, but can have no impact on vested treaty rights." *United States v. Washington, 641 F.2d 1368 (9th Cir. 1981)*.

The United States has acknowledged the distinction between these two issues. In an April 22, 1981 letter to the Bureau of Indian Affairs, the Tulalip Tribe presented to the Government the same preclusion argument set forth in the *amicus* brief. *See* Plaintiff's Memorandum, Exhibit 8-2; Tulalip Tribes' Memorandum as *Amicus Curiae.* The Director of the Office of Indian Services of the BIA responded:

> We appreciate your view on the legal effect of the 9th Circuit's decision. However, because the evidence submitted in support of several of the petitions for Federal acknowledgment was substantially different than that which was before Judge Boldt at the **[*5]** time he made the decision which was affirmed by the 9th Circuit, we are not now persuaded that the 9th Circuit's decision is necessarily dispositive of the claims by these groups to Federal acknowledgment as Indian tribes.

Plaintiffs' Memorandum, Exhibit 8-3.

The issue of whether plaintiffs are successors in interest to the Treaty of Point Elliot has already been resolved. The Court in *United States v. Washington* affirmed the District Court finding that the Samish lacked the necessary political and cultural cohesion to constitute a successor in interest to the *Treaty of Point Elliot. 641 F.2d 1368*. This Court, in an earlier order, held that plaintiffs are barred under the doctrine of *res judicata* from relitigating its status as the political successor to the aboriginal Samish Indian Tribe. Order Granting Federal Defendants Motion for Partial Summary Judgment, September 20, 1990.

Plaintiffs, therefore, have no rights under the Treaty of Point Elliot. The present case deals solely with acknowledgment as it pertains to eligibility for Government benefits.

B. *Summary judgment standard.*

HN2 Summary judgment is appropriate only if "the **[*6]** pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Thus, the question is whether the evidence, together with permissible inferences drawn from that evidence, is sufficient to establish a "genuine issue as to any material fact." *United Steelworkers of America v. Phelps Dodge Corp., 865 F.2d 1539 (9th Cir. 1989)*, *cert. denied, 493 U.S. 809, 107 L. Ed. 2d 20, 110 S. Ct. 51 (1989)*. Inferences may be drawn from underlying undisputed facts, such as background or contextual facts, as well as from disputed underlying facts which the judge must assume will be resolved at trial in favor of the nonmoving party. *Phelps Dodge, 865 F.2d at 1545*.

C. *The due process requirement.*

HN3 For the *Fifth Amendment* to apply, plaintiff must be found to have a protected property interest. *Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982)*. **[*7]** The hallmark of property is an individual entitlement. "Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact." *Id.*

HN4 The Supreme Court has held that continued receipt of Government benefits is a statutorily created property interest protected by the *Fifth* and *Fourteenth Amendments*. *See Mathews v. Eldridge, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)*; *Board of Regents v. Roth, 408 U.S. 564, 576, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)*. Under the Supreme Court's analysis, a person obtains a property interest in a benefit once it is acquired. "While the legislature may elect not to confer a property interest, . . . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards . . . . The adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms." *Logan, 455 U.S. at 432*, **[*8]** quoting *Vitek v. Jones, 445 U.S. 480, 490-91, n. 6, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980)*.

D. *Did the Government cut off already acquired benefits?*

The parties were asked to submit additional evidence and briefing on the issue of whether the Samish received benefits based on tribal status, and then had those benefits taken away. The evidence submitted by plaintiffs does not conclusively show that the Samish received benefits because of their tribal status. The evidence does indicate, however, that the Government cut off the benefits of individual members of the Samish tribe without due process when acknowledgment became a prerequisite to continuing eligibility.

(1) Litigation surrounding the failure of the Samish to receive a reservation.

Plaintiffs submit substantial evidence that prior to the ruling in *United States v. Washington*, the Samish were viewed as successors in interest to the Treaty of Point Elliot. In 1934, the Court of Claims found that the Samish Tribe was a party to the Treaty of Point Elliot, and that the Samish petitioners in that case were entitled to payment in accordance with the treaty. *Duwamish et al. v. United States, 79 Ct. Cl. 530 (1934)*. **[*9]** In 1958, the Indian Claims Commission similarly found that the petitioner was "the tribal organization of Samish Indians whose predecessors in interest ceded their lands . . . under the Treaty of Point Elliot," and awarded petitioners additional monies under the Treaty. *The Samish Tribe of Indians v. United States*, 6 Indian Claims Commission 159, Findings of Fact No. 2 (March 11, 1958).

These decisions dealt with treaty rights, not

statutory benefits, and therefore are not directly relevant to the due process analysis. Furthermore, the issue of treaty status was finally resolved in *United States v. Washington.* The court in *United States v. Washington* held that these prior claims involved compensation for individuals, not tribal rights, and therefore the doctrines of *res judicata* and collateral estoppel were inapplicable. *641 F.2d at 1374*. The Court then determined that petitioners were not successors in interest of the treaty signatories. This holding is binding in this case and treaty issues cannot be relitigated.

One aspect of the Court of Claims ruling, however, is relevant to the present inquiry. The Court of Claims offset **[*10]** money owed to the petitioners by the value of Indian benefits appropriated by Congress. The Court determined that

> During the period from July 1, 1854, to June 30, 1929, the records of the General Accounting Office disclose that the United States, out of gratuity appropriations made by the Congress, expended a total of $ 1,712,608.77 for the benefit of the tribes and bands, parties to the treaty of Point Elliott of January 22, 1855.

Duwamish et al. v. United States, 79 Ct.Cl. 530, Findings of Fact XXXIII. The Court then held that the gratuities exceeded the amount owed under the treaty and dismissed the case.

The nature of these "gratuities" is unclear. If the government included in this figure benefits given to members of tribes on an individual basis regardless of tribal status, then the gratuities are not significant. If, however, the gratuities were given to the Samish tribe itself, they constitute evidence that as of 1929, the Samish received government benefits based on at least tacit acknowledgment of their existence as a tribe. There is not sufficient evidence in the record to determine the nature of the gratuities.

The Samish allege that **[*11]** the Indian Claims Commission made a similar offset for services provided by the United States between 1855 and 1946. Barsh Declaration, P 11. There is nothing in the Commission's holding supporting this allegation. The Commission found in 1963 that the Samish were entitled to $ 17,000 under the treaty, and the Government had paid only $ 11,245.04 in consideration. *Samish Tribe of Indians v. United States,* 13 Indian Claims Commission 583, 605 (1963). The determination of gratuitous offsets was deferred for a later hearing. *Id. at 606*. The Final Award entered in 1971 noted that the Government "makes no claims for offsets in this case" and ordered the payment of the unpaid consideration. *Samish Tribe of Indians v. United States,* 26 Indian Claims Court 318 (1971).

Plaintiffs have not adequately shown that the gratuities which were treated as offsets were given to the Samish based on their status as a tribe. Plaintiffs' motion for summary judgment based on the rulings of the Court of Claims and the Indian Claims Commission is therefore DENIED.

(2) Alleged Acts of Recognition by the BIA which estop them from arguing the Samish is not a tribe.

The Wheeler-Howard **[*12]** (Indian Reorganization) Act of 1934 was the first legal basis on which the Federal Government began to make distinctions between recognized and non-recognized Indian tribes. *See* Barsh Declaration, P 14. Petitioners claim that various actions by the Government led them to believe they were recognized under the Act, and the Government is now estopped from arguing otherwise.

Plaintiffs submit numerous documents to support their claim that they were recognized. None of the documents, however, provide conclusive evidence. First, plaintiffs present evidence that they were among the bands asked to hold a "referendum to vote on Howard-Wheeler bill." Barsh Declaration, Exhibit 10. The Government argues that the referendum was an incidental sampling of Indian views with no legal significance. Defendants' Supplemental Memo, pp. 9-10. Plaintiffs' evidence

does not show the significance of the vote.

Secondly, plaintiffs submit a rough draft of a bill in which the United States Government considered terminating supervision over Indian property in 1953. The bill lists the Samish Indian Tribe as one of the groups affected. Barsh Declaration, P 15, Exhibit 11. The legislation, however, applies **[*13]** to "the following Indian tribes, bands, communities, organizations, or groups, and the individual members thereof . . . ." Barsh Declaration, Exhibit 11. This language indicates that the scope of the bill was intended to be wider than recognized tribes. Furthermore, this is not the type of document from which one can reasonably determine the official status of a tribe.

Plaintiffs also point to the issuance of blue cards to Samish tribal members by the BIA in the 1950s. These blue cards, however, do not shed any light on the question of tribal recognition. As plaintiffs' exhibit indicates, the sole criteria for a blue card is proof that the individual seeking the card is a descendant of a treaty tribe. Barsh Declaration, Exhibit 22. There is no requirement that one belong to a tribe which is officially recognized. The local superintendent of the BIA in a 1962 letter reminded tribal governing bodies that "As you know, the State does not recognize the blue card, formerly issued by the Bureau, as proof of tribal membership . . . ." Defendants Supplemental Memo, Exhibit J.

Fourthly, plaintiffs submit various pieces of correspondence between the superintendent of the Western Washington **[*14]** BIA office and Samish leaders. The letters address the renewal of the Samish Tribe's claims attorney contract, the acquisition of a reservation, and the need for the BIA to be apprised of "the Tribe's credit and funding needs." Barsh Declaration, Exhibit 15; *see also* Exhibits 13, 14, 16, 17. The Tulalip argue that these documents do not establish official Government recognition because plaintiffs have not shown that local BIA authorities had authority to engage in official dealings which would bind the United States to a recognition decision. Tulalip Tribe's Supplemental Memo, p. 10. The position of the Tulalip is supported by *Hoopa Valley Tribe v. Christie, 805 F.2d 874 (1986)*. In *Hoopa*, the Ninth Circuit held that the provision of services, absent a ratified treaty or the enactment of a statute, do not create a property right. *Id. at 879*.

Furthermore, the Tulalip and the Government have presented affirmative evidence indicating that the Samish knew they were not recognized. Mary McDowell Hansen, in direct examination in *United States v. Washington*, stated that in 1953, the BIA "almost promised us recognition **[*15]** if we filled out these forms." Jones Declaration, Exhibit 10, at p. 216. Later in her testimony, Ms. Hansen noted that the BIA made other requests and the Samish "thought we were on the verge of recognition again." *Id.* at 219. Kenneth C. Hansen, the former Samish Tribal Chairman, states that "Prior to the early 1970s, I was aware that the Bureau of Indian Affairs did not recognize us as an 'organized' tribe as it was defined by the Indian Reorganization Act of 1934." Hansen Declaration, P 9.

The evidence, when viewed in the light most favorable to the defendants, is not sufficient to establish that the BIA treated the Samish as a recognized tribe. Plaintiffs' motion for summary judgment on this basis is therefore DENIED. The Government is not estopped from arguing that the Samish should not be acknowledged.

(3) Health Benefits and Rights relating to Indian Schools.

The treaty of Point Elliot included provisions for education and health (Article XIV). These provisions are not the subject of the present inquiry. The issue before the Court is whether plaintiffs received statutory benefits based on their status as a tribe. Plaintiffs note that "Many Samish Indians were able to attend **[*16]** Indian schools or utilize Indian health facilities in the 1920s through the 1950s, although few records exist which can be used to establish the specific legal basis on which they were deemed eligible." Barsh Declaration, P 28. Plaintiffs' Exhibit 21 is a letter of recommendation from the Superintendent of the

Tulalip Indian Agency which allegedly shows that Mary McDowell was given educational assistance by the Bureau of Indian Affairs based on her membership in the Samish Indian Tribe. The evidence is unconvincing. No express statement to that effect is made--the letter simply states that Ms. McDowell is a Samish of one-fourth Indian blood who lives on the Tulalip reservation. Aid could easily have been given based on the blood quantum and residence on a reservation, regardless of tribal affiliation.

Plaintiffs' evidence that health benefits were received based on tribal status is likewise inconclusive. Plaintiffs note that the Indian Hospital in Tacoma requested a copy of the Samish's reorganization meeting minutes. Barsh Declaration, Exhibit 24. This is inconclusive. The evidence does not show that the hospital required or even considered tribal membership in determining health **[*17]** benefits.

Plaintiffs' second piece of evidence regarding health services also fails to show benefits were received based on tribal status. The Portland Area Indian Health Service made a determination in 1971 that the Samish were eligible for services provided by the Indian Health Service "based on the findings of the Indian Claims commission that the Samish were participants in the Point Elliott Treaty . . . ." Barsh Declaration, Exhibit 25. Benefits received because of treaty status are not relevant to the present inquiry. There is no reference to statutory benefits provided to plaintiffs because of their status as an acknowledged tribe.

In general, petitioners admit that it is "never clear, in Federal records from 1921 to the early 1970s, whether services are being provided to individual Indians simply because they are Indians, because they are the descendants of treaty signatories, or because they are members of particular tribes." Barsh Declaration, P 27. Plaintiffs note that the distinction between treaties and Congressional appropriations was blurry before 1921, but that "Through the 1920s, tribal membership as such was not required for Indians to be eligible for general Indian **[*18]** services." *Id. at PP 22, 24*.

In sum, there is a material factual dispute which cannot be resolved as a matter of law as to whether the Samish Tribe or its members received statutory benefits based on tribal status. Therefore, summary judgment on this basis is DENIED.

(4) Loss of benefits of tribal members following the 1975 Indian Self-Determination Act.

While the evidence does not establish that the Samish received benefits based on their tribal status, the evidence does show that members of the Samish tribe began to lose benefits after 1975 because of their lack of recognition. The 1975 Indian Self-Determination Act introduced the phrase "Indian tribes . . . recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *25 U.S.C. § 450b(e)*; Barsh Declaration, P 26. Following the enactment of this legislation, Congress made recognition of a tribe an express condition of eligibility for a wide range of special Indian programs. *See e.g.* Indian Financing Act, *25 U.S.C. § 1452(c)*; Indian Health Care Improvement Act, *25 U.S.C. § 1603* **[*19]** *(d)*; Indian Child Welfare Act, *25 U.S.C. § 1903(8)*; Indian Alcohol and Substance Abuse Prevention and Treatment Act, *25 U.S.C. § 2403(3)*, Tribally-Controlled Schools Act, *25 U.S.C. § 2511(2)*; Indian Law Enforcement Reform Act, *25 U.S.C. § 2801(5)*; Native American Languages Act, *25 U.S.C. 2902(5)*; Native American Graves protection and Repatriation Act, *25 U.S.C. § 3001(7)*; and Indian Child Protection and Family Violence Prevention Act, *25 U.S.C. § 3202(10)*. The Government acknowledges that benefit programs were tightened up to limit benefits to tribal members. Defendants' Supplemental Memo, p. 12.

In and of itself, the decision to alter or amend benefit programs does not implicate the *Fifth Amendment*. In each case, the legislative determination provides all the process that is due. *Logan, 455 U.S. at 433*, citing *Bi-Metallic Investment Co. v. State Bd. of Equalization, 239*

U.S. 441, 445-46, 36 S.Ct. 141, 60 L.Ed. 372 (1915). **[*20]** The issue in this case, however, is whether an administrative agency, in applying the amended legislation, can terminate the benefits of a current recipient without implicating the *Fifth Amendment*. In other words, is a recipient of benefits entitled to a hearing to determine whether she qualifies under the amended criteria?

The Government argues that plaintiffs have no property interest in tribal recognition because recognition itself does not entitle the Samish to any benefits. Tribal recognition is merely a prerequisite for benefit programs which Congress may authorize. The Government cites the acknowledgment regulations which state:

> ***HN5*** While the newly recognized tribe shall be eligible for benefits and services, acknowledgment of tribal existence will not create an immediate entitlement to existing Bureau of Indian Affairs programs. Such programs shall become available upon appropriation of funds by Congress.

25 C.F.R. § 83.11(b).

The Court must reject this attempt by the BIA to sidestep the due process requirements of the *Fifth Amendment* by creating a two tiered decision-making process. Samish Indians are being denied benefits which they previously received because of a Government **[*21]** decision that they are not a recognized tribe. It is sophistry to argue that the decision not to recognize the Samish as a tribe is unrelated to the discontinuation of benefits previously received. The protections of the *Fifth Amendment* would be seriously impaired if this Court allowed the Government to cut off benefits without a hearing by creating new eligibility requirements and then summarily holding that current benefit recipients do not meet the new requirements.

HN6 The aim of the *Fifth Amendment* is "to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Roth, 408 U.S. at 577*. Members of the Samish tribe have for years received a variety of benefits from the government. Before those benefits are taken away, the Samish ought to have the opportunity to demonstrate in a hearing that they continue to qualify for these programs. To decide otherwise is to create a loophole through which the basic aim of the *Fifth Amendment* can be undermined. Administrative agencies should not be allowed to cut off benefits to any or all recipients without procedural safeguards **[*22]** every time Congress alters the eligibility requirements of a Government program.

E. *What process is due?*

HN7 "Due process does not have a fixed content unrelated to time, place and circumstances." *Cafeteria & Restaurant Workers v. McElroy, 367 U.S. 886, 895, 81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961)*. It is "flexible and calls for such procedural protection as the particular situation demands." *Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)*. How much protection is required depends on a consideration of three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). **[*23]**

All three of these factors weigh in favor of a formal adjudication. The private interest that will be affected in this case is substantial. If the Samish are denied recognition, they will be cut off from numerous entitlement programs designed to protect

and advance the interests of Indians. Unlike the typical situation in which an individual is threatened with the deprivation of a benefit under one particular program, this case involves the loss of numerous benefits to a whole group of people.

The risk of erroneous deprivation in this case is also high. ***HN8*** *25 C.F.R. § 83.7* requires the BIA to make inquiries into the social and political structure of the petitioning tribe. Such matters are inherently complex and prone to mischaracterization.

Moreover, a formal hearing is likely to minimize the chance of an erroneous decision. A hearing will allow the Samish to present evidence of their cultural and political bonds, and challenge generalizations about the tribe that they believe are incorrect. Decision-making is undoubtedly aided by input and analysis from the group being characterized.

In sum, the burden that a formal hearing will put on the agency is substantially outweighed by the material **[*24]** impact of non-recognition on the lives of numerous people, and the danger of an erroneous decision. Due process mandates that plaintiffs be given a formal adjudication under the APA, *5 U.S.C. § 554*, with the right to present evidence and cross-examine experts before a neutral judge. ***HN9*** "Hearings compelled by reason of the due process *Fifth Amendment* requirements are treated for purposes of *5 U.S.C. § 554* as required by 'statute.'" *Clardy v. Levi, 545 F.2d 1241, 1244 (9th Cir. 1976)*, citing *Wong Yang Sung v. McGrath, 339 U.S. 33, 70 S.Ct. 445, 94* L.Ed.616 (1950).

The informal administrative hearing held by the BIA did not meet the due process requirements. Plaintiffs were not given an opportunity to cross-examine the BIA's experts or present their own experts, research materials relied on by the decisionmakers were withheld from the plaintiffs, and there is evidence that would lead an objective bystander to believe that some of the decision-makers prejudged the case. Therefore, plaintiffs' motion for summary judgment is GRANTED. The court orders **[*25]** the BIA to vacate its determination that the plaintiffs are not a recognized tribe, and hold a new hearing which conforms with the APA requirements for a formal adjudication. This matter should therefore be remanded to the BIA for a formal adjudication under the Administrative Procedures Act, *5 U.S.C. § 553* consistent with this ruling. The Clerk of the Court is directed to enter judgment in this case in favor of plaintiffs pursuant to this Order

IT IS SO ORDERED.

The Clerk of this Court is directed to send uncertified copies of this Order to all counsel of record.

DATED this 25th day of February, 1992.

THOMAS S. ZILLY

UNITED STATES DISTRICT JUDGE

End of Document

Samish Indian Nation
OF WASHINGTON

December 22, 2014

Mr. Stanley Speaks, Regional Director
Attn: Dr. BJ Howerton, MBA
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Ave.
Portland, OR 97232-4169

Re: Response of Samish Indian Nation to Written Comments on DEIS, Samish Indian Nation Trust Acquisition and Casino Project submitted by the Swinomish Indian Tribal Community

The Samish Indian Nation submits this response to the Swinomish Indian Tribal Community's (SITC) comments to the Samish Tribe's draft Casino EIS, The Samish Tribe's comments will focus on arguments made by the SITC regarding the legal status and history of the Samish Tribe. These arguments include that the area where the proposed Samish casino will be located is part of the Swinomish Reservation and belongs to the SITC, and that the SITC rather than the Samish Tribe is the only successor to the historical Samish Tribe.

First, the Samish Tribe will discuss what the two tribes can agree on. The Samish Tribe agrees with the SITC that March's Point was and is part of the reservation established by Governor Isaac I. Stevens in Article 2 of the 1855 Treaty of Point Elliott, the tract of land identified as "the peninsula at the southeastern end of Perry's Island, called Sha'is-quihl." Treaty of Point Elliott, ratified March 8, 1859, 12 Stat. 927. This acknowledgment does not mean, however, that the additional reservation area ever or now belonged or belongs to the SITC, a tribal government formed in 1936 under the Indian Reorganization Act comprised of individual Indian reservation residents.

The Samish Tribe has conducted its own research and retained its own experts on this issue and believes it is beyond reasonable dispute that the original reservation established on Fidalgo Island included March's Point, and that the western boundary of that reservation is as it was drawn in the mid-1850s by Governor Stevens, George Gibbs and other federal officials – a north-south line extending north from Similk Bay to Fidalgo Bay, and that the reservation includes March's Point. In addition to the sources cited in E. Richard Hart's April 11, 2012 report on March Point for the SITC, it is also the only reasonable geographic conclusion from the definition of the terms "isthmus" and "peninsula" as used in 1855. As a self-effectuating reservation established pursuant to a ratified treaty, the 1873 Presidential Executive Order purporting to redefine and reduce that treaty reservation without an Act of Congress and adequate compensation was void and of no legal effect. Legally, that treaty reservation continues in existence until properly vacated or diminished.

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The fact that the original 1855 treaty reservation on Fidalgo Island included March's Point and the fact this northern portion of that reservation was never legally removed from that reservation **does not mean**, however, that the SITC owns or has a legal claim to March's Point. In fact, as is shown below, the exact opposite is true. The SITC has no claim to or legal interest in March's Point.

The four Indian reservations expressly established in Article 2 of the Treaty of Point Elliott were not established for any particular tribe or tribes; by the terms of the treaty itself, the four reservations were "reserved for the present use and occupation of the said tribes and bands," meaning all the reservations were reserved for the use and occupancy of all the signatory tribes and bands to the Treaty of Point Elliott ("All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use."). *See* Natalie Roberts 1975 Swinomish Report (hereinafter "Roberts"), p 234 ("Before 1884 all Swinomish Reservation land belonged communally to the bands signing the treaty."). It is correct, of course, that once established, Governor Stevens and other federal officials administratively identified particular reservations primarily for the use and occupancy of particular tribes. (1857 Stevens Map, attached as Ex. 1). Stevens' 1857 map identifies the reservation on Fidalgo (Perry's) Island as for the "Skagits and allied tribes," while the treaty reservation on Lummi Island is identified as for the Lummi, Nooksack and Samish Tribes. These administrative recommendations do not, however, alter the legal interpretation of express treaty language that all four reservations were jointly for all signatory bands and tribes.

As Dr. Hart and other experts have repeatedly pointed out, the tribes identified by Governor Stevens under the Treaty of Point Elliott as being associated with particular reservations seldom ended up where they were told they would go to. The "Skagits," for example, did not end up on the Fidalgo Island Reservation, later known as the Swinomish Reservation. Likewise, the Samish Tribe never ended up on the Lummi Reservation, as initially recommended by Governor Stevens. This was for a variety of reasons. Most importantly, the Samish refused to leave their traditional homelands and villages, a fact reflected in contemporaneous federal correspondence of the time. As summarized by Dr. Wayne Suttles in Volume 7 of the Smithsonian Institution's Handbook of North American Indians (1990), "most of the Clallam, Nooksack, and Samish chose to live at or near their old villages." *See* Roberts at 228-29 (the Samish stayed on their own lands); Hart at 68-69 ("These passages suggest that the Swinomish, like the Lummi, Nooksack and Samish, were allowed to remain at their traditional locations, and were not asked to remove."). Contemporaneous correspondence from federal Indian officials remarks on how the Samish refused to come in and live on the Lummi Reservation, how there was not enough land on the Lummi Reservation for Samish members, and how Samish Indians were not included in the treaty goods and annuities distributed to Indians on the Lummi Reservation. For a variety of reasons, the Samish Indians refused to move from or returned quickly to their traditional homelands and territory after the Point Elliott Treaty was ratified in 1859.

It is beyond dispute that the traditional territory, village sites and gathering locations of the Samish Tribe included March's Point. Dr. Hart's discussion of Indian connections to March's Point relies primarily on Samish use and occupation of that area. Four experts relied upon by both the Samish Tribe and the SITC – Dr. Wayne Suttles, Dr. Marian Smith, Natalie Roberts, and Dr.

Sallie Snyder - all identify traditional Samish village sites and gathering locations on March's Point. These include village sites and gathering locations on the west shore of March's Point where the railway structure made landfall (kwt'aal), the name for camas and also a camas gathering site (*see* Hart, p. 7, citing Suttles' 1951 PhD dissertation – camas site a Samish village), a village site and gathering location near the base of March's Point in the area known as Summit Park and immediately adjacent to the proposed site of the Samish Casino project (Khwalol); a gathering location and Samish camp located to the west of Khwalol at the base of Fidalgo Bay near Similk Bay, a prairie location slightly to the east of the Camas village site where Samish planted and harvested potatoes beginning in around 1830 (*see* Hart, p. 7 (prairie on March Point "was the home village of the Samish Tribe"), and a Doowhaha (also labelled Noowhaha or Nu-wha-ha[1]) village on the north end of March's Point. These village sites are identified on a map introduced as Exhibit B-3 in the Court of Claims case deciding Point Elliott treaty claims, *Duwamish Tribe of Indians, et al. v. United States*, No. F. 275 (attached as Ex. 2). *See Duwamish Tribe of Indians v. United States*, 79 Ct.Cl. 530, 560, 581-82 (1934) (Samish a signatory and separate tribe under the Treaty of Point Elliott).

The fact that Samish Indians continued their occupation and use of March's Point during and after treaty time is documented in part by the fact that a number of early non-Indian settlers on March's Point from 1859 on married or settled with Samish women. This fact is undisputed. The status of March's Point after ratification of the Point Elliott Treaty in 1859 was put in dispute by this unauthorized non-Indian settlement. As a result of this settlement, and to essentially ratify its legality after the fact, a diminished reservation excluding March's Point was confirmed by Executive Order in 1873. March's Point was an ideal spot for non-Indian settlement because the trees had been removed through long-standing Indian management practices, and the resulting landscape was a gently sloping fern prairie. Federal Indian agents spent much of the early years after Senate ratification of the Point Elliott Treaty chasing trespassers off the northern portion of what later became known as the Swinomish Reservation – off of March's Point.

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[1] The August 31, 1995 administrative Samish Federal Acknowledgment decision, *Greene v. Babbitt*, Docket No. Indian 93-1, U.S. Dept. of Interior, Office of Hearings and Appeals (hereinafter the "Torbett Decision," after the Administrative Law Judge who heard and decided the case), found as follows: "The Noowhaha tribe and the Samish were at one time different tribes. Dr. Suttles and Dr. Hajda testified that the two tribes had combined probably around 1850 and that they had been one tribe since that time. This conclusion of Dr. Suttles and Dr. Hajda is controverted by the Defendants (the United States) but the undersigned (ALJ David Torbett) is convinced that the conclusions drawn by these two witnesses are sound." Page 22. *See* App. B, Findings of Fact 62-65, 197. This finding was subsequently removed on an improper ex parte basis by the Assistant Secretary of Indian Affairs, but was reinstated by the federal district court in *Greene v. Babbitt*, 943 F.Supp. 1278, 1288-89 (W.D. Wash. 1996). *See* Judgment, Nov. 1, 1996, ¶ (3)("The following three findings of Administrative Law Judge David Torbett, originally entered on August 31, 1995 but later rejected by Assistant Secretary Deer, are reinstated: 1. Part of the Noowhaha tribe merged with the Samish . . . ."). This ex parte revised Samish federal acknowledgment decision will be discussed further below.

As Dr. Hart relates in his Swinomish report at pp. 79-81, it appears that some early non-Indian settlers on March's Point and nearby areas avoided being removed by marrying or settling on their land with Indian women. While Dr. Hart is somewhat circumspect on the tribal identity of these women, *see* page 81 at n. 215, it is beyond dispute that these women were Samish Indians. *See* Dr. Joan Megan Jones, Samish Indian Nation Thompson Road Property Research Report (2009), pp. 15-16 (attached as Ex. 3). These settlers included George Cagey, H.C. Barkhausen, Richard and Shadrach Wooten, James Kavanaugh, Compton, Munks and March. The children of these families identified as Samish and many of their descendants became Samish leaders in subsequent years (i.e., Sas Kavanaugh), and are members of the Samish Tribe today. The Barkhausen family, which was involved in the first "formal" organization of the Samish Tribe in the early 1900s, obtained homesteads in the immediate vicinity of the Samish Tribe's proposed gaming facility, and most of those lands continue in Samish family ownership today.

March's Point was Samish territory. Dr. Sally Snyder's field notes from the early 1950s, working with Dr. Wayne Suttles, indicate from Samish and Swinomish informants that there was a "dividing line" at the lower end of March's Point where the Samish and Swinomish territories met. Megan Jones Report at pp. 5-6. *See* Hart at p. 3 ("Roughly speaking . . . the aboriginal territory of the Samish was north of Swinomish territory."). These informants identified the most northernmost Swinomish village site in the March's Point area as on Swinomish Slough, across the Slough to the east of March's Point. Jones at 6; Hart at 4, citing Dr. Marian Smith 1941 article. *See* Dr. Megan Jones Report, pp. 5-6; Jones Map, Jan. 2009, Documented Pre-Contact Samish Territory ("Historic Samish/Swinomish territorial line") (attached as Ex. 4). Suttles and Snyder identified on maps the places where Swinomish and Samish met – a line at the bottom of March's Point going due west from the Swinomish village discussed above. Snyder's field notes indicate that the line moved west from this spot past the traditional Samish village at Khwalol and the Samish camp at Didgwalic, and then went south to Gibraltor, or Similk. *See* line on Dr. Jones map.

The Samish Tribe believed it would get its own reservation under the Treaty of Point Elliott, but that reservation did not eventuate. Torbett Decision, p. 4 (Testimony of Dr. Yvonne Hajda). The Stevens Treaty Commission planned to establish a separate reservation for the Samish Tribe as it discussed its upcoming treaty negotiations in 1854. *See* Dr. Barbara Lane, Identity, Treaty Status and Fisheries of the Samish Indian Tribe, January 15, 1975, p. 10, citing Dr. Barbara Lane, Identity and Treaty Status of the Nooksack Indians, November 28, 1974, p. 12. The location of this proposed reservation for the Samish was not identified ("One on Samish; One on Lummi"). Many Samish Indians believed the location of this Samish Reservation was to be March's Point. That selection would have made sense because March's Point was traditional Samish exclusive territory. Swinomish were only permitted to visit Samish territory. Hart, at 11.

As this discussion conclusively demonstrates, March's Point was traditional Samish territory. There is also no doubt from the Samish Tribe's view that March's Point was included in the reservation established under the Treaty of Point Elliott and defined as the peninsula at the southeastern corner of Fidalgo (Perry's) Island. The question then becomes whether the present day Swinomish Indian Tribal Community, a tribal entity only created in 1936 pursuant to the 1934 Indian Reorganization Act, has any claim to March's Point, or more particularly to the March's

Point region reserved in the 1855 Point Elliott Treaty that was improperly removed from that reservation by Executive Order in 1873. The facts show that Swinomish Indian Tribal Community has no legal interest in March's Point.

The Swinomish Indian Tribal Community asserts that it is the legal and political successor in interest to the historical Samish Tribe, but this assertion is not true. A federal court found that the SITC could exercise off-reservation Samish treaty fishing rights because a few Samish Indians had obtained allotments on the Swinomish Reservation and they or their descendants had become members of the SITC. The Samish Tribe itself, however, never merged with or became part of the SITC.

The discussion must start with what the modern day Swinomish Indian Tribal Community (SITC) is as a legal and political entity. There is no dispute that the SITC was organized as a tribal government pursuant to the Indian Reorganization Act ("IRA") of June 18, 1934, Section 16, 25 U.S.C. § 476, which allows any "Indian tribe" to organize by adopting a constitution and bylaws.[2] The IRA's definition of Indian tribe appears at 25 U.S.C. § 479, and defines two separate categories of tribes: (1) any Indian tribe, organized band, [or] pueblo; or (2) the adult Indians residing on one reservation. See, Solicitor's Opinion M-27810, 1 Op. Sol. 484, 487 (Dec. 13, 1934)(attached as Ex. 5)("It is clear that the act contemplates two distinct and alternative types of tribal organization."). The procedure for organizing as a tribe or corporation under 25 U.S.C. §§ 476 and 477 differs markedly depending on which of these two categories a "tribe" fits under. The second alternative under 25 U.S.C. § 479 permits the adult individual Indians residing on one reservation to organize and be considered as an Indian tribe under Section 16, 25 U.S.C. § 476. A number of Indian tribes were established across the United States under this alternative.

The IRA first required that the adult Indians residing on any existing reservation vote to either accept or reject the IRA within one year after the IRA's enactment. 25 U.S.C. § 478. The adult Indians residing on the Swinomish Reservation voted in 1934 almost unanimously to accept the IRA. See Roberts Report at 307. Once this vote took place, the adult Indians residing on the Swinomish Reservation then requested a Secretarial election to organize as a tribe under Section 16 of the IRA.

Pursuant to Solicitor's Opinion M-27810 cited above, the Interior Department on October 18, 1935, adopted "Amended Rules and Regulations for the Holding of Elections under the Indian Reorganization Act of June 18, 1934 (Elections on the Adoption of Constitutions and Constitutional Amendments)." 55 Interior Decisions 355 (attached as Ex. 6). Again, these

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[2] *See, e.g., U.S. v. Washington*, No. C70-9213, Dkt # 744, Transcript of "Lummi Hearing," June 28, 1974, filed September 3, 1974, pp. 11-13, Statement of Swinomish attorney: "The Swinomish Indian Tribal Community located on the Swinomish Indian Reservation is made up of member[sic] who were originally of the Kikiellis (phonetic), Skagit, Sammash and Swinomish Tribes. This is referred to in the anthropological report that Barbara Lane submitted. However, membership in the Swinomish Indian Tribal Community, the IRA organization, was limited to those who were resident on the reservation at the time in 1935 that the organization was formed, and those who were thereafter born on the reservation."

procedures distinguished between the two types of tribal organizations that could organize as a tribe under the IRA – existing tribes, or the individual adult Indians residing on one reservation:

> The Indian Reorganization Act contemplates two distinct and alternative types of a tribal organization. In the first place, it authorizes the members of a tribe (or a group of tribes located upon the same reservation) to organize as a tribe, without any requirements of residence. In the second place, this section authorizes the residents of a single reservation (who may be considered a tribe for purposes of organization under section 19 (25 U.S.C. § 479)) to organized without regard to past tribal affiliation. (emphasis added).

55 I.D. at 356. For the first category of tribe – a tribe or tribes represented on the same reservation, "any member of the tribe or tribes shall be entitled to vote, regardless of whether or not he is a resident of the reservation at the time of such election." *Id.* "No person not a member of the tribe or tribes shall be entitled to vote." *Id.* at 357. For the second category of tribe – the adult Indians residing on one reservation, "[a]ny Indian residing on the reservation shall be entitled to vote, regardless of his membership in any tribe." *Id.* "No person shall be entitled to vote unless he is a resident of the reservation . . . ." *Id.*

To summarize, if a group of tribes represented on one reservation were re-organizing as a tribe under the IRA by adopting a Section 16 constitution, every member of each representative tribe would be entitled to vote in that constitutional election regardless of residence. In contrast, if it was only the individual residents of an existing reservation who wanted to "be considered as a tribe for purposes of (Section 16 constitutional) organization under section 19," only the resident adult Indians of that reservation, regardless of tribal affiliation, would be entitled to vote in that Section 16 election, and Indians who did not reside on the reservation, even though they might be members of the same tribe or tribes as Indians residing on that reservation, were not entitled to vote in that election.

The SITC clearly falls into this second category of Indian tribe under the IRA – individual Indians organizing as a new tribe. It is beyond dispute that only the adult Indians residing on the Swinomish Reservation were permitted to vote on the SITC's IRA Constitution. Off-reservation Indians were not permitted to vote. The Constitution was approved by residents of the Swinomish Reservation on November 16, 1935, and approved by the Department of Interior on January 27, 1936 (official copy of Constitution attached as Ex. 7). Article VII of the Constitution – "Adoption" – states this explicitly.

What this means is that the SITC is an Indian tribe comprised of individual Indians residing on the Swinomish Reservation[3]. Article II of the Swinomish Constitution explicitly limits membership in the SITC to residents of the reservation and children born to members residing on the reservation at the time of the child's birth. Non-residents of the Swinomish Reservation were

[3] By Swinomish Reservation here, we are referring to the 1873 Swinomish Reservation, the "diminished" or smaller Point Elliott treaty reservation confirmed by Presidential Executive Order.

not permitted to vote in the Swinomish constitutional election or to become members of the newly organized SITC.

What these facts also mean is that the SITC was not and is not an organization of pre-existing tribes represented on the Swinomish Reservation in 1935. The SITC now asserts that it is basically a confederation of four aboriginal tribes that all consolidated on or merged on the Swinomish Reservation – the aboriginal Swinomish, Lower Skagits, Kikiallus, and the Samish Tribe. But if it had been these four tribes organizing as the Swinomish Indian Tribal Community in 1935, the IRA and the Election policies and procedures adopted by the Department of Interior would have required that all the members of these four tribes, whether residing on or off the Swinomish Reservation, be allowed to vote on the SITC Section 16 Constitutional election. It is undisputed that this did not occur. All of the off-reservation Samish Indians – the Samish 1926 membership list lists 128 adult members and 300 overall members (most of whom resided off-reservation) while a 1930 Samish membership meeting listed 57 adult Samish (all of whom but 6 resided off-reservation) who paid the membership fee – were not permitted to vote in the 1935 SITC Section 16 Constitutional election. Legally therefore, under the IRA, the 1935 SITC Section 16 vote was not and could not have been a vote by the Samish Tribe to re-organize as the SITC along with three other Indian tribal entities.

This conclusion is buttressed by the Swinomish report prepared by Natalie Roberts in 1975.[4] Ms. Roberts found in her investigation that there was no operating tribal government on the Swinomish Reservation between its formation around 1870 and its organization under the IRA in the 1930s. Roberts Report, pp. 226-300. Settlement on what had become known as the Swinomish Reservation was primarily a family and individual matter. No tribal affiliation was required to become a member of the reservation community: "Once an Indian took up residence (on the Swinomish Reservation) and became known to the agency personnel of a particular reservation, received annuities or an allotment, and got his name on the books, that was apparently sufficient to identify him and his descendants of that reservation community." *Id.* at 279. There is no record of any tribal organization or activity on the reservation throughout this period. Even as late as the 1910s and 1920s, "no representative governing body" existed on the Swinomish Reservation, "the Swinomish community as a whole held no business councils or committees," and "the reservation community still operated as a unit only in the social-recreational and religious sense." *Id.* at 269-70.[5] Ms. Roberts found that a business council of reservation residents was finally formed by the

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[4] Natalie Roberts' 1975 Swinomish Report was submitted to Swinomish tribal officials for review, editing and approval. Torbett Decision, Ex. 9, App. B, Finding of Fact # 168. Swinomish positions on various issues therefore permeate the report. It therefore does not meet academic criteria for an objective academic report. Nevertheless, the report makes a number of observations and reaches several conclusions that are not subject to dispute.

[5] Roberts does note at this point in her report that the "aboriginal tribes" had separately, independently organized for purposes of beginning claims cases against the United States. This effort, which in Samish's case was organized off the Swinomish Reservation and included both on and off-reservation Samish representatives, culminated in the *Duwamish* claims case where Samish was found to be a signatory to the Treaty of Point Elliott that had continued to exist as a separate tribe up to the time of that court decision.

BIA in or around 1925. *Id.* at 270, 295. While this Council had a representative from each of the four tribes represented by the resident Indians on the Swinomish Reservation (and an at-large member), there is no indication or evidence that this was intended to be or was a council of "tribes," and there is no evidence that the Samish Tribe and its off-reservation members participated as a tribe in the selection of the Samish representative to this council. This original Swinomish representative council originally existed "mainly to legitimize (BIA) agency decisions," *id.* at 270, and only began exercising independent authority in conjunction with formation as a tribe under the IRA in 1936. *Id.* at 302 ("In the beginning of the modern era, the Swinomish had pulled themselves together into an informal community and prepared to incorporate into an organization with a legal definition recognized by the U.S. government.").

The Swinomish Indian Tribal Community therefore is a currently, federally-recognized Indian tribe that was formed in 1936 under the authority of the Indian Reorganization Act as a tribal entity comprised of the individual adult Indians residing on what was known as the Swinomish Reservation. It was not formed by the Samish Tribe. Rather, a few individual adult Samish Indians who owned allotments on that reservation and were residents there participated in that formation.

One final point, related to the legal status of the March's Point area of the original 1855 Fidalgo Island Reservation, must be made. If, as the SITC asserts, March's Point was in 1936 and is still today part of its reservation and jurisdiction, then under the IRA, the Indian residents of March's Point (and any other area removed from the original 1855 Fidalgo Island reservation by the 1873 Executive Order confirming the reduced Swinomish Reservation) would have been entitled to vote in the 1935 Section 16 SITC constitutional election. This would have included a number of "off-reservation" Samish Indians in 1935. They were not, however, permitted to vote in that election, thus confirming that March's Point was not part of the reservation that defined the establishment and authority of the SITC.[6]

This conclusion is also emphasized by the SITC's own 1936 Section 16 Constitution. Article II of that Constitution, approved by the Department of the Interior, defines the name and territory of the SITC. Ex. 7. After Section 1 defines the name of "this organized body" as the SITC, Section 2 defines SITC's territory and jurisdiction as follows: "The jurisdiction of the Swinomish Indians shall include all the territory within the original confines of the Swinomish Reservation boundaries, as set forth by Executive order of September 9, 1873, in pursuance of article III of the of the Treaty of Point Elliott, January 22, 1855 (12 Stat. 928) . . . ." (Emphasis added). This definition of SITC territory excludes that part of the original 1855 Point Elliott Treaty reservation on Perry's Island – March's Point in particular – that was removed from the original reservation by Executive Order on September 9, 1873. **Therefore, under its own original Constitution**

[6] It should also be noted that the IRA-organized SITC never even compiled a membership roll until May 23, 1980, after it was granted treaty status in *U.S. v. Washington* in the mid-1970s. Swinomish Ordinance 43. *See* Letter dated Oct. 11, 1995, from Wa Walton to Asst. Sec. – Indian Affairs Ada Deer, p. 3 (BIA allegedly acknowledged Swinomish assertion to Samish successorship when it approved Ordinance 42, which governs membership in the Tribe, because Samish Indians residing on the Swinomish Reservation could become members of the SITC).

definition, the SITC's territory does not include either March's Point or the location of the Samish Tribe's proposed gaming operation! March's Point is not part of the Swinomish Reservation under the SITC's own constitutional definition of its reservation.

In conclusion on this issue, the SITC did not organize under the IRA as a tribal government of several Indian tribes, including the historical Samish Tribe. So how can the SITC assert now in its comments opposing the Samish gaming operation that it is the successor to the historical Samish Tribe, and that the Samish Indian Nation is not? The SITC does this by asserting positions that are not relevant to this issue, and by ignoring a number of decisions – including decisions binding on the United States – that hold the contrary – that the Samish Indian Nation is a legal and political successor to the historical Samish Tribe.

The SITC's claim to Samish successorship is based exclusively on the following statement in *U.S. v. Washington*, 459 F.Supp. 1020, 1039 (W.D.Wash. 1974): "The intervenor Swinomish Indian Tribal Community is the present-day tribal entity which, with respect to the matters that are the subject of this litigation, is a political successor in interest to certain tribes and bands and groups of Indians which were parties to the Treaty of Point Elliott, 12 Stat. 927." These bands and tribes and groups have been held, with regard to the subject matter of *U.S. v. Washington*, to include the Samish Tribe. *See U.S. v. Washington*, 593 F.3d 790, 800 (9th Cir. 2010). The sole evidence submitted by the SITC in support of this finding was the following statement made by Dr. Barbara Lane, the preeminent expert witness in *U.S. v. Washington*, in her 1974 Swinomish treaty status report: "The modern Swinomish Indian Tribal Community is composed largely of people who are descendants of one or more of the groups known in 1855 to the treaty commission as Skagit, Kikiallus, Swinamish, Squinahmish, Sahkumehu, Noowhaha, Nookwachahmish, Meeseequaguilch, Chobahahbish, and Samish. . . . While the Swinomish Indian Tribal Community is comprised of descendants of the above named groups, not all descendants of those groups are members of the Swinomish Indian Tribal Community. . . . In this way the modern descendants of the Skagit, Kikiallus, Swinomish, and Samish have become dispersed and divided. Some are on the Swinomish Reservation and constitute the majority membership of the modern Swinomish Indian Tribal Community. Others reside on the Lummi, Tulalip, and other reservations and are listed on those rolls. Still others reside in western Washington, but are not on any reservation." Lane 1974 Swinomish Treaty Report, pp. 1-5. [7]

Dr. Lane's subsequent Samish treaty status report, written on January 15, 1975 after her Swinomish treaty status report, contains complementary statements on Samish history and status:

> "Today, some of the descendants of the 1855 Samish Indians still maintain their separate identity. They call themselves Samish and are known as such by other Indians

[7] In notes of a telephone call, obtained in discovery by Samish, made between Swinomish attorneys and counsel (Scott Keep) and expert (George Roth) for the United States on October 5, 1995, coordinating strategy to overturn and reject Samish federal recognition, Allan Olson, Swinomish tribal attorney admitted that this statement "was the only evidence on which [Judge] Boldt based [his] ruling" that the SITC was a political successor to the Samish. Phone notes attached as Ex. 10.

> and by non-Indians. They are represented by the Samish Indian Tribe of Washington. Members of the Samish Indian Tribe live in northwestern Washington in or near the traditional territory of the aboriginal Samish.
>
> Other descendants of the 1855 Samish Indians may still identify themselves as Samish and be known as such by others, but they are officially enrolled as members of other Indian communities. Some Samish descendants are known as Lummi Indians because they are enrolled as members of the Lummi Reservation community. Still other descendants of the 1855 Samish are known as Swinomish Indians today because they are enrolled as members of the Swinomish Tribal Community and reside on the Swinomish Indian Reservation.
>
> There are undoubtedly other Samish descendants on other Indian reservations and elsewhere, but the majority of Samish descendants today are those enrolled as members of the Samish Indian Tribe or as members of the Lummi or Swinomish reservation communities." Report, pp. 1-2.

These statements do not support Swinomish's assertion that it is the sole successor to the historical Samish Tribe and the Samish Indian Nation is not; in fact these statements indicate the exact opposite.[8] Dr. Lane testified in another *U.S. v. Washington* proceeding that she was not qualified to give an opinion on successorship status of tribes.

The law is also clear that the Swinomish's successorship ruling with regard to off-reservation treaty fishing rights in *U.S. v. Washington* has no application to or legal effect on federal recognition and the myriad other rights and responsibilities that flow from such federal recognition, including acquiring land under the fee-to-trust regulations and statute. The Ninth Circuit has repeatedly ruled on this issue, but the SITC refuses to abide by the law of the Circuit.[9] This issue was first litigated by the Tulalip Tribes in the Samish Tribe's federal acknowledgment proceeding, where Tulalip opposed Samish federal acknowledgment on the ground that the federal court's ruling against Samish in *Washington II* was res judicata and precluded the Samish Tribe from qualifying for federal recognition. The 9th Circuit rejected this argument in *Greene v. United States*, 996 F.2d 973, 976-77 (9th Cir. 1993("*Greene I*")): "We recognize that the two inquiries are similar. Yet each determination serves a different legal purpose and has an independent effect.

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[8] In the phone notes of October 5, 1995, Ex. 10, discussed in the previous footnote, George Roth, the United States' expert opposed to Samish federal recognition, stated that he "thinks there is [a] conflict between the Lane report on Swinomish and the Lane report on Samish."

[9] As the Samish Tribe will discuss below, this is likely because of a secret settlement agreement (it was never, to Samish's knowledge, filed in *U.S. v. Washington*) the Swinomish Indian Tribal Community entered into with the Lummi Nation in 1998. (Attached as Ex. 11) Both tribes were held in the 1970s to have successorship rights to the historical Samish Tribe for purposes of off-reservation treaty fishing rights. *See* Agreement, § 3.A.1. In the Settlement Agreement, the two tribes agreed not to contest each other's Samish successorship claims. Agreement, § 3.B. In the Agreement, the two tribes agreed to continue contesting any claim by the Samish Indian Nation or Samish Tribe that it is a successor to the historical Samish Tribe, whether or not a federal court had ruled on that issue. Agreement, §§ 3.A.5, 6; 4.B.3 (Agreement cannot be modified by a federal court unless agreed to in writing by both tribes).

Federal recognition is not a threshold condition a tribe must establish to fish under the Treaty of Point Elliott . . . . Similarly, the Samish need not assert treaty fishing rights to gain federal recognition."

This conclusion was reaffirmed in *Greene v. Babbitt*, 64 F.3d 1266, 1270-71 (9th Cir. 1995)("*Greene II*"): "Our decision in *Greene v. United States* . . . can leave no serious doubt that our court regards the issues of tribal treaty status and federal acknowledgment as fundamentally different. . . . To uphold the Tulalip position here, that *Washington II* precludes the present litigation altogether, would be inconsistent with our decision in *Greene* that the treaty fishing rights issue in *Washington II* differs from the tribal acknowledgment issue in this litigation." This principle was reaffirmed again recently by an en banc panel of the 9th Circuit in *United States v. Washington*, 593 F.3d 790, 800-01 (9th Cir. 2010) ("*Samish*"), where the Court expressly reaffirmed the holdings in *Greene I* and *Greene II*: "Our ruling was part of a two-way street: treaty adjudications have no estoppel effect on recognition proceedings, . . . and recognition has no preclusive effect on treaty rights litigation."

Federal acknowledgment or recognition brings along with that status a host of statutory benefits and opportunities. In *Greene I*, the 9th Circuit held: "In their initial complaint, the Samish alleged harm because of the . . . deprivation of 'rights and benefits of federally recognized Tribes.' Federal recognition brings its own obvious rewards, not the least of which is the eligibility of federal money for tribal programs, social services and economic development." 976 F.2d at 978. Economic development includes acquiring land within the tribe's historical territory. The 9th Circuit reaffirmed this holding in *Samish*: "Recognition, or 'acknowledgment,' serves a host of purposes for the group that succeeds in achieving it. It establishes a 'government-to-government relationship' between the recognized tribe and the United States. 25 C.F.R. § 83.2. It is a 'prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes.'" *Id.*

One of the statutory benefits available to federally-recognized tribes, particularly tribes like Samish which proved in its federal acknowledgment hearing that it had continually existed as a tribe since before the 1855 Treaty of Point Elliott to the present, is the right to take land into trust pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465. The Samish Tribe expressly raised this activity as one of the benefits it planned to take advantage of after achieving federal recognition. In a federal court hearing asking to reinstate administrative findings of fact improperly rejected by the Assistant Secretary of Indian Affairs and her legal counsel in an action which the federal court concluded was a "fundamental violation" of the Samish Tribe's due process rights (this legal proceeding will be discussed further below), the Samish Tribe argued that one of the primary reasons the original administrative findings – directed at Samish history, territory, continuous existence, and successorship - needed to be reinstated was in order for the Samish Tribe to have authority to acquire land into trust under 25 U.S.C. § 465:

> (Russel Barsh, Attorney for the Samish Tribe): As between the United States and the Samish, a decision has now been taken that the Samish are an Indian tribe. So as between the U.S. and the Samish that issue is put to rest. The significance of it as between the United States and the Samish is not about fishing, but about other

legislation which requires that a tribe identify its members and, in many cases, identify its territory.

I'd like to give one example just to show how serious this is, because every time we say there are other statutory benefits, the amici and the United States say it is all about fishing.

In the land consolidation, if the tribe is interested in acquiring land, it can be challenged effectively if it tries to acquire land within the traditional territory of another Indian tribe. So it has to stick within its traditional territory and justify land acquisitions in terms of its need for the land and its traditional connections to the site. That's in the federal regulations, 25 CFR, Part 125 (later converted to 25 CFR Part 151).

So if it's unclear where the Samish Indian Tribe is or who it is, who makes it up, how are they going to justify, as between the Samish and the United States, the defendants, the Bureau of Indian Affairs, a request that a piece of land, which is of traditional significance to the Samish, be placed in trust for them under those regulations, which I should mention for the record are under 25 USC, Section 465 and 467.

Now, that's fundamental, getting land. This has nothing to do with fishing. Just regaining a land base. And if the Samish cannot establish that they are the historical Samish and that they do in fact have the territorial area, which the historical Samish, and indeed the Nuwha'ha under the Samish, under the authority of the Samish had occupied at treaty time, then the United States can very easily say no, we can't give you any of this land, because it's not part of your traditional territory.

And other tribes will object. And then we'll get into the same problem we see here, where officers of the United States are advocating, are essentially acting as advocates for the interests, the competing interests of other Indian tribes, behind closed doors, without the participation of the Samish and saying these other Indian Tribes' interests, which are not litigated in Court, which are not part of a multi-party proceeding, outweigh the interests of the Samish established – established here to land, to sacred sites, to burial sites.

And I would argue simply in pulling that together that even if the three points that we raised, the substantive problems in the way in which the Assistant Secretary revised the decision made by Judge Torbett, even if under those three points the Samish were denied one statutory benefit because the United States said no, your entitlement to that with regard to your membership and your territorial area, your entitlement to that is not established, that that would be sufficient to give grounds to overturn.

It's not a question of recognition, federal recognition being one big pie. It's a pie made up of many slices. And to justify your eligibility to each slice, you have to step forward and show who you are, what your territory is and who your members are.

> And the Samish are going to be deprived of many of those slices precisely because of these changes, which I contend, with apologies to opposing counsel, which would contend have essentially now been admitted, were changes made because the United States was concerned about the interests of other Indian tribes, and weighed those concerns in Star Chamber. And those other Indian tribes are here as amicus, but not as parties.
>
> And I think that was fundamentally wrong of the United States to revise the findings with the objective of protecting the interests of other Indian tribes in specific resources, specific territorial area, in a closed proceeding, with the United States advocating what it conceived those other tribes interests to be. That's the way I see the admissions that are before this Court today.

Hearing, July 18, 1996, *supra*, Dkt. # 318, pp. 60-63 Transcript attached as Ex. 8. Counsel's argument, made in 1996, was prescient because that is exactly what the SITC is seeking to accomplish in its opposition to the Samish Tribe's present fee-to-trust application and EIS – that the Samish Tribe is not entitled by virtue of its federal acknowledgment to acquire land in trust within its historical territory. But the federal court in 1996 expressly acknowledged these tribal interests and accepted them in *Greene III* by reinstating the administrative findings that had been improperly removed by Assistant Secretary-Indian Affairs Deer and Assistant Solicitor Scott Keep, and that Samish counsel argued must be reinstated. *Greene III*, 943 F.Supp. 1278, 1282-88. The federal court expressly rejected the same arguments in 1996 that the SITC is repeating here today, in 2014. The SITC is only still fighting this federal court ruling because of the secret 1998 Settlement Agreement discussed above. The SITC's continued opposition violates res judicata and collateral estoppel principles.

In summary, the SITC's allegation that March's Point is part of the Swinomish reservation is completely without merit. The original treaty reservation established or reserved under the 1855 Treaty of Point Elliott was reserved for all the signatory tribes to that Treaty. That original reservation was reduced in 1873 by Presidential Executive Order, removing March's Point from the Reservation. The SITC was a tribal organization formed in 1936 under § 16 of the Indian Reorganization Act of individual Indian residents of the diminished Swinomish Reservation, by adopting a constitution. The vote to approve that constitution was limited to residents of the 1873 reservation, membership was limited to residents of the 1873 reservation, and the Constitution itself limits the newly formed tribe's territory and jurisdiction to the 1873 reservation. The SITC does not have, and did not have, any authority or jurisdiction over, or a legal claim to, March's Point.

The second argument that the SITC raises in its comments is its claim that the Samish Indian Nation, a federally recognized tribe, has no legal or political connection to the historical Samish Indian Tribe. *See* comments at p. 18. The SITC bases this assertion on two separate arguments: 1. That the federal courts in *U.S. v. Washington* held that the Samish Tribe was not a political or legal successor to the historical Samish Tribe; and 2. That the ex-parte revisionist Samish federal acknowledgment decision authored by the federal attorney opposing Samish

recognition, acting in concert with the SITC, who drafted findings not based on the record, but rather based on politics solely to protect the interests of the SITC, rejected any connection between the Samish Indian Nation and the treaty-time Samish Tribe. Samish will address each of these assertions in turn.

The Samish Tribe has already responded to the first argument. The Samish Tribe did not introduce sufficient evidence in *U.S. v. Washington* (*Washington II*) to support its right to exercise off-reservation treaty fishing rights. That fact is not disputed. But what the SITC neglects to mention is that numerous Ninth Circuit decisions – *Greene I*, *Greene II*, and *Samish* - have ruled that the decision in *Washington II* is limited to the narrow issue of off-reservation treaty fishing rights, and that the factual and legal issues involved in federal recognition, including the right to take land into trust within a tribe's historical area, are so "fundamentally different" that the holding in *Washington II* has no application whatsoever to federal acknowledgment and the services and benefits that flow from federal recognition. *See Samish*, 593 F.3d at 795-96, 800-01.

This exact issue was raised by the Tulalip Tribes in the Samish federal acknowledgment proceeding discussed immediately below. Tulalip tried to stop the Department of Interior from deciding the issue of Samish federal recognition at all, on the ground that the decision against Samish in *Washington II* was res judicata on the issue. When the federal court overturned the negative 1987 BIA decision against Samish federal acknowledgment in 1992, the Tulalip Tribes expressly asked the Court whether the Samish Tribe would be allowed in the APA federal acknowledgment trial that the federal court had ordered as a remedy to prove that it is the historical Samish Tribe, and the Court responded:

> MR. JONES (attorney for Tulalip): Your Honor, in addressing the scope of the participation that we would like to have on remand, might I ask the Court to clarify whether the Samish will be allowed to attempt to prove that they are the historic Samish Tribe of 1855 or not?
> THE COURT: Well, they're going to have a right to try and prove everything that is necessary to prove in order to gain acknowledgment. . . .
> . . .
> MR. JONES: Your Honor, as I understand the Court's ruling today, the question of whether Washington II is dispositive of the claims to be the historic tribes has now been reached and disposed of by the Court. . . . And with all due respect, as the Court knows, we disagree with the position you have taken [and will pursue it on appeal].

Greene v. Babbitt, No. C-89-645Z (W.D.Wash.), Dkt. # 214, Transcript, Oral Argument, Sept. 18, 1992, pp. 49, 57.

The Tulalip Tribes did indeed pursue this issue on appeal, where it was rejected again by the Ninth Circuit: "In this appeal, the Tulalip Tribe emphasizes that in the petition for recognition, the Samish Tribe has not claimed to be any tribe other than the historical Samish Tribe that was party to the Treaty of Point Elliott. To the extent that the Samish rely upon historical roots in this litigation, the roots are probably the same as those they posited in *Washington II*. However, other decisions of this court demonstrate that the legal issue and the factual issue, as well as the stakes,

are very different. . . . .the recognition of the tribe for purposes of statutory benefits is a question wholly independent of treaty fishing rights. . . . "We recognize that the two inquiries are similar. Yet each determination serves a different legal purpose and has an independent effect." (*quoting Greene I*, 996 F.2d at 976-77).

Greene II, *supra*, 64 F.3d 1266, 1270-71. The Ninth Circuit rejected Tulalip's argument on this issue.

The federal court that reviewed the Samish Tribe's August 31, 1995 federal acknowledgment decision after it was improperly altered by the federal government on November 8, 1995, specifically ruled through reinstatement of contested findings that the Samish Tribe is a legal and political successor to the historical Samish Tribe. *Greene v. Babbitt*, 943 F.Supp. 1278 (W.D.Wash. 1996)("*Greene III*"). *E.g.*, C-89-645Z (W.D.Wash.), Dkt. # 318, Transcript of Hearing, July 18, 1996, p. 20 (Transcript attached as Ex. 8)(Russel Barsh, attorney for Samish: "We think that findings that were made were all necessary – the ones that are in dispute now, I should clarify, are all necessary to establish who the Samish are, what their traditional territory is and who is entitled legally to assert membership in the Samish Indian Tribe as a federally acknowledged Indian tribe." The Court reinstated all the disputed findings requested by Samish.). Samish will return to this federal court decision below, after summarizing the history of the Samish Indian Nation's federal acknowledgment process.

The federal government only began officially referring to the Samish Tribe as not being federally-recognized in the early 1970s. *Greene v. Babbitt*, Dkt. No. Indian 93-1, U.S. Department of the Interior, Office of Hearings and Appeals, Recommended Decision by Administrative Law Judge David Torbett, August 31, 1995 (Samish Federal Acknowledgment Trial)(hereinafter "Torbett Decision"). App. B, Supplemental Findings of Fact, # 110. Torbett Decision attached as Ex. 9. Judge Torbett found that the United States started treating the Samish Tribe as unrecognized only after a BIA clerk, without any legal basis, had in 1969 arbitrarily and capriciously dropped the Samish Tribe from an internal BIA list of federally-recognized tribes. *See Samish Indian Nation v. United States*, 419 F.3d 1355, 1359-60, 1374 (Fed. Cir. 2005).

As a result of this improper, arbitrary and unauthorized federal action, the federal government started to treat the Samish Tribe as unrecognized, including terminating the eligibility of individual Samish Indians for various federal services and benefits. The Samish Tribe began seeking confirmation of its federally-recognized status, first in 1972 and then again in 1974 and 1975. *See Samish*, *supra*, 593 F.3d at 795. This request was put on hold while the Department of Interior reviewed its authority to federal acknowledge Indian tribes. When the Department of Interior issued its first Federal Acknowledgment Regulations in late 1978, the Samish Tribe revised and resubmitted its Federal Acknowledgment petition in early 1979 under the new regulations. *Samish*, 593 F.3d at 795; *Greene III*, 943 F.Supp. at 1281.

The Samish Tribe's petition for federal acknowledgment was denied in 1982, primarily based upon the adverse decision against it in *Washington II.*[10] The Samish Tribe petitioned for reconsideration. The BIA issued a final decision denying the Samish Tribe's federal acknowledgment petition on February 5, 1987. This "decision was made on the papers; the regulations did not provide for a hearing and gave the applicant [tribe] no right to see the submissions of others." *Samish*, 593 F.3d at 795. The Samish Tribe appealed the BIA's Samish federal acknowledgment decision in 1989 to federal court, and the federal district court in early 1992 ruled that the decision denied the Samish Tribe due process and "remanded [the proceeding] for a formal adjudication under the Administrative Procedures Act." *Samish*, 593 F.3d at 795.

"The purpose of this Court's original remand order in 1992 was to take this case out of the political arena and to assure that the Samish would have their claims heard by an impartial and disinterested fact finder." *Greene III*, 943 F.Supp. at 1287. The district court judge based this ruling on the fact that in the BIA's 1987 denial of the Samish federal acknowledgment petition, there was evidence that "the decision makers prejudged the case," and that "the decision maker met ex parte with government witnesses and advocates opposed to tribal recognition." *Id.* at 1282. The Ninth Circuit in *Greene II* concluded that "Informal decision-making, behind closed doors and with an undisclosed record, is not an appropriate process for the determination of matters of such gravity." 64 F.3d at 1275. From this language, it is clear that the district court was concerned with two critical issues in remanding the Samish federal acknowledgment proceeding for a full APA trial: 1. It wanted a fair, objective and neutral fact-finder; and 2. It wanted a decision based on the evidence and the record, not on political considerations.

On remand, an administrative law judge from the Department of Interior Office of Hearings and Appeals, David Torbett, was appointed to preside over the case. Extensive discovery and depositions were conducted beginning in 1993, and ALJ Torbett conducted an eight day full trial on Samish federal acknowledgment from August 22-30, 1994. *Greene III*, 943 F.Supp at 1282. The federal court judge who in 1996 reviewed the ALJ's decision characterized this proceeding as comprehensive and exhaustive. *Greene III*, 943 F.Supp. at 1288 ("Administrative Law Judge Torbett conducted a thorough and proper hearing on the question of the Samish's tribal status, and made exhaustive proposed findings of fact after considering all the evidence and the credibility of the witnesses."), 1289 ("In this case, the government should be bound by the findings of the Administrative Law Judge, which were prepared after all parties had an opportunity to be heard. The ALJ carefully considered and weighed all the evidence, including the testimony of the parties' witnesses, and made findings consistent with the evidence.").[11]

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[10] From subsequent cases ruling that treaty fishing rights and federal recognition are completely unrelated, we know it was improper for the BIA to rely a decision involving only off-reservation treaty fishing rights to deny tribal recognition, because "treaty litigation and recognition proceedings were 'fundamentally different' and had no effect on one another . . . . treaty adjudications have no estoppel effect on recognition proceedings." *Samish*, 593 F.3d at 800. The 1982 and 1987 BIA Samish acknowledgment decisions were therefore erroneous as a matter of law and are not entitled to any weight as precedent.

[11] In his decision at pp. 18-19, Judge Torbett prefaced his ruling as follows: "The opinions rendered in the District Court decision and the United States Court of Appeals decision affirming

In his recommended administrative decision issued on August 31, 1995, Judge Torbett concluded that the Samish Tribe had proved "that the Samish have continuously existed as an Indian tribe up until this very day. The quality of proof supports the Petitioner as to each element contained in the federal regulations." Torbett Decision, p. 19. *See* App. B, Supplemental Findings of Fact, # 67, p. 13 ("[T]he Samish were signatories to the 1855 Treaty of Point Elliott."). This is the test for political and legal successorship. In a 1992 hearing in *Greene v. Babbitt*, federal district court judge Zilly ruled that the Samish Tribe was authorized to prove that it was the historical Samish Tribe in its federal acknowledgment trial. *See* p. 14, *supra*.

In the Samish Tribe's appeal back to Judge Zilly in 1996 to reinstate three of Judge Torbett's findings that had been removed on an ex parte basis from the Samish federal acknowledgment decision by Assistant-Secretary Ada Deer, counsel for Samish argued to the court that the findings needed to be reinstated in order to preserve the Samish Tribe's legal and political successorship to the historical Samish Tribe and to qualify the recognized Samish Tribe to acquire land within the traditional territory of the historical Samish Tribe. *E.g.*, *Greene v. Babbitt*, Transcript of Hearing, July 18, 1996, Dkt. #318 *supra*, pp. 20-21 ("We think that the findings that were made were all necessary – the ones that are in dispute now, I should clarify, are all necessary to establish who the Samish are, what their traditional territory is . . . There are three there which we feel are very central to the question of who the Samish are and where their traditional territory is . . . .").

In his recommended federal acknowledgment decision, ALJ Torbett expressly rejected the United States' position that the Samish Tribe had merged with and become part of the SITC. Torbett Decision, p. 20-21 ("Speaking generally, the heart of the [United States]' case is their assertion that the true Indian Reservation Samish have integrated with other Indian tribes and that other Non-Reservation Samish are simply Indian descendants and are not Indian enough to be considered part of any Indian community. The undersigned specifically rejects this position as not being supported by the evidence.").

So Administrative Law Judge Torbett, after an eight-day full trial, made an objective, comprehensive, exhaustive decision in favor of Samish federal acknowledgment, based solely on the evidence and the expert testimony presented to him, including judging the credibility of both the expert and lay witnesses. *See, e.g.* Torbett Decision, p. 20 ("Now, having considered the testimony set out above the undersigned is of the opinion that the testimony of the Petitioners'

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that District Court both state in essence that a policy decision based on governmental investigation does not give due process to the Petitioners in their efforts to obtain federal recognition as a tribe. These courts insist that something more is needed and the Administrative Procedures Act is an appropriate mechanism to afford the Petitioners due process in this particular case. To the undersigned, the right of due process means a right to a hearing where the parties are allowed to present evidence which pertains to the issues and to confront and cross-examine the witnesses. To the undersigned it follows that the parties so entitled are entitled to a due process decision, that is, a decision based on the weight of the evidence adduced at the hearing."

witnesses is accurate and factual. The undersigned accepts this testimony and the expert conclusions of the Petitioners' witnesses as the facts of this case. . . . These findings of fact support the positive finding for the Petitioners as to each of the contested criteria.").

What happened next in Samish federal acknowledgment? The United States and the SITC violated every proscription that had beenimposed by the federal courts on the process that would be used to determine whether the Samish Tribe was entitled to federal recognition. After ALJ Torbett's thorough, comprehensive and objective decision based on the evidence presented and the credibility of the witnesses who appeared, the federal attorney who represented the United States in opposing Samish federal acknowledgment and the federal expert witness who testified that in his opinion Samish was not a tribe or deserving of federal recognition, in concert with the SITC, embarked on an ex parte campaign to overturn that decision for entirely political reasons, not based on the evidence.

The actual events are undisputed. Under the procedures agreed to by the Samish Tribe and the United States when the original 1987 Samish federal acknowledgment rejection was reversed by federal district court judge Zilly on February 25, 1992 in *Greene v.* Babbit, *see* 1992 WL 533059 (Order), the Office of Hearings and Appeals would issue a recommended decision after trial which would then be forwarded to the Assistant Secretary – Indian Affairs Ada Deer for review and a final decision. *Greene III*, 943 F.Supp. at 1282, 1286-87. After ALJ Torbett issued his recommended Samish federal acknowledgment decision on August 31, 1995, the federal attorney who represented the United States in opposing Samish federal recognition in the administrative trial – Scott Keep – and the United States' main expert witness who testified that the Samish Tribe did not deserve federal recognition – George Roth – approached Assistant Secretary – Indian Affairs Ada Deer, ex parte, and urged her to reject Judge Torbett's decision. *Greene III*, 943 F.Supp. at 1282-83.[12] The Samish Tribe was not notified of this meeting or included in it. *Id.*

The Assistant Secretary ultimately concluded that she was going to recognize the Samish Tribe, *id.*, but then agreed with Mr. Keep's request to reject the findings of fact reached by ALJ Torbett that were required under the Federal Acknowledgment regulations and of vital importance to the Samish Tribe. *Id.* In addition, Mr. Keep drafted alternative findings of fact to support the Assistant Secretary's final Samish federal acknowledgment decision but that removed every critical finding need by the Samish Tribe. These revisionist "findings" drafted by Mr. Keep were adopted virtually "word for word" by the Assistant Secretary. *Greene III*, 943 F.Supp. at 1283 n. 9; Transcript of Hearing, July 18, 1996, Dkt. #318, p.44. "A major part of the revision that [the Assistant Secretary] made to the findings of the administrative law judge" was to protect the interests of federally recognized tribes such as the SITC, by removing findings made by the ALJ that might be "troublesome" to tribes like the SITC. Hearing, July 18, 1996, pp. 40-41.

The Assistant Secretary's final Samish decision was issued on November 8, 1995 (the "Deer Decision"). The changes made in her final decision were made after the Solicitor's Office

[12] The United States admitted during the hearing in this matter that it was an express violation of the APA for the attorney involved in prosecuting this matter, Scott Keep, to meet ex parte with the decision maker. Hearing, July 18, 1996, Dkt. #318, p. 38.

and Assistant Secretary, in an action described by federal court as "fundamentally unfair" and a "fundamental violation of the due process rights" of the Samish Tribe, gutted the positive Samish federal acknowledgment decision issued by ALJ Torbett of all factual findings supporting the continuous legal and political existence of the Samish Tribe. *Greene v. Babbitt*, 943 F.Supp. 1278, 1288-89 (W.D.Wash. 1996)("*Greene III*").[13] The U.S. Attorney acknowledged to the federal court that these findings had been deleted and changed not based on the record, but only to protect the SITC and other already recognized tribes. *Greene v. Babbitt*, No. C-89-645Z, W.D. Wash., Dkt. # 318, Transcript of Hearing, July 18, 1996, pp. 40-44, 64. The Court found that these findings were "improperly rejected" by the Assistant Secretary, *id.*, and reinstated them after the Samish Tribe petitioned the Court to overturn the Assistant Secretary's revised Samish federal acknowledgment decision.

These improper actions were only discovered by Samish when it went back to federal court in January 1996 in *Greene v. Babbitt* to ask the federal judge to restore the findings made by the ALJ that had been rejected and/or replaced by the Assistant Secretary as drafted by Scott Keep. *Greene III*, 943 F.Supp. at 1283. At the hearing on the Tribe's reinstatement request on July 18, 1996, the attorney for the United States, Anthony Rogers, admitted that Scott Keep's revision of the ALJ's decision and findings of fact was done for political reasons, because the Assistant Secretary-Indian Affairs allegedly had a political responsibility to protect tribes that are already federally-recognized. Hearing, Dkt. #318, pp. 42, 43, 62, 63-64 "her decision [was] a politically based one"). The intent of the federal court's 1992 remand order to ensure a neutral, objective decision based on the evidence had been thrown out the window by the United States.

In addition, the United States attorney admitted at this hearing that the findings of fact drafted by Mr. Keep were not based on the record, but based solely on political considerations. Hearing, Dkt. #318, July 18, 1996, p. 43. The U.S. attorney told the federal district court that the Assistant Secretary- Indian Affairs "change[d] the findings" because "she needed to take some action" to protect the Swinomish and Tulalip Tribes. *Id.*

The federal district court concluded that the federal government's actions regarding changing the Samish federal acknowledgment decision "rendered the proceedings fundamentally unfair and violated the Samish Tribe's Fifth Amendment due process rights." 943 F.Supp. at 1286. Statements made by the federal district court include the following: 1. "the Samish were harmed because Assistant Secretary Deer's rejection of certain proposed findings may have preclusive effect in future litigation concerning Samish membership, claims to tribal territory (exactly what the SITC is using here, in its comments to this EIS), and possible government liability for past benefits." *Id.* at 1284; 2. "Despite the Ninth Circuit's admonishment (against decision-making behind closed doors with an undisclosed record), stated in clear and unambiguous terms, the

[13] The Court found that the Swinomish Indian Tribal Community had participated in and added to this fundamental APA and due process violation by submitting ex parte comments to the Assistant Secretary outside the process approved by the Court, urging the Assistant Secretary to reject Samish federal recognition. *Greene III*, 943 F.Supp. at 1283. The SITC should not be permitted to profit from its inequitable conduct toward the Samish Tribe.

government began anew, within two months after the Ninth Circuit's decision (on Aug. 22, 1995), to engage in informal decision-making behind closed doors, without a record," *id.* at 1286; 3. "The purpose of this Court's original remand order in 1992 was to take this case out of the political arena and to assure that the Samish would have their claims heard by an impartial and disinterested fact finder. The procedures outlined in the Joint Status Report, and adopted by the Court, reflect this intent. This purpose was substantially frustrated, however, by the government lawyer's improper ex parte communications with the decision maker, which resulted in a violation of the plaintiffs' rights to due process," *id.* at 1287; 4. "The proceedings before the Bureau of Indian Affairs have been marred by both lengthy delays and a pattern of serious procedural due process violations," *id.* at 1288; 5. "Mr. Keep and his superiors must have recognized the fundamental unfairness involved with having Department officials argue ex parte to the agency decision maker the contentions that had already been considered and rejected by the Administrative Law Judge," *id.* at 1288; 6. "Rather than remand to the Department, the Court reinstates the contested findings. Failure to do so would subject the Samish to relitigation of issues already decided in their favor by the Administrative Law Judge and improperly rejected by Assistant Secretary Deer." *Id.* at 1288; 7. "Ada Deer, the decision maker, arbitrarily and in violation of clearly established law rejected those proposed findings and inserted new findings drafted by Mr. Keep," *id.*; 8. "[T]he agency has repeatedly demonstrated a complete lack of regard for the substantive and procedural rights of the petitioning party, and the agency's decision maker has failed to maintain her role as an impartial and disinterested adjudicator, it is appropriate for this Court to 'use its equitable power to order relief tailored to the situation.' . . . In this case, the government should be bound by the findings of the Adminstrative Law Judge, which were prepared after all the parties had an opportunity to be heard. The ALJ carefully considered and weighed all the evidence, including the testimony of the parties' witnesses, and made findings consistent with the evidence. Assistant Secretary Deer's ultimate rejection of the findings was based solely on improper ex parte contacts with one of the parties' lawyers. Under these circumstances, reinstatement of the rejected findings is the appropriate remedy," *id.* at 1288-89.

While the federal court only expressly reinstated three findings changed by Scott Keep, it is clear that every finding drafted by Mr. Keep that changed or revised the neutral, evidence-based findings made by ALJ Torbett violates the due process rights of the Samish Tribe and subjects the Tribe to fundamental unfairness, and that none of the Deer Decision can be used or relied upon by the federal government, in any manner or forum.

The Swinomish Indian Tribal Community participated in this travesty of justice perpetrated against the Samish Tribe by the United States. Discovery obtained by the Samish Tribe shows that the SITC coordinated closely with federal government attorney Scott Keep in planning and strategizing for the Samish federal acknowledgment trial, provided Swinomish witnesses and documentation for Mr. Keep to present at the trial, and were notified by Mr. Keep immediately after ALJ Torbett's recommended decision was issued on August 31, 1995, to coordinate how to overturn and/or reject that decision. Attached as Ex. 12. Phone notes of a conversation on October 5, 1995 between Scott Keep, federal expert George Roth, and Swinomish attorneys even shows that the United States consciously decided not to argue in the case that the SITC instead of the Samish Tribe was the successor to the historical Samish Tribe because it might undercut the SITC's argument that denying it intervention in the Samish federal acknowledgment proceeding

prevented all available legal and factual arguments from being raised. (Attached as Ex. 10). The United States and the SITC made a conscious decision in the Samish federal acknowledgment proceeding not to argue that the SITC was the successor (in a non-treaty context) to the historical Samish Tribe. *Id.* The SITC also participated in the improper ex parte communications with the Assistant Secretary on the Samish federal acknowledgment decision. *Greene III*, 943 F.Supp. at 1283.

This factual findings drafted by Scott Keep for political reasons to protect the SITC, not based on the evidence, and included in the improper, discredited, due process deficient Deer Decision are the asserted findings that the SITC says in its EIS comments are binding on the BIA. Swinomish comments, pp. 18-19. As this rather long discussion has shown, however, these findings were not based on the record from the Samish federal acknowledgment trial; they were made for political reasons only and substituted based on improper ex parte contact with the federal government's lawyer with the agency decision maker. As such, they are entitled to "no weight." Hearing, July 18, 1996, Dkt. #318, p. 24. They included "facts" asserted by the SITC in its October 11, 1995 letter to Assistant Secretary Ada Deer opposing Samish federal recognition. Scott Keep incorporated these alleged facts into the revised "factual findings" he drafted for Assistant Secretary Deer specifically to protect the SITC and to remove ALJ Torbett's findings in favor of Samish. It would violate the Samish Tribe's Fifth Amendment due process rights for the federal agency to consider or use the distorted, improper, political "facts" drafted by Scott Keep.

In addition, the federal court judge reviewing Assistant Deer's unfair decision expressly rejected the findings asserted by the SITC in its comments, and reinstated ALJ Torbett's original findings on this subject. *See Greene III*, 943 F.Supp at 1288 n. 13 ("the Samish family lines that settled on the Swinomish Indian Reservation did not relinquish their Samish affiliation, so there was no historical merger of the Samish with the Swinomish, *see* Final Determination at 35)"; Judgment, *Greene v. Babbitt*, Nov. 1, 1996, Dkt. #330 "(3) The following three findings of Administrative Law Judge David Torbett, originally entered on August 31, 1995 but later rejected by Assistant Secretary Deer, are reinstated: . . . 2. Many of the Samish families that settled on the Swinomish Indian Reservation did not relinquish their Samish affiliation (see Final Determination at 35, and references to record contained therein)."

A short discussion of a few of the facts asserted the SITC's comments shows that their asserted facts are not supported by the evidence.

1. No federal court has determined that the Samish Indian Nation is a successor to the historical Samish Tribe.

The Samish Tribe has addressed this issue earlier in this response, where the federal court judge ruled that the Samish Tribe would be able to prove that it was the historical Samish Tribe to gain federal recognition. *See* p. 17, *supra*. ALJ Torbett made findings of fact, of continuous, independent tribal existence from treaty time up to the present that can only be read as a finding of successorship. The United States clearly believed that ALJ Torbett had determined Samish successorship to the historical Nuwhaha and Samish tribes:

> Yet this afternoon [Russel Barsh, counsel for the Samish Tribe]'s up saying that everything [the Assistant Secretary] changed would have to be done by a resort to the record, which we don't dispute up to a point. But when the record, particularly as it relates to the Samish relationship, if we can use the same word again, with the Swinomish Indian community, when who is the successor tribe could have important legal ramifications, when that record is blurred by the administrative law judge, you've moved into the area of the Assistant Secretary's discretion and responsibility.
>
> And she needed to take some action. She was undoubtedly troubled by this when she received the memoranda, not only from Mr. Keep, but from the amici. . . . She undoubtedly was concerned enough about this to be moved to change the findings.
>
> . . .
>
> To resolve the question of which is the proper successor tribe to the Nuwha'ha or the aboriginal Samish, which are questions far more complex and outside of my limited experience in this case than I could deal with, are also for another forum for another day and were not contemplated in the Court's remand to the agency. Findings dealing with that that the ALJ made are unnecessary to the decision of Samish acknowledgment, which has been achieved.

Hearing, July 18, 1996, Dkt. #318, pp. 43. 52 (emphasis added). Scott Keep removed the two findings of ALJ Torbett finding Samish successorship to the Nuwha'ha and historical Samish. Federal district court judge Zilly obviously disagreed with the United States' argument, because he reinstated both findings. *See* Judgment, Nov. 1, 1996, Dkt. # 330, (Section (3)1. "Part of the Noowhaha tribe merged with the Samish."; 2. (quoted above – Samish did not merge with Swinomish). Samish is a political and legal successor in interest to the historical Nuwha'ha and Samish tribes for every purpose other than off-reservation treaty fishing rights. *See* Letter from Secretary of Interior Bruce Babbitt to Wa Walton, Chairman, Swinomish Indian Senate, April 26, 1996 (denying Swinomish request to overturn Samish recognition decision, finding Swinomish to be the successor only for treaty fishing rights). The SITC continues to fight this determination in favor of the Samish Tribe only because its June 15, 1998 secret settlement agreement with the Lummi Nation requires it to continue fighting Samish successorship even after a federal court has ruled to the contrary. *See* Agreement, § 3.A. 5 & 6.

2. Most of the Samish went to the Swinomish Reservation. Swinomish Comments, p. 18.

This statement is simply not true. The reduced Swinomish Reservation was opened for allotment shortly after it was confirmed by Executive Order in 1873. Federal correspondence confirms that allotment of this Swinomish Reservation was completed by 1905, and thereafter no additional allotments were available. An affidavit prepared by Alfred Edwards in 1978, the son of Samish leader Charlie Edwards and later a Samish leader in his own right, documents that allotments were no longer available, and Alfred confirms that he acted as Chairman of the Samish Tribe from 1950 on. Affidavit attached as Ex. 13. The main Samish Village on Guemes Island was still in existence in 1905, and was a centerpiece of traditional Indian culture in the region. After that village was lost when fee patents to the village site were issued, many Samish moved to a new Samish village adjacent to the Ship Harbor fish cannery. No additional allotments were available to Samish Indians on the Swinomish Reservation. Findings in the Torbett decision confirm that

the few Samish Indians who moved to the Swinomish Reservation after 1905 did so only because they already had relatives living there. The great majority of Samish Indians remained off-reservation.

Federal documents at the time confirm that only a few Samish Indians received allotments on the Swinomish Reservation. An 1898 census of the Swinomish Reservation lists 98 male adults, nine of whom are of Samish descent. A 1905 BIA list of allotment patentees on the Swinomish Reservation lists three persons of Samish blood. A 1910 map of allotments on the Swinomish Reservation has the same list of allottees of Samish descent. A June 30, 1909 list of people actually living on their allotments on the Swinomish Reservation lists a total of 32 people, only 3 of whom were of Samish descent. The 1927 Census of the Tulalip Agency of Indians residing on the Swinomish Reservation lists a total of 280 individuals, only 18 of whom can be identified as of Samish descent. Other lists from the same time period show similar limited numbers of Indians of Samish descent on the Swinomish Reservation. Only a very small portion of Indians on the Swinomish Reservation were of Samish descent.

At the same time, as the Samish Tribe entered the "modern era" in 1926 by adopting a formal tribal constitution and membership list, the total membership of the Samish Tribe on formal membership documents was approximately 124 adults and a total membership of 300. So of a total Samish tribal membership of 300, perhaps 20 Samish Indians resided on the Swinomish Reservation. Again in 1930, when the Samish Tribe met to appoint a delegation to meet with the Tulalip BIA agent, sixty-seven Samish Indians signed the membership list and paid tribal dues. Of these sixty-seven adults, six resided on the Swinomish Reservation and two on the Lummi Reservation. Using these figures, less than 10% of the Samish membership resided on the Swinomish Reservation at any one time. The SITC and Scott Keep simply made up their own facts when they assert that most of the Samish membership moved to the Swinomish Reservation.

3. The leadership of the historic Samish tribe almost exclusively went to the Swinomish Reservation. Swinomish Comments, p. 19.

This factual assertion was simply made up by Scott Keep and the SITC. The Samish leadership in the 20th century included both on and off reservation tribal leaders. Prominent off-reservation Samish leaders include:

1. Sas or SJ Kavanaugh: Kavanaugh was an off-reservation Samish. Sas was prominent in the Northwest Federation of Indians, in organizing the Samish Tribe's independent participation in the Duwamish claims case, and in adopting the 1926 Samish Constitution. SJ Kavanaugh died in the late 1930s or early 1940s without children, but SJ's brother, Francis, was also a member of the Samish Tribe – he is on the 1926 membership roll - and has many descendants enrolled with the Samish Tribe today. The transcript from the *Duwamish* trial in 1932 shows that Mr. Kavanaugh confirmed in that proceeding that he was President of the Samish Council.

2. Don McDowell: Off-reservation Samish. Don was a leader of the Samish Tribe around the same period as Sas Cavanaugh. He was acquainted with Indian Commissioner John Collier and arranged the Samish Tribe's vote in favor of the Indian Reorganization Act in 1934. Don McDowell's daughter, Mary (McDowell) Hansen, was active in Samish tribal government from the 1950s through Samish restoration in 1996. Her son, Ken Hansen, was tribal chairman during the 1970s, and again from restoration in 1996 through his death in 2005.

3. Robert Wooten: Off-reservation Samish. Robert Wooten, who is on the 1930 membership meeting roll, was Samish tribal chairman in the 1950s. His son, Tom Wooten, has been Samish Chairman from 2005 to the present.

There are others, but this illustrates the extensive involvement of off-reservation Samish in Samish tribal affairs. And of those few Samish leaders who did move to the Swinomish Reservation because they had relatives there, they all continued their independent, primary involvement in the Samish Tribe and Samish tribal affairs. For example, the Samish Tribe's active participation in the *Duwamish* claims case as a separate tribe shows that the on and off-reservation Samish leadership participated equally in Samish tribal affairs, each comprising half of the tribal delegation tasked with meeting and negotiating a federally-approved attorney contract for that case. There is nothing anywhere in the historical record showing any intent by the active Samish Tribe to cease its existence by merger with another tribe. The Samish Tribe continued to actively exist as a separate political entity throughout this period. The 90+% of Samish members who resided off any reservation never made any decision to become part of another tribal entity. The Torbett Decision confirmed the active leadership of both on and off-reservation Samish Indians throughout the 20th century. *E.g.*, Torbett Decision, p. 21.

The essence of Scott Keep and the SITC's revisionist findings is an assertion that somehow the "core" of the Samish Tribe moved to the Swinomish Reservation. As this brief discussion shows, this assertion is simply not true – the vast majority of the Samish membership and many Samish leaders remained off-reservation throughout this period. Judge Torbett expressly found that the core of the Samish people had continuously preserved their identity and integrity as the Samish Tribe. Torbett Decision, p. 22. Scott Keep, adopting almost word-for-word the language and arguments in the SITC's October 11, 1995 letter objecting to Samish federal recognition, rejected Torbett's finding and wrote instead that the core of the Samish moved to the Swinomish Reservation. Deer Decision at 15-16. *See* Ex. 10, phone notes dated Oct. 5, 1995, between Scott Keep and Swinomish tribal attorneys ("US arg. has been core of Samish at Swinomish"). This revised "finding" was made up out of whole cloth, based solely on ex parte communications after the objective, neutral finder of fact had specifically rejected the same contention, and cannot be given any weight by the federal agency. The revised findings were made solely for political purposes to protect the SITC.

This concludes the response of the Samish Indian Nation to the comments of the SITC in opposition to the fee-to-trust application of the Samish Tribe to take the property at issue in this

matter into trust for the Samish Tribe for gaming purposes. If you have any questions, please contact me and I will try to answer them.

Sincerely,

Thomas D. Wooten
Samish Tribal Chairman

Attachments
c: AES
Samish Tribal Council (w/o attachments)

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MEMORANDUM

TO: James V. DeBergh, Attorney-Advisor, Office of the Solicitor, Division of Indian Affairs, United States Department of the Interior

Jessie Young, Attorney-Advisor, Office of the Regional Solicitor, Pacific Northwest Region, United States Department of the Interior

FROM: Craig J. Dorsay, Tribal Attorney, Samish Indian Nation

SUBJECT: Response to Letter dated April 13, 2016, from James Janetta, Office of the Tribal Attorney, Swinomish Indian Tribal Community, to Stanley M. Speaks, Regional Director, Northwest Regional Office, Bureau of Indian Affairs, United States Department of the Interior, Re: Samish Indian Nation Fee-to-Trust Applications for Casino and Gas Station Projects

DATE: June 6, 2016

This memorandum is the Samish Indian Nation's Response to the letter dated April 13, 2016, from James Janetta ("Janetta") to BIA Regional Director Stanley Speaks. While the letter states that it is addressing the Samish Tribe's fee-to-trust application to take property into trust for a Casino and Gas station projects, it does not address any issues or points relevant to the fee-to-trust process. Instead, it is a screed against the Samish Tribe's status as a federally-recognized Indian tribe and should be ignored by the United States. The only good news from this document is that it confirms and expressly states what the Samish Tribe has been telling the federal government for years about the Swinomish Indian Tribal Community's (SITC) opposition to the Samish Tribe – that the SITC still refuses to accept that the Samish Tribe is a legal, federally-recognized Indian tribe, and that the SITC is still actively seeking to litigate the subject of the Samish Tribe's status as an Indian tribe by re-opening Samish's federal acknowledgment proceeding. The Samish Tribe will not respond to these inappropriate demands and arguments by the SITC; the federal government knows that they are improper and inappropriate.

Instead, in this response, the Samish Tribe will merely state some of the basic legal principles and legal history applicable to the Samish Indian Nation. These principles are well documented and established, although SITC chooses to ignore them.

When the issue of the *Carcieri* decision came up in 2009 and its potential applicability to pending Samish fee-to-trust decisions, Samish immediately raised the concern that any *Carcieri*

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analysis should not be used as an excuse to attempt to relitigate the Samish Tribe's federally-recognized status. Samish stated at that time that this was what SITC was sure to attempt. The Samish Tribe was repeatedly assured that no such relitigation would occur. But as Janetta's recent letter and Slonim's *Carcieri* response show, this is exactly what Swinomish is attempting to do now. The Department of Interior should clearly and expressly reject and denounce such attempt.

I have one final point to make before turning to a discussion of applicable legal principles. If you read past the invective and personal insults in Janetta's letter, you will see that his basic point is that the Samish Indian Nation should be happy to be federally-recognized at all and to qualify for a few limited federal programs and services, and instead has the audacity to claim the same legal status as every other federally-recognized tribe and to make legal claims and raise legal arguments that every other federally-recognized tribe can make. Ltr. at p. 18. I can assure Mr. Janetta personally that if he is offended and outraged by the Samish Tribe now, he will only be more outraged and offended in the years and decades to come.[1]

Now let me turn to a brief summary of applicable legal principles which are completely ignored in Janetta's letter. The Samish Tribe discussed these principles at great length in its December 22, 2014 response letter, from Chairman Tom Wooten to Regional Director Stanley Speaks, to Swinomish's EIS comments. That letter, referred to herein as "Samish Memo," is attached to this Memo as an Exhibit for the Department's easy reference. I will not repeat that discussion in full here, but just merely restate the most important principles.

The federal district court overturned and remanded the BIA's February 5, 1987 negative Samish federal acknowledgment decision in an Opinion and Order dated February 25, 1992. Samish Memo at 16. The court found that the 1987 (and previous 1982) decisions violated the Samish Tribe's due process rights, and remanded the proceeding for a formal administrative adjudication with full due process protections. 1992 Order at 16-19. The district court also found "evidence that would lead an objective bystander to believe that some of the [BIA] decision-makers prejudged the case." Order at 19, 943 F.Supp. at 1282, and that the BIA in that earlier decision had met ex parte with government witnesses and advocates and tribes opposed to Samish federal acknowledgment. *Id.* Samish Memo at 16. The district court later stated that the primary purpose of this remand was "to take this case out of the political arena and to assure that the Samish would have their claims heard by an impartial and disinterested decision-maker." 943 F.Supp. at 1287. The Ninth Circuit affirmed this ruling, holding that "informal decision-making,

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[1] Janetta's position with regard to the Samish Tribe is of course contrary to the express dictates of federal law, which specifically prohibits discrimination among federally-recognized tribes. 25 U.S.C. § 476 (f), (g) ("Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to [any Act of Congress] with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes."). *See* 25 C.F.R. §83.12(a) ("The newly acknowledged tribe shall be considered a historic tribe and shall be entitled to the privileges and immunities available to other federally recognized tribes by virtue of their government-to-government relationship with the United States. It shall also have the responsibilities and obligations of such tribes. Newly acknowledged Indian tribes shall likewise be subject to the same authority of Congress and the United States as are other federally recognized tribes.").

behind closed doors and with an undisclosed record, is not an appropriate process." *Greene v. Babbitt*, 64 F.3d at 1275.

The 1978 Federal Acknowledgment Regulations (redesignated in 1982) that applied to the Samish Tribe's Federal Acknowledgment Proceeding, required that the Samish Tribe prove that it "establish a substantially continuous existence" and "have functioned as [an] autonomous entit[y] throughout history until the present," 25 C.F.R. §83.3(a), and satisfy seven separate criteria "establishing that [it] has been identified from historical times until the present on a substantially continuous basis" as a tribe. 25 C.F.R. §83.7(a).

The ALJ – Judge Torbett – conducted an impartial and objective 8 day contested hearing on Samish federal acknowledgment on remand in August 1994, and the proceeding included extensive discovery and depositions in the year proceeding. Judge Torbett issued a comprehensive and exhaustive opinion and findings of fact supporting Samish federal acknowledgment under the Federal Acknowledgment regulations on August 31, 1995. There can be no dispute that this decision was objective, fair and impartial, and was binding on the United States. The Samish Memo on page 16 contains a number of references by the federal district court in 1996, upon review of the BIA's subsequent illegal actions, to the character of Judge Torbett's decision.

Then, once that decision was forwarded to the Assistant Secretary-Indian Affairs for finalization, the Department of Interior reverted to its improper, ex parte, pre-judging, actions that had led to the overturning of the Bureau's decision in the first place. This history is recounted in detail in the Samish Memo at 17-24. I will not repeat that discussion here, but instead highlight the important points.

1. Scott Keep, the federal government attorney opposing Samish federal acknowledgment, completely rewrote Judge Torbett's recommended decision and all of the factual findings contained in that decision on an ex parte basis.

2. Assistant Secretary Deer adopted Scott Keep's revisions to the Samish federal acknowledgement decision without any change ("virtually identical").

3. Scott Keep's changes to the Samish Federal Acknowledgment Decision were not based on the record, but instead the changes were made solely for political reasons because the Department allegedly had a political obligation to "protect" existing federally-recognized tribes. In addition, the changes made to Judge Torbett's decision by Scott Keep included changes demanded by the Swinomish Indian Tribal Community, which were also communicated on an ex parte basis to Scott Keep.

4. The federal government's actions in unilaterally changing the Samish Tribe's Federal Acknowledgment decision constituted a fundamental and express violation of the APA and Fifth Amendment due process standards, and the only appropriate remedy was reinstatement of Judge Torbett's rejected findings and decision.

5. Assistant Secretary Deer in accepting the political changes made to the Samish Federal Acknowledgment decision by Scott Keep, as the agency's final decision

maker, "failed to maintain her role as an impartial and disinterested adjudicator," 943 F.Supp. at 1289, as required by the APA and due process.

6. The findings of fact removed ex parte by Scott Keep were required by the Federal Acknowledgment regulations and necessary to support the Samish Tribe's claims to tribal territory. *Id.* at 1284. This is the exact issue in contention in the present matter.

As SITC argues, the federal district court in *Greene v.* Babbitt only reinstated three of the findings that had been improperly changed by Scott Keep and Assistant Secretary Deer. This was for strategic reasons, and because it was impossible at that time to go over every finding changed improperly by Keep. The entire Keep/Deer decision is tainted and illegal, however, and none of that decision can be used or relied upon by the United States. For example, there are no objective factual findings made in the Deer decision; there are only political findings inserted on an ex parte basis by Scott Keep to protect the Swinomish and other tribes. None of the findings created by Scott Keep are binding on the Samish Tribe or can be used to the Samish Tribe's detriment. None of the findings inserted by Keep are factual findings that apply to the Swinomish Tribal Community. The Deer decision was a political decision made in express violation of the APA and all known legal standards, and is not valid precedent for anything. Only Judge Torbett's August 31, 1995 decision is objective, fair, comprehensive, exhaustive, and binding. The SITC has no other hook than to continue to argue for the validity of this embarrassing Deer decision (and is required to do so under its secret 1998 "Samish" agreement with the Lummi Tribe), but such an argument has no legal merit whatsoever and should be roundly rejected.

There are a few final points to make about Janetta and Swinomish's continued complaints about Samish federal recognition and the Samish Tribe's legal status. First, Janetta continues to complain twenty years later that the SITC was "wrongfully" denied intervention in Samish's federal re-recognition proceeding. Janetta at 19, Point 5. Janetta is apparently unaware of Justice William Canby's 2010 Ninth Circuit decision in *Evans v. Salazar*, 604 F. 3d 1120, rejecting this exact argument, relying on Samish's en banc decision in *U.S. v. Washington*, 593 F.3d 790 (9th Cir. 2010)("*Samish*"). Justice Canby, one of the preeminent academic authorities on Indian law, ruled as follows:

> In *Samish*, we overruled *Washington III*, making it clear that the Tulalip Tribes were correctly denied intervention in the Samish recognition litigation and must be denied intervention here. . . .
>
> In its supplemental briefing, the Tulalip Tribes also argue that, even if recognition of the Snohomish can have no effect in establishing treaty fishing rights, recognition will threaten the 'political successorship [,] sovereignty … and cultural identity of the Tulalip Tribes. The asserted reason is that the Tulalip Tribes were found in *Washington I* to be the successors of Snohomish Indians who were parties to the treaty.
>
> We fail to see how recognition of the Snohomish Tribe as a distinct historical entity can intrude upon the established recognition of the Tulalip Tribes as successors to treaty signatories. Any effective intrusion would constitute an interference, by reason of recognition, in the Tulalip Tribes' adjudicated treaty rights, an outcome forbidden by *Samish*. As for the sovereignty and cultural identity of the Tulalip Tribes, those valuable attributes remain in the Tulalip Tribes wholly independent of any

> recognition or non-recognition of the Snohomish Tribe. Mere distaste for Snohomish recognition does not qualify for intervention as 'an interest relating to the property or transaction that is the subject of the action, … so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest ….'"

604 F.3d at 1123-24. This ruling is apparently inconvenient to the SITC's position on this issue and so Janetta chooses to ignore it entirely. It is controlling, and Janetta's argument on this issue is therefore completely without merit.

Another ruling that Janetta chooses to ignore completely is the en banc Ninth Circuit's rejection of Janetta's "faux finding" argument, which pervades his submission. Janetta made this same argument to the en banc Court and they dismissed it out of hand in the following terms: "The Treaty Tribes contend that the Samish Tribe misled the district court into mistaking the text of the disputed findings of the Administrative law Judge. We are satisfied, however, that the district court here was correct in holding that the district court in Greene III reinstated the actual findings of the Administrative Law Judge, not some inaccurate description thereof." 593 F.3d at 796 n.7. This is what Samish was attempting to do in *Greene v. Babbitt*, and it was what Judge Zilly in that case reinstated.

Janetta's discarded allegations of course pale against Scott Keep's wholesale replacement of 300 factual findings in Samish's federal acknowledgment decision, not for factual reasons but solely for political reasons to protect the SITC.[2]

The district court ruled this action a fundamental and comprehensive violation of all standards of due process and fairness and threw Keep's illegal decision out. *Greene v. Babbitt*, 943 F.Supp. 1278 (W.D. Wash. 1996). I am sure that this is just another instance where Janetta believes Samish misled and lied to the federal court.

There is one final ruling the en banc Ninth Circuit made in *Samish*, an extremely critical one, that is also completely ignored by Swinomish and Janetta because of its inconvenience, Janetta continues to argue, contrary to the express ruling of Judge Canby on behalf of the en banc Ninth Circuit, that Samish is forever foreclosed from asserting rights derived from its successorship to the historical, treaty Samish Tribe. Janetta at 18, Point 1. The en banc Ninth Circuit ruled the exact opposite in clear and unambiguous language.

What the Ninth Circuit ruled in *Samish* was that an administrative finding by the Department of Interior Office of Hearings and Appeals that Samish met the legal test for legal status, successorship and treaty exercise was not an extraordinary reasons sufficient to re-open Samish's off-reservation treaty fishing rights decision in *Washington II*, for several reasons discussed in the opinion. 593 F.3d at 799. Judge Canby then, however, writing for the en banc

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[2] "[T]he government began anew . . . to engage in informal decision-making behind closed doors, without a record." 943 F.Supp. at 1286. The federal court of course ruled that Swinomish was complicit in these violations. 943 F.Supp. at 1283. During its Rule 60(b)(6) proceeding, Samish submitted documentation to the court obtained in discovery showing that Swinomish cooperated closely in developing strategy and providing documentation and witnesses in opposition to Samish federal re-recognition. *See* Samish 12/22/14 Letter, with Exhibits.

Court, narrowly limited preclusion to that specific decision and no other. In calling it "the course we adopt," Judge Canby stated the following rule for tribes who had been previously denied treaty status but who have subsequently successfully achieved federal acknowledgment:

> Nothing we have said precludes a newly recognized tribe[3] from attempting to intervene in *United States v. Washington* or other treaty rights litigation to present a claim of treaty rights not yet adjudicated.[4] Such a tribe will have to proceed, however, by introducing its factual evidence anew; it cannot rely on a preclusive effect arising from the mere fact of recognition. . .. Our ruling was part of a two-way street: treaty adjudications have no estoppel effect on recognition proceedings, and recognition has no preclusive effect on treaty rights litigation. Indeed, to enforce the assurance in *Greene II* that treaty rights were 'not affected' by recognition proceedings, the fact of recognition cannot be given even presumptive weight in subsequent treaty litigation. To rule otherwise would not allow an orderly means of protecting the rights of existing treaty tribes on the one hand, and groups seeking recognition on the other.

593 F.3d at 800-01.

While Janetta and Swinomish apparently refuse to recognize this holding, it is beyond dispute. The Samish Tribe cannot re-open its adjudicated treaty fishing rights decision; Samish agrees that it cannot do so. But the preclusive effect of that decision is restricted to the specific

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[3] Judge Canby specifically defined the Samish Tribe as "the newly recognized Samish Tribe" elsewhere in the opinion. 593 F.3d at 800 n.12. Obviously Judge Canby, a preeminent academic authority in Indian law, was aware that he was using the same term at both locations. *See* Canby, William C. Jr., American Indian Law in a nutshell (6th ed. 2015), p.117 (citing *Samish*).

[4] Only treaty fishing rights have been adjudicated in *U.S. v. Washington*. 593 F. 3d at 801 ("As we have already recited, we denied the Tulalip Tribes intervention in the Samish recognition proceedings on the ground that the 'Tulalip's interest in preventing the Samish from gaining treaty fishing rights was not affected by this litigation, involving federal tribal recognition . . . .'", *citing Greene v. Babbitt*, 64 F.3d 1266, 1270 (9th Cir. 1995) (*Greene II*). Judge Canby repeated this restriction elsewhere in the Samish decision and later in 2010 in *Evans v. Salazar*, 604 F.3d at 1123 ("even if recognition of the Snohomish can have no effect in establishing Snohomish treaty fishing rights"). Snohomish was another tribal group denied off-reservation treaty fishing status at the same time as Samish. Judge Canby restated the same test for Snohomish – if it ever successfully achieved federal acknowledgment (which it hasn't) – that he did for Samish.

Elsewhere in *Samish* Judge Canby addressed the specific parameters of the extent of collateral estoppel that exists with regard to Swinomish's (and other adjudicated treaty tribes) treaty fishing rights decision(s) in *U.S. v. Washington*. Judge Canby stated that "offensive" collateral estoppel of those decisions – using them against Samish in other legal and factual situations – should be denied because "the circumstances here justify denying its effect," particularly where Samish was not a party to Swinomish's treaty fishing rights determination. 593 F.3d at 801 n.13.

treaty issue adjudicated, for a tribe that is subsequently federally recognized.[5] Samish, as a newly recognized Indian tribe as defined by Judge Canby, has the right to claim treaty rights in any subsequent treaty litigation to establish rights that were not previously adjudicated, but it has to introduce the factual evidence supporting its eligibility for treaty status and exercise "anew." Swinomish is expressly prohibited from using its treaty fishing decision as offensive collateral estoppel in any other situation. If Swinomish disputes this clear course adopted by Judge Canby and the en banc Ninth Circuit, it should seek relief from that Court, not try to ignore or avoid that decision as it does here.

The Samish Tribe established in its contested Federal Acknowledgment proceeding that it is a continuously existing political entity descended directly from the historical Samish Tribe that signed the 1855 Treaty of Point Elliott. The Samish Tribe is therefore enabled to exercise and assert all rights deriving from its historical antecedent except for specific issues to which it has been judicially foreclosed – off-reservation treaty fishing rights. As a successor to the historical Samish Tribe, the federally-recognized Samish Tribe has a direct historical and legal connection to the traditional territory of the Samish Tribe, justifying its fee-to-trust application that is being disputed by the SITC.

This concludes the Samish Indian Nation's response to Janetta.

[5] For example, Snohomish, the subject of *Evans v. Salazar*, has never been subsequently federally-recognized, and therefore cannot take advantage of the rule announced in *Samish*.

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IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGARET GREENE, and the SAMISH INDIAN TRIBE,

Plaintiffs,

v.

BRUCE BABBITT, Secretary of the Interior, et al.,

Defendants.

and

TULALIP TRIBES OF WASHINGTON, et al.,

Amici Curae,

Case No. C89-645Z

Seattle, Washington
July 18, 1996
1:30 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

For the Plaintiff: Russel L. Barsh
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5188

1 conclusions about who today properly includes members of those
2 particular families that are referred to on page 12, which
3 federally recognized Indian tribe can properly claim them as
4 members, where can they properly claim their membership for the
5 purpose of receiving federal benefits.
6 And the arguments before Judge Torbett were essentially
7 that they had gone with the Samish. There was some fuzziness
8 about how they became part of the Samish, but the plaintiffs'
9 experts concluded that by whatever means, whether those the
10 Samish had reported or by many others that were reviewed in the
11 course of the hearing, they had become subject of the Samish
12 Nation and, therefore, their historical identity and rights had
13 been merged into the Samish.
14 Now, that raises a very interesting question that was
15 brought up by amicus curiae, about whether that kind of a
16 finding, about who the members of the Samish are and what
17 territory the Samish can claim as their historical territory
18 and identity, whether that somehow is a violation of other
19 Indian tribes' rights to due process, because they aren't there
20 to disagree and defend what they consider are their historical
21 rights.
22 The answer to that quite simply is that dispute is not
23 before this Court. This is between the United States and the
24 Samish. So the United States now --
25 THE COURT: It wouldn't be binding on some tribe that

1 wasn't involved.

2 MR. BARSH: It wouldn't be binding. Precisely. And
3 if a dispute arose, for example, in the Nuwha'ha case, if there
4 were a grave site, for example, and the Samish said under the
5 provisions of the Native American Graves Protection and
6 Repatriation Act we want that protected and we want the bones
7 reburied, and the Upper Skagits, who also claim descent partly
8 through the Nuwha'ha, challenged that and said no, no, those
9 are our bones, those are our bodies, not Samish bodies, then
10 the dispute between the two tribes would have to be
11 independently adjudicated. But the United States at least
12 would be bound by the decision that as far as the U.S. and the
13 Samish are concerned those bones are in Samish territory.
14 So any other Indian tribe that was concerned, if it came
15 into a specific dispute with the Samish involving these
16 findings, would, of course, have the right of any non-party to
17 relitigate the facts. And that's why we don't think that
18 amicus curiae's arguments are really relevant to our work here
19 today.

20 THE COURT: All right. Tell me what you are claiming
21 with respect to damages as a result of the delays in having a
22 final determination. And what it is that you think this Court
23 could or should do?

24 MR. BARSH: We've given great thought to that. It's a
25 very difficult problem and a very emotional one with the

Final Determination

To Acknowledge the Samish Tribal Organization

As a Tribe

Prepared in response to recommended
finding by Administrative Law Judge,
David L. Torbett, August 31, 1995.

Approved: NOV 0 8 1995

Assistant Secretary - Indian Affairs

EVALUATION OF THE SAMISH TRIBAL ORGANIZATION UNDER 25 CFR 83

INTRODUCTION

This decision of the Assistant Secretary - Indian Affairs (ASIA) is an evaluation of the Samish Tribal Organization (STO) under the acknowledgment regulations (25 CFR 83). It also includes supplementary findings concerning the history and status of the petitioner, the historical Samish tribe, and the Federal acknowledgment process.

This determination is made under the acknowledgment regulations which became effective in 1978. Revised acknowledgment regulations became effective March 28, 1994 (59 FR 9280). Petitioners under active consideration at the time the revised regulations became effective in 1994 were given the option to be considered under the revised regulations or the previous regulations. The Samish requested to be considered under the 1978 regulations.

In accordance with sections 83.9 and 83.10 of the 1978 regulations, this determination will become effective in 60 days of its publication in the Federal Register unless the Secretary of the Interior requests that the Assistant Secretary - Indian Affairs reconsider her decision.

ADMINISTRATIVE HISTORY

A final determination to decline to acknowledge the Samish Tribal Organization as a tribe was published in the Federal Register February 5, 1987 (52 FR 3709). The Secretary declined a request for reconsideration and the determination became effective May 6, 1987. In a 1992 decision in Greene v. United States, the court vacated the 1987 determination on the grounds that a formal hearing had not been given to the petitioner. The court ordered that a new hearing be held which conformed to the requirements for a formal adjudication under the Adminstrative Procedures Act.

Under instructions from the court, proceedings before an Administrative Law Judge (ALJ) of the Department of Interior's Office of Hearings and Appeals began in 1992. A formal hearing before the ALJ was held in Seattle, Washington, from August 22 to August 30, 1994. The court's instructions required the ALJ to make a recommended decision to the ASIA whether the STO should be acknowledged to exist as an Indian tribe.

The ALJ issued a recommended decision to acknowledge the Samish Tribal Organization. This recommended decision, which was dated August 31, 1995, was received by the ASIA on September 11, 1995. The parties and amicus curiae had 30 days from the receipt of the

decision by the ASIA, or until October 11, 1995, to submit comments on the ALJ's recommended decision. The procedures established by the court provided that a final determination be issued by the ASIA within 30 days of receipt of comment.

BASES OF THIS DECISION

This decision is based on weighings of evidence and firdings of fact by the ALJ in his recommended decision to acknowledge the Samish. Only those findings of fact by the ALJ which are specifically referred to and accepted here form the basis of this decision. Some findings of fact by the ALJ have been rejected as clearly erroneous and contrary to evidence and testimony in the record. All findings of fact by the ALJ which are inconsistent with this report are rejected whether referred to specifically or not. This decision makes some supplementary findings of fact which are based on the ALJ's findings and our review of the record.[1]

The ALJ's recommended decision interprets some of the provisions of the acknowledgment regulations in a way that departs from precedents or does not rely upon an analysis of precedents. In this decision, the Government has rejected the ALJ's interpretations which are contrary to established practice and interpretation of the regulations in previous acknowledgment decisions.

The ALJ's decision upholds the acknowledgment regulations. The ALJ's decision also agreed with the Government's position as to the standard of proof to be met in presenting and evaluating evidence that the petitioner was a tribe under the criteria in 25 CFR 83.7. The ALJ incorporated that portion of the Government's brief dealing with standards of proof into his decision and used the Government's standard in making his decision (recommended decision 3).

MEMBERSHIP OF THE SAMISH TRIBAL ORGANIZATION

In order to evaluate the character of a petitioning group, the acknowledgment findings require a complete list of the petitioner's members. In this case, there are two lists. The membership list used for the 1987 administrative decision under 25 CFR 83 will be referred to here as the 1986 list. A second list was compiled by the Government in 1994, based on several lists provided by the STO in response to a discovery request for an updated membership list, and on hearing testimony by the STO Secretary which explained the lists. This membership list will be referred to as the 1994 list.

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[1] We have reviewed also and considered the evidence and arguments submitted by the Swinomish Tribal Community, Tulalip Tribes, and the Upper Skagit Indian Tribe.

Based on a review of the evidence used by the ALJ to support his findings, it is clear that the ALJ relied on the 1986 list for purposes of defining the STO. We defer to this decision. This finding, therefore, also uses the 1986 list.

For tribes acknowledged under 25 CFR 83, the acknowledgment roll becomes the base roll of the newly acknowledged tribe. The 1986 list will be used as the base roll of the STO, subject to verification that individuals consent to be listed as members. This roll cannot be modified to such an extent that the validity of the acknowledgment decision becomes questionable. However, individuals may be added to the roll who are politically and socially part of the tribe and meet its membership requirements.

Evaluation under 25 CFR Part 83

INTRODUCTION

The acknowledgment regulations require that a petitioner must meet all seven criteria set forth in section 83.7 to be acknowledged. This decision begins with a statement of the three criteria which have not been in dispute. Separate evaluations under each of the four disputed criteria are then presented. Each evaluation describes the main findings by the ALJ which form the basis for the evaluation. In addition, each evaluation indicates the findings of the ALJ which have been rejected and the supplementary findings which have been adopted in relation to the criteria. Appended to the decision are additional and more detailed findings by the ALJ which also form the basis for this determination.

CRITERIA FOR ACKNOWLEDGMENT

To be acknowledged a petitioner must meet all of the criteria for acknowledgment in 25 CFR 83.7 of the applicable 1978 regulations. These are:

83.7(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis, as "American Indian," or "aboriginal."

83.7(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

83.7(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other

authority over its members as an autonomous entity throughout history until the present.

83.7(d) A copy of the group's present governing document, or in the absence of a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members.

83.7(e) A list of all known current members of the group and a copy of each available former list of members based on the tribe's own defined criteria. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity.

83.7(f) The membership of the petitioning group is composed principally of persons who are not members of any other North American Indian tribe.

83.7(g) The petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

CRITERIA NOT IN DISPUTE

In the 1987 determination, vacated by the court, the Samish Tribal Organization was found to meet the criteria in 83.7(d), (f) and (g). Both parties accepted that those criteria were met by the STO. Consequently, they were not at issue in the proceedings before the ALJ. We find for purposes of this decision that the STO meets the criteria in 83.7(d), (f) and (g).

CRITERION A -- EXTERNAL IDENTIFICATION

The ALJ's decision found that "[t]hese findings of fact support the positive finding for the Petitioners as to <u>each</u> of the contested criteria (emphasis added)" (recommended decision 21). Although there was little evidence that there were external identifications of the STO for substantial periods of time, we defer to this finding. The ALJ was apparently persuaded that there had been substantially continuous external identification of the petitioner as an Indian entity and, therefore, that the STO meets the criterion in 83.7(a).

We do not, however, find the ALJ's finding 130 to be relevant to criterion (a) because it deals with the identification of individuals, while criterion (a) requires external identification of the <u>group's</u> Indian identity. This finding is therefore rejected.

CRITERION B -- COMMUNITY

Summary evaluation

The Samish were parties to the 1855 Treaty of Point Elliot. The Samish village at Samish Island was replaced in 1875 by a village established at New Guemes. This was maintained until around 1905. The Samish from, or associated with, this village moved to the Swinomish and Lummi Reservations. This movement began before 1900 and continued into the 1920's. After 1905, some Samish from this village became part of a small Indian settlement at Ship Harbor, which was largely Samish. This settlement persisted until approximately 1930. Some other Samish families, descendants of marriages with non-Indians, did not move to the reservations.

The reservation families continued to be somewhat distinct as a Samish community even after moving to the reservations, notwithstanding their social and political participation in the communities which emerged on those reservations. From the late 19th century to the present, the nonreservation families continued in significant contact with the reservation families, beyond simply being in the same organization, even though they had married non-Indians and lived elsewhere. A portion of these reservation and non-reservation families comprise the STO today.

Based on these findings, we conclude that the STO meets the requirements of criterion 83.7(b).

Findings by the ALJ which have been accepted

The administrative law judge found in part:

> A certain number of reservation and off reservation Samish intended to remain Samish. This core have in accordance with the regulations preserved the integrity of the Samish tribe (Recommended decision 22).
>
> There is significant evidence in the record which supports the proposition that certain off reservation Samish continued to be a part of the Samish community (Recommended decision 21).
>
> The Cumshelitsha-Whulhoten (sic) family does not live on a reservation, but they have continued to participate with the families that are not classified as being Indian descendants throughout. . . . (Recommended decision 6).

Additional findings by the ALJ relevant to this criterion are cited in the sections of adopted findings included at the end of this decision.

Additional findings

These supplemental findings of fact are based on the ALJ's findings concerning the existence of community. They are also based on his interpretation of the requirement for autonomy under the regulations, as modified in this decision (see discussion under criterion 83.7(c) below).

1. The 31 percent of the 1986 STO members who are enrolled in a recognized tribe also participate socially and politically in those reservation communities. Members have filled offices and held leadership roles in organizing the tribal governments under the Indian Reorganization Act.

2. The STO maintained a 1/8 Samish blood degree membership requirement until 1974, when it was changed to lineal descendancy. Blood degree was a political issue between the reservation and non-reservation family lines in the 1970's. This conflict is evidence that the STO had made significant distinctions between members and non-members and that membership had been based on more than descendancy alone.

3. Members of the non-reservation family lines were identified on the 1920 Federal census and on employment registers of the Ship Harbor canneries in the 1920's as Indian or part-Indian. This evidence supports a finding that they were socially distinct from non-Indians.

4. Geographical dispersion of a group's membership does not foreclose tribal existence, but neither does concentration in a broadly defined geographical area provide evidence for it. While a concentration of many members within, for example, a 50-mile radius creates an opportunity for these individuals to interact on a regular basis, it is not evidence that such interaction has occurred.

Findings by the ALJ which have been rejected

1. The ALJ's findings concerning intermarriage, genealogy and blood degree from his summary of evidence, p. 9, and findings 154-63 and 191-2 in Appendix B of the recommended decision are specifically rejected.

We affirm the interpretation of the regulations, based on past decisions, that where the members of a petitioner have only distant genealogical relationships with each other, this does not provide any evidence for the existence of community. The absence of marriages among a group's members over many generations, while not necessarily evidence that a community does not exist, makes it likely that there were no social ties among members based on kinship, unless the contrary can be established using other

evidence. A relationship as distant as second or fifth cousin between two individuals is far too distant to presume, on genealogical evidence alone, that a significant social tie exists between them. Such a genealogical relationship may provide the basis for actual social ties or relationships characteristic of a community, but they cannot be presumed to exist without direct evidence.

2. The Department testified that certain portions of the membership "with a few exceptions, had little or no knowledge of or contact with others in the group, particularly if you filter out the possible participation in meetings of the organization." The ALJ's comment on this testimony implied that participation in the organization should be considered a valid form of social interaction to show that a community exists. This comment is specifically rejected (recommended decision 17). We affirm that a tribe is more than a voluntary association (see also discussion of voluntary organizations under criterion c).

CRITERION C -- POLITICAL INFLUENCE

Summary Discussion

The historical Samish tribe as it existed off-reservation until after 1900 was centered on a distinct settlement and had well-established traditional leaders. The next generation of traditional leaders, such as Charlie Edwards and Tommy Bob, moved to the reservations. They were influential among the Samish, and more generally on the reservations, as spiritual and cultural leaders as well as leaders in pursuing hunting and fishing rights. They remained active until as late as the 1940's. Charlie Edwards, perhaps the most influential person, survived until 1948. Contemporary with them were other, off-reservation leaders. These, especially Sarsfield Kavanaugh, most active from around 1912 to the late 1920's, and Donald McDowell, active from the 1930's to around 1950, were particularly important in dealing with non-Indian institutions on behalf of the Samish.

After 1951 a formal council was established which has been demonstrated to have had significant support of, and contact with, the STO membership. The council pursued goals which reflected significant interests and concerns of the membership. Internal conflicts in the 1970's demonstrated the involvement of a broad spectrum of the STO membership in its political processes.

We conclude that the STO meets the requirements of criterion 83.7(c).

Findings by the ALJ which have been accepted

The existence of a community with leadership before the end of the off-reservation New Guemes settlement in 1905 was not contested in the 1987 determination and is accepted here.

The ALJ has presented several findings concerning political leadership and influence after 1905. These findings are adopted here.

The ALJ concluded:

> There is sufficient evidence in the record to show the continuation of the Samish tribal functions between 1935 and 1951. . . . There is oral history of meetings during that time and there is documentary evidence. Mary Hanson's [sic] testimony supports the proposition that the tribe continued to exist as a tribal entity during this period of time. Recommended decision 21.
>
> There are other important reasons to believe that the Samish continued to exist as a tribe during this critical period of time. There is a continuity of leadership. These leaders who emerged from one generation were often followed in succeeding generations by their children and grandchildren. They continued to maintain influence with the tribe throughout the history of the tribe. The Edwards family in particular have been leaders since almost the turn of the century and are still leaders in the tribal movement. There are other leaders such as Sas Kavanaugh and Don McDowell who demonstrated tribal leadership at certain times during the tribe's history. Recommended decision 21.

Although this discussion by the ALJ refers to 1935-51 explicitly, the individuals referenced and the statements made in that discussion constitute a finding of tribal political leadership for a much longer period, from the early 1900's until the present (see also the portions of the ALJ's summary of evidence and supplementary findings of fact appended to this decision). Further, the statements and findings of fact constitute a finding of tribal political leadership which included the nonreservation families. This is a finding that the relationship between leaders and followers is based on more than simply that the leaders are the leaders of a voluntary organization. The ALJ found that the formal organization created in 1951 was a revitalization of an existing tribe not a newly created organization.

Discussion of Criterion 83.7(c)

The most culturally distinct and socially cohesive portion of the petitioner's membership is the 31 percent that are enrolled with recognized tribes. In the 1987 final determination on the STO, the activities of this portion of the STO membership was not included

as evidence for the evaluation under criterion 83.7(c) because they historically have participated socially and politically in the recognized tribes.

The ALJ specifically included the activity of the members of recognized tribes in evaluating the STO. For the reasons set forth below, we find that the political participation of the petitioner's members who are also enrolled in a recognized tribe is valid evidence for meeting criterion 83.7(c) in this case. In addition, their social cohesion and social and cultural distinction from non-Indians is valid evidence for demonstrating that the STO meets the requirements under 83.7(b) for demonstrating the existence of a community.

Criterion 83.7(c) requires the demonstration of "autonomous" political influence within the petitioning group. The regulations define "autonomous" in part as a group having ". . . its own means of making tribal decisions independent <u>of the control of any other Indian governing entity</u>" (emphasis added) (83.1(i)) of the 1978 regulations). The provisions of the regulations concerning autonomy, and the related language of 83.3(d) excluding acknowledgment of "splinter groups" from recognized tribes, reflects the intent of the regulations that they not be used to break up an already recognized tribe. "Autonomy" is defined only in relation to the governing body of a recognized tribe, not in relation to non-Indian political bodies.

The ALJ found that being "socially and politically integrated" into another Indian community is not incompatible with "maintaining a distinct Samish identity." While maintenance of distinct tribal identities within a reservation is extremely common, the ALJ argues further that, "It is often necessary and always proper for people to participate in activities which control their immediate environment. However, in doing so, an individual's political affiliation is not changed because he or she associates with others of another political party (recommended decision 22)."

The ALJ's findings, however, could be interpreted to mean that if a petitioning group is internally cohesive and is exercising political influence within itself, the involvement of its members in another Indian political system (one which is part of a recognized tribe) would not violate the requirement under 83.7(c) that a group be politically <u>autonomous</u>. The ALJ's decision is rejected to the extent that it conflicts with the requirement for autonomous political process under the regulations.

However, in the present case, the political participation of a minority portion of a petitioner in a recognized tribe does not violate the bar to autonomy under 83.7(c) nor the prohibition in section 83.3(d) against recognizing "splinter groups" because a minority of the petitioner's membership is involved. Where, as in the present case, most of the petitioning group is not maintaining

a political relationship with a recognized tribe, and the petitioner is maintaining internal political processes independent of a recognized tribe, the autonomy of these processes is not violated by the additional political affiliation of a minority of its members.

The ALJ's discussion concerning Samish political participation in the reservations states in part that "to be a member of a tribe is a political affiliation and it is essentially a matter of intention on the part of the individual tribal member (recommended decision 22). His use of "intention" here is in the context of his finding that this political participation was of necessity and was therefore not an indication that political affiliation with the Samish had been abandoned. The Department continues to affirm its position that an "intent" to be part of the political process of a tribe which is not carried out or acted upon is not valid evidence for the existence of political influence within a tribe under the meaning of the regulations.

Additional findings concerning criterion c

These supplemental findings of fact are made based on the ALJ's findings concerning political influence and the interpretation, presented above, of the requirement for autonomy under the regulations.

1. The ALJ found that the political participation in the STO of members enrolled on reservations is valid evidence for political influence within the Samish. He also found that a community exists and that leadership in a broad sense exists. In the light of these findings by the ALJ, conflicts within the STO in the 1970's over control of the STO and over what the blood degree requirement should be for membership have the character of political conflicts between interest groups or subdivisions within the STO.

While these conflicts tended to follow reservation-nonreservation lines, portions of the non-reservation Cubshelitsha line sided with the reservation Indians. Relatively large numbers of individuals were involved. This series of conflicts shows the mobilization of political interests of large sections of the membership over a sustained period. They are thus good evidence of internal political processes which support a demonstration of meeting criterion 83.7(c).

2. Because the ALJ found that the political participation in the STO of members enrolled on reservations is valid evidence for political influence within the Samish, some of the political issues raised by such individuals within the STO during the period between 1951 to present are entitled to some weight as evidence of political processes. These issues include fishing rights, whether to have a blood degree requirement for membership, cultural

preservation, obtaining a land base and rejecting per capita payment of the Samish claims award.

Findings by the ALJ which have been rejected

1. The ALJ's findings concerning political influence are rejected to the extent that they do not differentiate clearly between a social club or voluntary organization and a tribe. A tribe is significantly more than a voluntary organization and the ALJ's findings are rejected to the extent they imply otherwise.

To be a tribe there must be more social contact between members, and distinction from non-members, than exists in a club. Precedents in previous acknowledgment decisions as well as in court decisions and Federal law underlying the acknowledgment process have consistently made this distinction. These precedents were cited in the Department's brief but were not commented on or analyzed in the ALJ's recommended decision.

A voluntary organization consists of otherwise unconnected individuals who join an organization for limited purposes. Mere common participation in a voluntary organization does not in and of itself demonstrate that the members of a petitioner have the kind of social and political links with each other to form a social and political community within the meaning of the acknowledgment regulations.

The petitioner's witness William Sturtevant supported this view, testifying that "One can contrast it [a community] with more temporary groupings of . . . interest groups, groups of people that are meeting together, talking to each other for a limited purpose. Social clubs or professional society meetings or employees of the Bureau of Indian Affairs, or employees of the Smithsonian, in a sense those are communities, but not really what either anthropologists or the BAR definition applies, as I understand it [Tr. 40]."

2. The ALJ found that organizing for specific purposes such as government benefits or fishing rights was conclusive evidence that the tribe continued to exist and had political influence over its members (recommended decision 21). We reject the ALJ's conclusion here and elsewhere in his decision to the extent that the ALJ has found that the creation of an organization for specific purposes in itself demonstrates political influence or internal tribal political processes under the regulations. Consistent with the regulations and their intent, as well as previous acknowledgment decisions, there must be evidence that these purposes reflect the needs and desires of the membership which have been communicated to the leadership.

A voluntary organization can represent, or claim to represent, the interests of a large body of individuals without the individuals represented having significant interest in, or even knowledge about, what the council is doing. Such interest and knowledge is crucial to distinguish between a voluntary organization and a tribe.

3. The ALJ's summary of evidence (recommended decision 21) cites the STO's opening of an office, holding classes, running cultural programs and a museum and obtaining Federal grants. Operation of programs and obtaining grants are not in themselves evidence of political influence within the meaning of the regulations.

CRITERION E -- ANCESTRY FROM THE HISTORICAL TRIBE

Introduction

The STO membership consists of individuals with ancestry from the historical Samish tribe and from other, non-Samish Indian families which historically became incorporated into the Samish tribe. This decision makes supplementary findings, based on the ALJ's findings, concerning the status of several family lines with ancestry from the Noowhaha tribe but not from the Samish tribe. A supplementary finding has also been made concerning a family line whose ancestry as Samish had not been clearly established.

Additional finding concerning the Noowhaha

The ALJ found that the Samish tribe as it existed in 1926 was a tribal political unit. The Noowhaha in the present STO are descendants of specific Noowhaha families--Blackinton, Wooten and Barkhousen--which were members in 1926. Under the precedents for interpreting the acknowledgment regulations, when individual families from other tribes have become incorporated historically into a tribe, their ancestry qualifies as ancestry from the historical tribe. Therefore ancestry from the Blackinton, Wooten, and Barkhousen family lines qualifies as descent from the historical Samish tribe.

Rejected finding concerning the Noowhaha

The ALJ's finding that the Noowhaha and the Samish combined in pre-treaty times is rejected (recommended decision 22). A review of the specific findings of fact in the recommended decision (findings 63 and 67), the testimony of the plaintiff's witnesses, and their writings, which form part of the administrative record of this case, reveals that by "combined" these individuals meant that the two tribes formed an alliance in pre-treaty times (cited in Def. Brief 149). The Department has never objected to this characteri-

zation of the relationship between the two tribes in pre-treaty times. However, a political alliance does not meet the requirements of criterion 83.7(e) for descent from a historical tribe or from tribes which "combined into a single autonomous political unit" (emphasis added).

In addition, the Federal district court in United States v. Washington, No. 9213, Subproceeding 89-3 (W.D. Wash) (Shellfish) held that the present Upper Skagit Tribe is the successor to the historical Noowhaha. The district court made specific findings concerning the incorporation of Noowhaha into the Upper Skagit. These findings are consistent with the Department's previous findings concerning the Noowhaha which were that many Noowhaha joined the Upper Skagit Tribe and that the Upper Skagit had been considered to represent the Noowhaha in the past, although some Noowhaha families moved to the Swinomish and Lummi Reservations (ASIA 1982a, 1982b, 1987). The Department reaffirms that the present Upper Skagit Tribe is the successor to the historical Noowhaha.

Previously, the Indian Claims Commission, in its March 11, 1958, opinion concerning the claim of the Samish in Docket 261, rejected the Samish's contention there was a merger between the Samish and the Noowhaha tribe at the time of the Point Elliott treaty of 1855 (Indian Claims Commission 1958).

Additional Finding concerning Quacadum Wood family

Based on the ALJ's supplementary finding number 198, we conclude that the Quacadum-Wood family line, classified by the Department as only of Snohomish Indian ancestry in previous decisions, also had Samish ancestry.

The following portions of finding 198 are accepted.

> The Snohomish portion of the Tribe's membership consists of only one family line, descendants of Mary Quacadum Wood.
>
> In 1926, however, her [Mary Quacadum Wood's] daughter applied for membership in the Samish Tribe, and claimed that Mary Wood was Samish (TR:437; Exhibit D-7).
>
> Furthermore Dr. Hajda testified that Mary Wood's line "have been associated for a long time with the Samish," at least since the 1920s (TR:811).

The balance of this finding is rejected.

Evaluation under the Criterion

The 1986 membership of the STO consisted of 61 percent who have Indian ancestry from the Samish tribe and 19 percent who have ancestry from Noowhaha families which historically became incorporated into the Samish tribe. The remaining members had Indian ancestry from other tribes. Thus, 80 percent of the 1986 members were descendants of the historical Samish tribe. We conclude, therefore, that the STO meets the requirements of criterion 83.7(e).

SUMMARY EVALUATION OF THE STO UNDER 25 CFR 83

The Samish Tribal Organization meets the requirements of each of the seven criteria in section 83.7 of the 1978 acknowledgment regulations. Therefore the STO meets the requirements to be acknowledged as a tribe.

Additional Findings and Rejected Findings

These additional findings form part of this decision.

The Historical Distribution of Samish

The Swinomish Tribe intervened in U.S. v. Washington as the successor to its four constituent band, Samish, Swinomish, Lower Skagit and Kikiallus. The court ruled in its favor, finding that "The intervenor Swinomish Indian Tribal Community is the present-day entity which, with respect to the matters that are the subject of this litigation, is a political successor in interest to certain tribes and bands and groups of Indians which were parties to the Treaty of Point Elliott, 12 Stat. 927 (459 F. Supp. 1020 (1978)).

The Samish are one of four constituent tribes of the Swinomish Tribal Community, a recognized tribe (Upchurch 1936). The Samish, who maintained a village off-reservation during the 19th century, abandoned that village around the turn of the century. Some had moved to the Swinomish Reservation before that time, and others moved early in the 20th century. A few remained off-reservation at Ship Harbor until as late as 1930. Most of the Samish, including some historically incorporated Noowhaha families, went to the Swinomish Reservation. A smaller number went to the Lummi Reservation. A major component of the Samish at Lummi, the Cagey family, originally had gone to the Swinomish reservation and participated in that reservation's government. Only later did the Cageys move to the Lummi Reservation. A few families who descended from the Samish married non-Indians at an early date and did not go either to New Guemes or to any reservation. The descendants of the latter represent the majority of the 1986 STO membership.

The leadership of the historic Samish tribe almost exclusively went to the Swinomish reservation. The leadership of the STO has historically included some of these leaders and individuals descended from those families, particularly the Edwards and Whulholten families.

The primary STO family lines from the reservations since 1951 have consisted of the Cagey, Whulholten, Underwood (Canadian Reserve members) and Tom (of Noowhaha descent) lines and part of the Edwards line. Most of the descendants of the Samish families who became part of the Swinomish and Lummi Reservations and those who joined Canadian Reserves identify as Samish. However, they are not members of the STO and have not appeared on any lists of members of the STO compiled from 1951 to the present.

The present-day membership includes only part of the Edwards descendants, a key family in the Samish leadership. Descendants of

the leaders from the Edwards family who are not members of the STO, but identify as Samish, are prominent today in the Swinomish Tribe's governing body. There are few living descendants of the Whulholten leadership line, and almost none are in the STO. Several reservation Samish family lines, which had individuals listed as members in 1926, now have no, or almost no, representation in the STO. These are the George, Paul, Stone and Jefferson families, which are part of the Lummi and Swinomish tribes.

Rejected findings concerning Reservation Samish

The ALJ's findings are rejected to the extent that they conclude that all members of recognized tribes who are of Samish ancestry and who have a Samish identity are members of the STO. The ALJ states that the four Swinomish reservation members of "Samish ancestry" who testified stated that they considered themselves Swinomish. The ALJ further states that these are "in opposition to the numerous members of the Samish tribe who live on reservations who consider themselves still to be Samish."

This contradicts the evidence in the record of this case as well as the testimony. The Samish individuals from Swinomish who testified clearly identified themselves as Samish but not members of STO. Further, the plaintiff has admitted that there are such individuals, holding only that certain reservation families remained distinct.

Further, the ALJ's overall finding of tribal continuity is flawed because it does not recognize that there are reservation Indians who are of Samish descent and identify as Samish but are not members of the STO. There is no statement or analysis of this significant point in the ALJ's recommended decision.

Previous Federal Recognition of the Samish

The Samish have not been federally recognized as a separate and distinct tribe since the early 1900's, when the core of the tribe moved to the reservations. The court in Greene rejected the contention that the Samish petitioner was a recognized tribe until the 1970's in its decision of February 25, 1992. The court stated that "The evidence, when viewed in the light most favorable to the defendants, is not sufficient to establish that the BIA treated the Samish as a recognized tribe" (Order, p. 12). The testimony of the long-time STO Secretary Mary Hansen at the hearing concerning the Samish clearly identified them as unrecognized in the 1950's (TR 1038). The ALJ's supplementary finding 110 is rejected, as are all other findings to the extent that they imply that the Samish petitioner was a recognized tribe until the 1970's.

Nature and Purpose of the government's research

A petitioner for acknowledgment under 25 CFR 83 has the burden to demonstrate through credible research that it meets all of the criteria in 83.7. Under section 83.6(d), "The Department shall not be responsible for the actual research on behalf of the petitioner."

The role of the Government's researchers who prepare recommended findings for the Assistant Secretary - Indian Affairs is that of evaluators who review the petitioner's research. The Government is not the primary researcher, though it may do supplementary research where necessary to complete its evaluation (see 25 CFR 83.9(a)). The Department's findings are thus based on research materials submitted by the petitioner, as supplemented and evaluated by its own research.

The comments and findings of the ALJ concerning this Department's research and the role of that research under 25 CFR 83 are based on an apparent misunderstanding of the role of this Department in the administrative process of acknowledgment. The ALJ's discussion, summary of evidence, and findings on these subjects are rejected as not an accurate description of the nature and purpose of the Department's research. The rejected findings specifically include those where the Department's research is discussed on pages 7-8, 13, and 17 of the ALJ's discussion of evidence.

Accepted ALJ Findings on Nature of the STO

I. Findings from the Summary of Evidence in the Recommended Decision

Introduction

The following portions of the summary of evidence in the ALJ's decision (recommended decision 4-18) are accepted and form part of the basis for this decision. Those portions not cited here or earlier in this decision are rejected as contrary to testimony and evidence in the record or contrary to established practice and interpretation of the regulations in previous acknowledgment decisions.

Excerpt

She [Yvonne Hajda] said the first generation or two following the treaty thought they [the Samish] would get a reservation of their own, but they never did. (Tr. 815). Some of the Samish moved to the Lummi reservation and others stayed off the reservation. Ibid. The off-reservation Samish continued to interact with those on the reservation by supporting each other, including pooling income and food. (Tr. 819-820). The off-reservation Samish tried to continue with their traditional Indian lifestyle of hunting and gathering, but this was made increasingly difficult because of white encroachment on what had been their lands. (Tr. 818).

Moving up to sometime around the turn of the century, Dr. Hajda testified that the Samish had an off-reservation village on Guemes Island (New Guemes Village). (Tr. 821). The village served as a religious center for the Samish, because it was the only place in the area where whites did not interfere with the holding of winter dances. (Tr. 822). The village also "served as a kind of refuge, refugee camp ... for Indians from other areas who were being driven off" with the Samish acting as host. Ibid. "It was a Samish house. Ibid.

The balance of this finding is rejected.

Dr. Hajda stated that after the break-up of the village, among the places the Samish moved to included the Swinomish reservation, Anacortes and Ship Harbor. (Tr. 825). Some Samish lived at Ship Harbor seasonally and some lived there year-round. (Tr. 827). Ship Harbor had two canneries that made substantial employment of Samish people. (Tr. 825-826). The Samish cannery employees formed two baseball teams. (Tr. 828). At Ship Harbor, the Samish conducted religious activities. Ibid.

According to Dr. Hajda, the Samish held political meetings during the early part of this century, including a meeting at New

Guemes Village where 200 or so people attended, and meetings in 1912 or 1913. (Tr. 828-829). "(T)here certainly was organization during that time." (Tr. 829-830). She said the Samish also participated as a tribe in meetings of the Northwest Federation of Indians. (Tr. 829-831). There were numerous meetings of Samish people in 1926-27. Apparently they were in response to legislation passed at about that time permitting Indians to sue the government for not fulfilling treaty rights. (Tr. 832).

Moving to the time of the Depression, the Samish participated politically by taking a straw poll among its members about whether to support the Indian Reorganization Act. (Tr. 837-838). The Samish also played a roll (sic) in the northwestern Washington region during the Depression in preserving the winter dance religion. (Tr. 839).

Moving to the time of World War II, the witness testified that the war made it difficult to meet because of gas rationing, men being called away for military service and people leaving the region for war-related employment. (Tr. 840). Nevertheless, "we have oral testimony that people continued) to meet and to discuss the things that they had been discussing. Providing people.with what needed to be provided, giving help to people, the usual -- (those) kinds of things. Concerned with fishing and land rights. The same things that had been there all along." (Tr. 841). She said there is also a written letter that provides evidence that a Samish council meeting was held in 1942. (Tr. 859-860).

In 1951, the Samish organized formally by adopting a tribal constitution, Dr. Hajda said. (Tr. 1951)(sic)[2]. Following the adoption, they pursued such concerns as health, social justice and employment, as well as fishing rights. (Tr. 844). Also during the 1950s, the Samish participated as a tribe in working with other Indian tribes to fight federal termination of Indian benefits. (Tr. 845).

The Cumshelitsa-Whulhoten (sic) family does not live on a reservation, but they have continued to participate with the families that are not classified as being Indian descendants throughout --- from the beginning. (Tr. 862).

In her testimony, Dr. Hajda concluded that the Samish who live on the Swinomish and Lummi reservations have the capacity to maintain their Samish identity, despite their participation in the affairs of the reservations.

"I think that many of them managed to have office or whatever it was at Swinomish or Lummi, and continued to be Samish and to

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[2] The correct reference is page 842 of the transcript.

participate as Samish. It's not an unusual thing. If you look at the United States in general, I know of a great many Indian men who vote as United States citizens. It's not either/or. They serve in the armed forces with great pride, many Indian men are proud of this. It doesn't seem to make them less Indian to have done so. So I find it difficult to think that it's an either/or choice ... (P)eople who live on reservations may well maintain another identity, as well. It's not uncommom." (Tr. 867-868).

In her testimony, Dr. Hajda also provided examples of Samish leaders:

During the era of the New Guemes village, the Whulholten brothers provided economic leadership by running a fishery. (Tr. 823). Billy Edwards served as a Samish spiritual leader during this era. (Tr. 823-824). While Samish were living at the Ship Harbor community, Charlie Edwards served as a kind of labor boss in rounding up Samish people to work at the local canneries. (Tr. 827). Sas Kavanaugh played a leadership role in organizing Samish meetings around 1912-13. (Tr. 830). During the Depression era, Don McDowell served a leadership role for the Samish, including helping people fill out forms for governmental assistance. (Tr. 837). Following World War II, Alfred Edwards emerged as a Samish leader, serving as president of the new Samish organization. (Tr. 843). With the establishment of a formal Samish council, it has taken a leadership role, including the mobilization of resources. (Tr. 860).

Petitioners' witness, Dr. Wayne Suttles is a professor emeritus of anthropology and linguistics at Portland State University. (He retired in 1984.) Dr. Suttles has conducted extensive field research with the Coast Samish [sic] [Salish] Indian people of northwest Washington and British Columbia, including the Samish. Some of the research was basis of his Ph.D. dissertation completed in 1951.

Dr. Suttles testified about Salish and Samish historical culture, including intermarriage among tribes and with white settlers. He said the Salish people, including the Samish, had a tradition against marrying close relatives (up to fourth cousins). (Tr. 165). The tradition included marrying outside one's tribe for economic and security reasons. (Tr. 165-167).

"(T)he reasons for this are that a marriage started a series of exchanges of foods and foods for wealth, and shared access of resources between the families marrying." (Tr. 165).

"(T)his advantage of marrying out, not only did it start exchanges, but there were political advantages. If you had inlaws somewhere else, you're less likely to be attacked by those people." (Tr. 166).

The Salish Indians also intermarried with white settlers when they showed up in the early part of the 19th century and recognized them as in-laws, Dr. Suttles said. (Tr. 179-182). Intermarriage with whites dropped off after more white women came into the area and expressed prejudice against Indian women and white settlers married to them, he said. (Tr. 236).

Even with the intermarriage among tribes, specific tribal identity was maintained, Dr. Suttles said. (Tr. 202). The various tribes "were part of a social network that extended pretty much indefinitely ... Samish had ties with the Swinomish and Skagit, Skagit had ties with the Snonomish, the Snonomish had ties with the Duwasmish, (and) so on ... It was a kind of social continuum through marriage, a biological continuum because of kinship relations. But each of the units that was in that had a real identity, real existence." (Tr. 202).

"Sometimes people have said, well now, you're saying this was a continuum. Doesn't that mean that these local groups, tribes, whatever you call them, don't really exist? And I say no, this is not this kind of homogeneous continuum where you can't find any units within it. It is a network, and --- well to use a metaphor, I think we can say that each of these local groups was a knot in the network. The network wouldn't exist without knots." (Tr. 202).

According to Dr. Suttles, evidence that the Salish people did not act as a homogenous tribe, but instead as a network of related specific tribes, include the existence of property rights among the tribes (Tr. 203); the hosting of intergroup gatherings (dances and potlaches) where one tribe was considered hosts and the other(s) guests (Tr. 199); and the existence of separate languages. (Tr. 161).

Dr. Suttles also testified about differences between the Samish and Noowhaha tribes: They spoke different languages. (Tr. 205). The Samish [sic] considered to be of higher status than Noowhaha. (Tr. 212).

Dr. Suttles also testified about the role of leaders in Salish culture. The Salish did not have head chiefs, he said. (Tr. 213). White settlers tried to force the concept onto them, he said. (Tr. 213-214). While there were no head chiefs, people took leadership roles by virtue of wealth, including ownership of property useful for hunting and fishing, and skills. (Tr. 214216).

Dr. Suttles also testified about what distinguishes contemporary Coast Salish Indians from other people in northwestern Washington today. He said the differences include preservation of traditional ceremonies, including the winter dance (Tr. 223); participation in the Shaker Indian church (Tr. 223); pride about Indian ancestry (Tr. 224); and the wide recognition of kinship ties. (Tr. 224).

Petitioners" witness, Ms. Mary Hansen, a Samish, testified about whether the Samish have acted continuously as a community during her lifetime.

Ms. Hansen recalled meetings of Samish people during the 1930s. (Tr. 1029). Also during the 30s, the Samish people looked after one another by providing food and other support to the needy. (Tr. 1032).

This looking after one another continued during World War II, Ms. Hansen said. (Tr. 1032-33). The Samish also held formal political meetings and social gatherings during the war years. (Tr. 1033).

Moving up to the 1950s, Ms. Hansen was involved in the Samish establishing a formal tribal organization in 1951. Ibid. She said the formal council was in response to passage of the Indian Claims Act, but other concerns, including concerns about sick and hungry members of the community, were also brought up in organization meetings. (Tr. 1034). Samish were also concerned about fishing rights during this time and the possible termination of federal benefits to Indians, including closing a local hospital. (Tr. 1037-39). She said correspondence was sent to the Samish membership to keep them apprised of the activities of the council. (Tr. 1039-40).

Also in the 1950s, Samish regularly were together at funerals, which were important occasions for exchanging information and getting caught up on each other. (Tr. 1036). Also in that decade, the Samish council provided $75 to Mrs. Lyons, a tribe member, after her house burned down. Ibid.

In the 1960s, the Samish made an unsuccessful effort to take over the extinct Ozette reservation. (Tr. 1040). Obtaining a land base is an important issue for the Samish and a Samish land acquisition committee was formed two years ago. (Tr. 1041).

Regarding activities on the Lummi and Swinomish reservations over the years, the Samish have held gatherings as Samish, Ms. Hansen said. (Tr. 1055-56).

Ms. Hansen also testified about Samish leaders. She said Mr. Cagey, Albert Edwards and Sas Kavanaugh were leaders during the 1930s. (Tr. 1030). According to her testimony, during the 1950s, Wayne Kavanaugh, Alfred Edwards and herself were among the people on the Intertribal Council, which was fighting against the termination of federal benefits to Indians, including the closing of a local hospital. (Tr. 1038).

Obtaining federal recognition is important, but it's not the sole concern of the Samish, Ms. Hansen testified.

The Defendants (sic) witness, Holly Reckord, is chief of the Branch of Acknowledgement and Research of Indian Tribes (sic) for the Bureau of Indian Affairs.

According to Ms. Reckord, the criteria regarding exercising of political authority does not mean legal authority.

"We're not looking for a governmental kind of political authority. We're basically looking for people making decisions and having them stick.

For example, the group owns a cemetery. Somebody wants to bury their father-in-law there who is not a member of the group. Who do they go to, who makes the decision, does the decision stick. That would be the kind of political activity that we're really looking for.,, (Tr. 275).

She said that proof of interaction is the key to meeting criterion number two.

I think what we are looking for in our regulations, and the way we have applied them, is for interaction ... (Petitioners) can show this in any number of ways. They can show this by showing us that they are doing things together. They are perhaps marrying each other, they are burying each other, they meet together. And also informal kinds of social relationships. They seem to know each other, they gossip about each other, they know what their relatives are doing, they know how they're related ... Whatever they can show us that shows they have continued to interact, and that they are in some way separate from the surrounding community." (Tr. 266-267).

The Defendant's witness, Dr. James Paredes, is professor of anthropology at Florida State University. He has conducted extensive study of American Indians while as a professor and as a graduate student, including Chippewa, Oneida, Poarch Creek and the Machis Lower Alabama Creek Indian. He helped prepare a history of Poarch Creek to support its case for federal recognition. He also was on an Association of American Indian Affairs committee to develop a program to help unrecognized Indian groups seek federal recognition. (Tr. 276-283).

In his testimony, Dr. Paredes concluded that kinship ties play an important role in maintaining Indian communities.

"In Indian communities, kinship is especially important, given that for so many, quote, 'traditional Indian cultures,' the political, religious and economic life was predicated upon various kinds of kinship structures ... American Indians, by virtue of being insulated, in increasingly insular communities, with prolonged patterns of intermarriage, kinship ... continues to be an

important basis for the integration of that community, and for deciding who belongs and who doesn't belong." (Tr. 298-299).

Outmarriage, that is the marriage between people of Indian descent and those of no Indian descent, serves to weaken kinship ties between Indians, Dr. Paredes concluded.

"Outmarriage, in the case of Indian communities, obviously has occurred since the days of Jon Rolfe and Pocahontas ... But in any kind of small isolated community, marriage tends to be a very effective glue in keeping people obligated to each other ... At the simplest level, outmarriage means that one has their primary, secondary and tertiary kinship loyalties divided between two kinds of communities ... (w)heras inmarriage reinforces your existing kin ties ... " (Tr. 300-301).

Dr. Paredes also concluded that keeping a common locality plays an important role in maintaining Indian communities, as well as other kinds of communities. (Tr. 297-298).

Ms. Patricia Simmons is an employee of the Branch of Tribal Relations for the Bureau of Indian Affairs.

Ms. Simmons testified for the Defendants that, starting in the mid 1960s, the branch prepared lists of Indian tribal organizations that the federal government has had dealings with. (Tr. 347). They were not intended to be lists of federally recognized tribes as such, she said. (Tr. 348).

Ms. Judy Flores is enrollment clerk for the Swinomish tribe.

She testified that, of Swinomish tribal members, 421 people, or about 72 percent of the tribe, live either on the reservation or in towns close by. (Tr. 765).

The Defendant's chief witness, Dr. George Roth is a cultural anthropologist with the Branch of Acknowledgement and Research of the Bureau of Indian Affairs. His qualifications as an expert include a Ph.D. degree in cultural anthropology with his dissertation based on a study of the Colorado River Indian and Chemehuevi Valley reservations. During his 16-year tenure with the branch, he has been the lead researcher on 13 petitions from groups of people claiming Indian descent seeking federal recognition as tribes. (Tr. 569).

"(O)ur basic conclusion [concerning the Swinomish Reservation] was that over a period of time, the reservation became increasingly a real social unit unto itself, as opposed to simply a place where a variety of people with a variety of connections were living," Dr. Roth said. (Tr. 592-593).

Other evidence is the Ph.D. dissertation of Natalie Roberts at the University of Washington based on field study at the Swinomish reservation, Dr. Roth said.

"Her primary thesis is that over a period of time, the Swinomish reservation evolved into a community of its own. There are a number of informal and semi-formal social institutions and clubs and things which have grown up starting around 1920, and continuing to the present, so that the tribe has become socially integrated as well as politically integrated," he said. (Tr. 599-600).

Dr. Roth indicated that the people of Samish descent living on the Lummi reservation are integrated into that reservation. He said evidence shows that Sammish (sic) people have consistently served in the Lummi tribal government since 1959. (Tr. 624-625).

II. Factual Findings from Appendix B of the ALJ's Decision

Appendix B of the ALJ's decision contains additional findings fact. The appendix states that "The findings set out below which are adopted principally from the Petitioners brief with modifications constitute additional Findings of Fact in this case and are incorporated by reference into this opinion."

The following portions of the appendix are accepted and form part of the basis for this decision. Those portions not cited here or earlier in this decision are rejected as contrary to testimony and evidence in the record or contrary to established practice and interpretation of the regulations in previous acknowledgment decisions.

Subject headings have been added and findings reorganized under them for clarity. The numbers are those appearing in the ALJ's decision. The numbers in the ALJ's decision were not consecutive, reflecting the latter's selection from the petitioner's proposed findings. Each numbered finding is complete here unless a notation is made that part of the language has been rejected.

Findings re Traditional Culture and 19th Century History

44. In his direct testimony, Dr. Suttles provided an overview of the aboriginal Coast Salish peoples, who included the Samish. He referred to the Salish family of languages, which were mainly spoken by peoples who inhabited the Pacific Coast of Washington State near Grays Harbor, as well as the coastlines of Puget Sound and Georgia Strait, generally near the present-day cities of Seattle and Vancouver, Canada (TR:161). Samish was one of these Salish languages, and was spoken by the people living in the southeast quadrant of the San Juan Islands, and mainland to the east of the Islands (TR:162).

45. Dr. Suttles succinctly described Coast Salish social organization in the following terms:

> The social units were, small to large, the family [and] the household. The house itself occupied during the winter was a large wooden structure made of posts and beams holding wall planks tied to them, and with roof planks laid upon them. Each house was divided into a number of sections, and each section was occupied by a family. Some heirarchy [sic], but sharing a lot with other members of the household.

(TR:162-163). Villages consisted of one of more houses, and villages themselves were often grouped into larger linguistic and territorial divisions, which were usually referred to as "tribes"

(TR:163). There was an upper class or elite in each house, as well as slaves, who were typically the descendants of war captives (TR:164).

46. Unlike Indians in most other parts of North America, Coast Salish reckoned descent from important ancestors on both their mother's side and father's side, with the result that all kinship groups overlapped (TR:163-164). A single family would typically have roots in more than one village or geographic area (TR:164, TR:166). By custom, "you had to marry somebody you weren't closely related to, or [at] least people didn't know you were closely related," and closeness in this instance meant the fourth degree or fifth descending generation (TR:165). Thus "the ideal thing was to seek some non-relative.of a family of about equal status in some other place. And maybe even the more distant the better" (TR:165). Marriages were generally arranged, especially among high-status families (TR:165).

47. Long-distance marriages served an economic function, because each marriage resulted in a series of exchanges of wealth, enabling houses to share in the resources harvested over a very large geographic area (TR:165-166, TR:169-170). They also served a political function since "If you had in-laws somewhere else, you're less likely to be attacked by those peoples," which was a distinct advantage in a region where raids and fighting were quite common (TR:166). Dr. Suttles noted that his study of the Lummi revealed that, collectively, they had managed to arrange marriages with all of the tribes surrounding them (TR:166). Differences of language were not an obstacle to this kind of strategic intermarriage, and several languages might be spoken in the same house (TR:190).

53. According to Dr. Suttles, there was no formal system of chiefs or principal leaders among the aboriginal Coast Salish. Every family had its own leader, and the wealthier men in the village were particularly important and influential because they could give feasts (TR:213-215). There were also special-purpose leaders, whose influence was based on the ownership of some expensive technology'(such as a deer net or fish weir) or on

54. In the 1820s, the Hudsons Bay Company tried to encourage some men to assume a more formal role as chiefs; in the 1850s, similarly, U.S. officials tried to identify a small number of "head chiefs" for treaty purposes (TR:214). These efforts did not displace aboriginal patterns of flexible, informal and special-function leadership, however.

55. Among Coast Salish, intermarriage with non-Indians began as soon as the Hudson Bay Company established its trading post at Fort Langley in the 1820s (TR:179-180). The Bay Company "discovered it was good to form alliances with the local people" this way, Dr. Suttles observed, "And the local people were very

eager to form these alliances" as well (TR:180). To illustrate this point, he gave two examples of white in-laws helping protect their Samish relatives from encroaching settlers (TR:180-181). Marriages with non-Indians occurred "everywhere" among Coast Salish peoples, but Dr. Suttles was not aware of any statistical data on its precise extent (TR:238-239).

59. Dr. Suttles did not think that the establishment of reservations put an end to traditional patterns of long-distance marriage, but that Indians, mobility was.reduced. Many received individual allotments of land on particular reservations, for example, and they were likely to remain where their land was and identify with that place (TR:191). It was his impression that mobility, long-distance marriage and marriages with non-Indians continued to be more frequent among those Indians who did not move to reservations (TR:192). At the same time, sharing food from different parts of the region was still common among Coast Salish people both on and off-reservation (TR:221).

60. Dr. Suttles described the aboriginal territory of the Samish as having been bounded by the southeast tip of San Juan Island, Deception Pass, Padilla Bay, Samish Bay, Chuckanut Bay, and the northern end of Lopez Island (TR:192-193, Exhibit J-1) . During the earliest period of contact (in the early 1800s) there were villages on the south shore of Guemes Island, at March's Point on Fidalgo Bay and on Samish Island (TR:193-194). As a result of epidemics and raids by northern Indians, all of the Samish appear to have concentrated in one village on Samish Island by Treaty time, which is to say the 1850s (TR:194-195).

68. According to Dr. Hajda, the Samish believed that they were going to obtain their own reservation under the treaty (TR:815). After the treaty, the Samish were told to go the the Lummi Indian Reservation, but by the 1860s only about one-third of them were still living there, though others continued to come there occasionally to collect their Treaty annuities (TR:212, TR:815). "It seemed pretty clear that they didn't think they were going to get what they thought was theirs," and resisted limitations on their freedom of movement, as well as efforts to convert them to Christianity (TR:242, TR:815).

69. Dr. Hajda explained that Indian life on 19th-century reservations was controlled by U.S. Indian Agents, and traditional ceremonies were forbidden after 1884 (TR:816). Treaty annuities were often delivered late; "you might be hungry, you might not have enough land to support yourself" (TR: 816). Survival offreservation was also difficult, but for different reasons. White settlers tried to drive Indians from the land; the Samish living on Samish Island moved to Guemes Island after Dan Dingwall, a local storekeeper, shot one of them (TR:817). Indians on the reservations were encouraged to farm,

although the land was not really suitable for agriculture, while Indians living offreservation found it increasingly difficult to fish or hunt, and increasingly went to work for whites as loggers and hop-pickers (TR:818). For instance, Annie Lyons tried to support herself by digging and selling shellfish, but after local whites accused her of stealing oysters and "gave her a bad time," she married a man from the Swinomish Reservation and moved there (TR:819).

72. By 1876, conflicts with local settlers on Samish Island persuaded the Samish there to the west side of Guemes Island, where they built a single longhouse (TR:195, TR:242; the "New Guemes" house or village).

73. Dr. Hajda characterized the New Guemes Island house as a kind of "refuge" for Samish families that were being driven off their lands by white settlers (TR:805). Two men took the initiative of acquiring the house site--Bob Edwards, who was of Samish and Noowhaha ancestry, and Citizen Sam, step-nephew to Whulholten, who was Samish (TR:805). The New Guemes house also became a kind of refugee camp for families from other areas who were being driven off their lands; they apear to have built smaller houses near the Samish longhouse (TR:822).

74. Nine different families lived together in the Guemes Island house in 1880 (TR:195, Exhibit P-2)[3] They had mainly Samish, Noowhaha and Klallam ancestry, but about half of them also had other connections or spoke other languages (TR:195). For comparative purposes, Dr. Suttles described the complex composition of the last traditional longhouse on the Lummi Indian Reservation, also in the 1880s, which he described as "pretty typical" of Coast Salish houses (TR:198-199).

75. Dr. Hajda noted that these nine families formed two clusters, one associated with the Edwards and the other with Whulholten. They both self-identified as Samish, although it was unclear to her exactly how they had originally been related (TR:801). "There was a considerable representation of people who had been brought in by marriage,, as well, which was customary (TR:802). The Samish were not all concentrated in this one house or village, moreover, although it served for many years as a headquarters (TR:804).

76. Samish people continued to fish and hunt; unlike the Indians on the nearby Lummi Reservation, they generally did not

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[3] Charlie Edwards, one of Dr. Suttles' informants, lived in the house as a child, together with the father of another one of his informants, Annie Lyons (TR:196-197).

practice farming (TR:243). Their principal organized activity as a group continued to be the holding of ceremonials, at New Guemes village, to which Indians of other tribes were invited (TR:-243). The New Guemes house even had its own baseball team at the turn of the century (TR:236).

77. Dr. Suttles' impression was that there was never any all-purpose leader in the house, although Charlie Edwards and Annie Lyons' father, Whulholten, were the owners or managers of reef net locations (TR:240, TR:801, TR:823).

78. In the 1890s, the Samish may have continued to control as many as three or four reef-net sites in the San Juan Islands, including sites owned by the families of Charlie Edwards and Annie Lyons (TR:245-247). Other important economic sites included a Samish halibut-fishing camp on Cypress Island, a halibut-fishing and salmon-trolling area at South Beach, salmon weirs on the Samish River and Whitehall Creek, and large beds of oysters and clams on both ends of Samish Island (TR:250-251). Although the reef-net sites were very important, their produce had to be complemented by others resources harvested under the supervision of other Samish families (TR:251, TR:254).

80. By the 1890s, the Samish were selling their salmon to canneries, for instance at Friday Harbor, and making a new commercial business of extracting dogfish (sha rk) liver oil for sale at Samish Bay (TR:220). Others earned cash by digging shellfish and hawking them around white settlements (TR:220).

81. Dr. Suttles observed that, when the U.S. and Canadian governments tried to suppress the traditional winter dance, "it maintained itself, particularly in places off the reservation like the Samish village on Guemes Island, which had winter dances and potlatches right up to the time it was abandoned, I guess" (TR:176). Guemes Island was therefore for many years:

> ... a very important ceremonial center for people on the reservations as well as off the reservations, because of the reservations you did have the agents and the missionaries sort of looking askance at this kind of activitiy, or trying actively to suppress it. People of the reservation were free to do it. The Samish were a center of that.

(TR:177-178). Charlie Edwards, a leader in the winter dances in the 1940s when Dr. Suttles began his research, was clearly identified as Samish, as was Tommy Bob, who performed the important function of purifying or exorcising the house before the ceremony began (TR:178-179).

84. Some people from the New Guemes house, like Charlie Edwards, went to the Swinomish Reservation; others, like Harry Lyons, went back to Samish Island (TR:241). Harry Lyons'

daughter Annie eventually moved to the Swinomish Reservation, but had relatives off-reservation and on the Lummi Reservation (TR:248). The Cageys married into families that had obtained of land on the Lummi Reservation (TR:591). According to Dr. Hajda, this was typical of the region: aboriginal houses divided, some families moving to different reservations, and others continuing to live offreservation (TR:819). Related families continued to share income and assist one another, however (TR:819-820).

85. Billy and Bob Edwards were part of a group of families that moved to Ship Harbor, near Anacortes; Whulholten's sister Cubshelitsa moved to the town of Anacortes (TR:241, TR:825). There were two canneries at Ship Harbor, the Fidalgo Island Packing Company and Alaska Packers; both employed Indians, Chinese, and whites in different seasonal crews (TR:825-826). The Fidalgo Island company hired Charlie Edwards as a "runner," or recruiter, and he found jobs for his Samish kin (TR:826). There was soon "a little cluster of shacks" on the company's property, where several Samish families lived year-round (TR:826-827). They had small gardens, their own baseball team, and Billy Edwards kept a small "smokehouse" there for religious gatherings (TR:828).

Findings re the Noowhaha Tribe

62. Dr. Suttles, who had studied the relationship between the Noowhaha and Samish in the early 1950s, noted that the aboriginal territory of the Noowhaha extended from the north end include the Samish River drainage, Samish Lake and part of the Skagit River drainage (TR:204-205, Exhibit J-1). one important village was at Bayview, another at Bow, but most of the villages were farther inland in "prairie areas, which provided good hunting and foraging for roots and bulbs as opposed to fisheries (TR:205). The Noowhaha spoke a Salish language different from Samish, but Samish people Dr. Suttles had interviewed in the 1950s spoke both (TR:205-206).

63. According to Dr. Suttles, the Noowhaha were called "Stick" Samish, from the Chinook Jargon term for "forests", or sometimes Upper Samish, since they lived inland from the saltwater Samish (TR:206). They were tied by kinship with both the Samish, downriver, and with Upper Skagit people farther upstream; at least some Noowhaha families built their houses beside the Samish house on Samish Island (TR:207). Dr. Suttle's considered it very likely that the Samish gradually expanded eastward, into what originally had been Noowhaha territory, leading to conflicts that were finally settled by arranged marriages between them--probably in the 1850s or a little earlier (TR:209-211). By the time the Samish built their new house on Guemes Island in 1876, some Noowhaha families were living with them (TR:210).

64. Some people of Noowhaha descent are enrolled today with the Upper Skagit, and others with the Samish (TR:248) . Dr. Suttles had also met people of Noowhaha descent on the Swinomish Reservation, in the 1950s (TR:248). He was unaware of any contemporary organized Noowhaha group that might constitute the core of a continuing community (TR:248-249).

The balance of this finding is rejected.

65. Dr. Hajda "reserved judgment" on Dr. Suttles' surmise that there had been early warfare between the Samish and Noowhaha, but she agreed that "certainly the Samish and the Noowhaha had established what looks like a symbiotic relationship" involving "dependence and superiority," or a "patron-client" relationship (TR:799-800). The Samish protected the Noowhaha from raiders, and in return obtained access to resources farther inland. At some time in the 19th century, however, the Samish population declined, and some Noowhaha families gained higher status--in particular the family of Pateus, a treaty signer (TR:800). In more recent times, Samish and Noowhaha people lived together in the Guemes Island house and near the towns of Bow and Edison, and fished together (TR:804, TR:810).

Findings re Community:

101. Some of the people who moved away for wartime jobs, or served in armed forces, did not return to the Tribe's traditional area when the war ended (TR:842). Other Indian tribes, and non-Indian communities, had the same experience (TR:842). The main Samish destinations after the war were Seattle and Bremerton, about an hour and a half by car to Anacortes (TR:842). Mrs. Hansen confirmed Dr. Hajda's observations in this regard (TR:1033).

104. Mrs. Hansen explained that communication with Tribal members was maintained by letters and postcards (TR:1039-1040).

141. Dr. Hajda noted for example that the Cubshelitsa-Whulholten family has always lived off-reservation, but it has always been actively involved with on-reservation Samish families (TR:862).

146. In the course of the original administrative proceedings and this remand, the Tribe produced copies of membership lists from as early as the 1920s. Dr. Hajda cautioned that these lists were never thought of as formal membership rolls, and were not reliable or complete evidence of who was actually interacting socially within the community (TR:870-871). In any event, key families such as the Edwards and Cubshelitsa-Whulholten lines, could be found on all of these lists (TR:871). Like other Northwest Indians, the Samish would have had a relatively stable core group of families,

to which various peripheral families attached themselves from time to time (TR:872).

Findings re Political Influence (20th Century)

87. A new phase of organized Samish political activity began at about this time (TR:828). There were meetings about land rights in 1912 and 1913 (TR:829). It was at this same time that the Northwest Federation of Indians was organized by Thomas Bishop, a Snohomish Indian, and he travelled throughout the region urging Indian communities to organize and demand the fulfillment of their sixty-year-old treaties (TR:829). Sas Kavanaugh, part of the Edwards family, was the main organizer for the Samish (TR:830). Dr. Hajda explained that Kavanaugh was typical of a new breed of leaders who had more schooling and experience with "the white world" (TR:830). They did not replace traditional leaders like Billy and Charlie Edwards, but provided complementary specialized skills, "which again is a traditional pattern" (TR:830).

88. The Samish participated in the Northwest Federation as a distinct group, rather than as individuals; membership was by tribe (TR:831). The Federation did not start off seeking compensation for land. "They wanted land" (TR:831). Enabling legislation was eventually adopted by Congress opening the courts to these claims (TR:832).

The balance of this finding is rejected.

92. Mrs. Hansen recalled attending Samish meetings in the 1930s where they discussed the proposed Indian Reorganization Act, and many elders required intepretation (TR:1029). Meetings were held at the American Hall in LaConner; the hall was owned by the Swinomish, but the Samish paid rent and hosted the meetings (TR:1055-1056). Several Samish men often simply met informally at the Cageys' house at Lummi, "or on my great-grandmother's farm where we lived," to talk about problems such as land, health or housing, and then report back to the other families (TR:1031-1032). She remembered Alfred Edwards and George Cagey acting as leaders at that time (TR:1030). Her father would also frequently visit elderly Samish people to help them with "a little something" or some money (TR:1032).

94. During the Depression, Dr. Hajda testified, the canneries at Ship Harbor did less business and shut down from time to time, never again able to employ as many Indians as they had in the 1920s (TR: 836). New Samish leaders emerged who had more education and more experience with government bureaucracy. Don McDowell, from the Whulholten-Cubshelitsa family line, was a notable example who "went around and visited people to see what kinds of help they needed" for many years (TR:837).

97. During.the Second World War, young Samish men were overseas, some people left the Anacortes area to find jobs in war industries in south Puget Sound like the Bremerton shipyards, and it was more difficult to meet frequently as a group because of gas rationing (TR:840). Several older Samish leaders also passed away in the 1940s, including Charlie Edwards, the Cagey brothers, and Don McDowell (TR:840-841). This also had an adverse effect on organized political activity (TR:841). There are few records of meetings during that period, but oral history tells of meetings to discuss land rights, fishing, and helping people out as before (TR:841; TR:859-860). Treaty Days were still being celebrated, but there were smaller crowds (TR:841).

98. Mrs. Hansen recalled that gas rationing restricted mobility, so she kept abreast of Tribal meetings by staying in touch with relatives who could still attend (TR:1033). There was money to share with needy Samish relatives during the war years from earnings at the shipyards, and at the Boeing aircraft factory (TR:1032-1033).

102. The war produced a new generation of Samish leaders who were more concerned with "organization"; many had been union men, and brought a concern for issues such as paying dues, and following Roberts Rules of Order (TR:842-843). Continuity was provided by Alfred Edwards, son of Charlie Edwards, who became the president of the new, post-war Samish Tribal organization; Mary McDowell Hansen, daughter of Don McDowell, became Tribal Secretary. While many individual members of the Council were new, on the whole they came from the same families as the pre-war Council (TR:843).

106. The Samish Tribe provided money and volunteers to fight proposals to terminate Federal responsibilities to all Washington Indian tribes, in the 1950s (TR: 845, TR:1038-1039). Reservation and landless tribes joined together in an organization called the Intertribal Council, and Mrs. Hansen was its first secretary (TR: 845-846, TR: 1038). Each tribe had its own delegates, including Tulalips, Swinomish and Lummi as well as Samish, Snohomish and others (TR:1039).

111. The dispute over Federal recognition led to a loss of confidence in the Tribal Council, political divisions, and a temporary change of leaders (TR:850, TR:854, TR:961, TR:1063)[4]

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[4] Mrs. Hansen identified the Wooten, Penter, and Cayou families with this coup (TR:1064-1064) - She explained that they had not been active in Tribal affairs before or since. As discussed below, the Cayou line is now regarded as being of doubtful Samish ancestry by both the Tribe and the Government.

The balance of this footnote is rejected.

Samish families which had consistently occupied key positions were unrepresented from 1975, when Margaret Greene was "ousted" as chairperson, to 1980, when Ken Hansen was elected chairman (TR:1046-1047). Dr. Hajda noted that Ken Hansen, son of Mrs. Hansen, brought youth and enthusiasm to the Tribal Council and helped mediate between different families, mobilizing support for the fight for Federal recognition (TR: 851-852). Recognition became "a focus, both positive and negative, for tribal activity" from that time forward, requiring continuing efforts to raise cash donations, recruit volunteers, and organize travel(TR:860-861).

The balance of this finding is rejected.

121. Dr. Hajda explained that past and present leadership has included reservation and non-reservation families. Margaret Greene, currently chairperson of the Tribe, is from the Cagey family, who are residents of the Lummi Reservation, while Tribal secretary Mary Hansen is of the Cubshelitsa-Whulholten line, who never lived on reservations (TR:875-876). A generation earlier, similarly, Charlie Edwards represented a family residing on the Swinomish Reservation, while Sas Kavanaugh came from offreservation (TR:876). Mrs. Hansen confirmed this based upon her own personal experience (TR:1047-1048).

187. With regard to "political authority," Dr. Hajda explained that in the case of the Samish, leaders have been:

> [p] eople who have skills in dealing with situations that are of concern. Mary Ann Cladoosby (TR:1028-1029; also TR:805, TR:825, TR:837). Those concerns have changed over the years, obviously. In that sense, I think it's a continuation of earlier patterns, where you had different leaders for different sorts of activities or aspects of life. It wasn't necessarily power and influence, but connections that would be useful for activities that the tribe might want to carry out, for instance. People who had education, people who were seen as having spiritual power, that sort of thing.

Findings on Reservation Participation

169. Dr. Hajda explained that, although many Samish Indians had held public office on the Lummi and Swinomish Reservations, they continued to consider themselves as Samish and participate in Samish activities (TR:867).

The balance of this finding is rejected.

170. Dr. Hajda described the Cagey family, who live in a distinct part of the Lummi Reservation locally known as Samish Hill, and have hosted Samish events there; some had identified chiefly as Samish, others as Lummi (TR:1000-1001). Dr. Hajda also

observed that there have been a number of complaints of discrimination against Samish people at Lummi, including job discrimination and verbal harassment (TR:1018-1019).

172. Dr. Hajda explained that, even among reservation Indians like the Warm Springs today, "tribal" identity is situational--that is, it may depend on the occasion or the purpose of the question (TR:897-898) . A person of Samish descent may choose to assert that identity in certain circumstances but not others (TR:897).

The balance of this finding is rejected.

174. Dr. Roth acknowledged that as a general proposition, a person can be a member of two communities at the same time, and that some overlap in the membership of communities does not necessarily jeopardize their autonomy or distinctness (TR:680-681). He conceded that Samish people who were participating in Swinomish Reservation activities, were also participating in Samish social and political activities (TR:682).

Findings concerning the Acknowledgment Regulations

131[5]. Dr. Sturtevant cautioned against confusing the concept of a "community" with that of a "tribe, ". noting that a tribe may consist of more than one community (TR:40-41, TR:76-77) . At the same time, he explained that a "community" tends to be broader in membership than a group of people related by marriage, and more permanent and broader in its interests than a social club or professional society (TR:41). He indicated that he would approach the task of evaluating the existence or nature of a "community" by looking for "networks of communication," including "how much people know about other people, when they see them, what they see them for, what they know about them," and the frequency and nature of interactions between them (TR:42, TR:78).

132. In this respect, Dr. Sturtevant considered that the new, expanded definitions of "community" and "political authority" incorporated into 25 C.F.R. Part 83 by amendment in 1994 bring these criteria closer to the common understanding of anthropologists of these terms (TR:64-65). He stressed the usefulness of flexibility in the evidence required at different stages of a group's history, and of interpreting evidence in the context if the history, geography, culture and social organization of the group in Question (TR:59-60, TR:62) . He also observed that no real Indian tribe would display all of the attributes of a

[5] The ALJ's decision at page 26 contains two findings numbered 131. This accepted finding 131 appears second.

"community" listed in 25 C.F.R. Part 83, as amended, particularly in modern times, and welcomed the fact that the amended regulations do not require this (TR:65).

133. According to Dr. Sturtevant, 25 C.F.R. Part 83 reflects a belief that Federal recognition should be based on "the persistence of social groups," and it is therefore important to realize that "the group can continue and does continue through time, whereas the cultural features, the behavior, the way of being, changes"(TR: 66) what is distinctive about the group today may not be aboriginal; he cautioned against looking for stereotypes such as "war dances" and basket-making (TR:66-67). Moreover it is frequently the case that "in most respects their behavior and their interaction is not distinguishable from the characteristics of behavior among their non-Indian neighbors" (TR:67-68). Indeed, it is "very common" for Indians to participate actively in neighboring non-Indian communities (TR:69-70). He noted that about half of the Indians in the United States today live in cities, rather than predominantly Indian settlements (TR:74). The primary difference between Indian and non-Indian communities today, he stated, is mainly a matter of ancestry, rather than particular cultural characteristics (TR:71).

134. Dr. Roth paraphrased this criterion as "some substantial body ... of social connectedness and social distinction" (TR:664). He observed that there is no body of comparative data on the social connectedness of the members of Federally-recognized reservation tribes, but that in a case like the Samish, the analysis must take account of difficulties created by landlessness and nonrecognition: "Obviously there's a lot of things you can't expect a group to be able to do,' (TR:663, TR:665).

135. In Dr. Sturtevant's research experience, highly dispersed Indian tribes maintained a "community" by gathering periodically for special occasions, or maintaining kinship connections with at least some other people in the community (TR:74-75). In contrast with an "association" an Indian community has a historical relationship with a homeland some where--although "they don't by any means all necessarily live there,,--and shares more than one purpose or interest (TR:125-126, TR:149).

136. Dr. Roth explained that he looks for some evidence that the peripheral members are connected with the core, but not necessarily connected with each other (TR:728). The core is a hub of communication with the periphery and need not consist of people living together in a geographical settlement (TR:728).

The balance of this finding is rejected.

137. Dr. Suttles likewise observed that the term "community" was often used to refer to a "closed group of face-to-face relations with people within it, closed to outsiders." This fit

the Okinawan village he had studied, but not aboriginal Coast Salish societies (TR:200). However, Coast Salish houses were "communities" in the sense of cooperation and exchange (TR:201). The Samish longhouse of the 1880s on Guemes Island was a "community" in this sense, even though its inhabitants had mixed ancestries and spoke several languages (TR:201).

138. Dr. Suttles testified that in the Coast Salish region as a whole, "Indian" identity was not only being asserted today through distinctly Indian religious activity, such as the winter dances and Indian Shaker Church, but through acute consciousness of kinship ties and loyalty to the extended family (TR:223-224). Dr. Hajda indicated that, based on her experience with Coast Salish and Columbia River Indian tribes, the Coast Salish today are more preoccupied with ancestry or kinship as a basis of Indian identity (TR:883).

139. Dr. Paredes also agreed that kinship is "central to defining who we are," and that this can be "especially" true in Indian communities (TR:298-299).

The balance of this finding is rejected.

Miscellaneous Findings

1. Ms. Simmons, an employee of the Bureau of Indian Affairs for 30 years, testified that she began preparing lists of Indian tribes "with whom we had dealings" in 1966 (TR:347, TR:349). Her preliminary list was "based on a review of the files" in her office, and was circulated among staff for comment (TR:347-348). "It was never intended to be a list of federally recognized tribes as such," she recalled; "it may have evolved into that," however, under Congressional pressure to make clearer distinctions between recognized and non-recognized tribes (TR: 348). By 1969, she had restricted her list to "those groups who had a formal organization approved by the Department" (TR:349350, TR:357).

2. Ms. Simmons explained that initially, "we,just listed everybody that there was a file records section for" in the Bureau's Washington, D.C. offices (TR:351, TR:36). The draft was then sent to Area Offices and Agency Superintendents to identify which of the groups listed had a "formal relationship" with them.

The balance of this finding is rejected.

3. Under cross-examination, Ms. Simmons identified an early draft of the list she prepared in 1966, which includes the Samish Tribe on page 14 (TR:355, Exhibit P-3). She recalled that the Samish had been taken off her 1969 list because the Bureauls Portland Area advised her that they were "recognized for claims

purposes only," but she had no record of this (TR:355, TR:358359, Exhibit P-4).

The balance of this finding is rejected.

15. The Tribe called Ms. Hansen, who had served on its council and as its secretary since the 1950s. Mrs. Hansen is the greatgranddaughter of Cubshelitsa, sister of Whulholten, one of the leaders of the Samish village on Guemes Island a century ago, and daughter of Don McDowell, Samish Tribal leader in the 1930s; she was given the name Cubshelitsa by Whulholten's granddaughter, Mary Ann Cladoosby (TR:1028-1029; also TR:805, TR:825, TR:837).

21. Dr. Sturtevant is the curator of North American ethnology at the Smithsonian Institution in Washington, D.C., with which he has been affiliated in various capacities since 1956 (TR:31). He has conducted anthropological fieldwork among Indian tribes in various regions of the United States including the Seminoles of Florida, the Senecas of New York, and the Pomo in California, as well as field research in Mexico and Burma (TR:32-34). By his own calculation, he has visited communities belonging to every American Indian cultural region except the Plateau (TR:34). He has also conducted historical research using a variety of print and graphic materials (TR:37-38).

22. Dr. Sturtevant has been the general editor of the Smithsonian Institution's encyclopedic *Handbook of North American Indians*, which is being written by leading anthropologists and historians under the sponsorship of an Act of Congress, summarizing existing knowledge of Indian cultures and history (TR:35-36). His editorial role includes selecting experts to prepare various chapters, and evaluating their work professionally (TR:37).

23. Dr. Sturtevant was also invited, by the Government defendants, to participate in a workshop in January 1992, to advise them on reforming their procedures for determining whether particular groups are Indian tribes under 25 C.F.R. Part 83 (TR:58).

24. Dr. Suttles is professor emeritus at Portland State University in Portland, Oregon, where he began teaching anthropology and linguistics in 1966 (TR:154). Since he began his studies, before the Second World War, his research has focussed on the Coast Salish peoples of northern Washington and southern British Columbia, including Semiahmoo, Lummi, Samish, Saanich, Songhees, Sooke, Nooksack, Swinomish, Skagit, Katzie, Cowichan, Chilliwack and Musqueam (TR:154-156). Dr. Sturtevant regards him as the primary expert on the culture and society of Coast Salish Indians, and on that basis had arranged for him to edit the volume of the *Handbook of North American Indians* devoted to the Northwest Coast (TR:39).

26. Dr. Suttles began interviewing Samish elders in 1947, and in 1951 was asked by the attorneys representing a number of tribes in the area to testify on their behalf before the Indian Claims Commission; among the Samish he knew at that time were Charlie and Alfred Edwards, Tommy Bob, Annie Lyons, and Mary Hansen (TR:157; TR:222). He testified that he had remained in contact "off and on" with Samish people (TR:158).

28. Dr. Hajda, an independent researcher, completed her doctorate in anthropology at the University of Washington in 1984. Her thesis, on the social organization of lower Columbia River Indians, drew heavily on historical records...

The balance of this finding is rejected.

29. Dr. Hajda has continued this cultural and historical research as a consultant to the Indian tribes of the Warm Springs and Grand Ronde Reservations, and, under contract with the U.S. Forest Service, on the Yakima Reservation in Washington (TR:765-786). Her field research has focussed on Indians of coastal Oregon and southwestern Washington, and in this connection she has studied with Dr. Suttles at Portland State University (TR:787). Dr. Sturtevant and Dr. Suttles arranged for her to prepare a chapter for the volume of the *Handbook of North American Indians* on Northwest Indians (TR:39).

33. Prior to his employment at BAR, Dr. Roth obtained a doctorate in cultural anthropology at Northwestern University based on his study of social integration on two multi-tribal Indian reservations in Arizona, Chemehuevi and Colorado River (TR:569). This work involved living for 18 months on the reservations, and comprised his "primary" experience with field research, as well as considerable archival study (TR:571). He also spent a month studying the political system in Tecate, Mexico (TR:572).

35. Since joining the staff at BAR, Dr. Roth has made 13 or 14 field visits, averaging a week or two, to evaluate petitioning communities, as well as field trips to Maine, Texas and Oklahoma in connection with proposed Federal legislation (TR:572-573). As a BAR anthropologist he is responsible for checking the quality of petitioners' research data, and conducting additional research and analysis (TR:576-577).

39. Once at Florida State University, Dr. Paredes became interested in the Poarch Creek Indians of Mississippi (sic), and in 1971 began what he described as a "long and continued steady relationship" with them as a researcher (TR:279-280). He helped them prepare their successful case for Federal recognition as an Indian tribe, and then, he supposed as a result of that work, BAR contracted with him to spend two weeks collecting archival materials on another petitioning Indian

group, the Lower Alabama Creeks (TR:281-282). More recently, he was consulted by the Brotherton Indians of Wisconsin on means of seeking Federal recognition (TR:284). Like Dr. Sturtevant, he had participated in the workshop convened by BAR in 1992 to discuss reforming procedures under 25 C.F.R. Part 83 (TR:58, TR:293).

66. Counsel for the Government also asked Dr. Suttles to explain the origins of the Indians who were living until the early 20th century at Mitchell Bay on San Juan Island. Dr. Suttles believed they had mostly been of Cowichan and Saanich (Vancouver Island) origin, possibly with some Samish and Lummi ancestry as well (TR:242-243). These families, it should be noted, have comprised less than 10 percent of the Tribe's members according to both parties' figures.

199. The Tribe stipulated in the course of the hearing that there were legitimate questions about the ancestry of the Cayou and Viereck lines (TR:478), accounting for roughly 9 percent of the current membership. Dr. Hajda agreed that there were "reasonable grounds" for raising such questions (TR:812-813, TR:907) adding that two other small families of debatable ancestry, listed on the Tribe's older membership lists, have since died out (TR:813-814).

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Source Information

Record URL: http://search.ancestry.com/cgi-bin/sse.dll?h=3053726&db=Indian_Schedules&indiv=try

Source: Year: *1887*; Roll: *M595_582*; Line: *13*; Agency: *Tulalip*.

Source Information: Ancestry.com. *U.S., Indian Census Rolls, 1885-1940* [database on-line]. Provo, UT, USA: Ancestry.com Operations Inc, 2007.
Original data: *Indian Census Rolls, 1885-1940*; (National Archives Microfilm Publication M595, 692 rolls); Records of the Bureau of Indian Affairs, Record Group 75; National Archives, Washington, D.C.

Tulalip Agency

1887

Swinomish Indian Reservation Census

No	Indian Name	English Name	Relationship	Sex	Age
1.	Ste ah had	Harry	H.	M	65
2	Nap tat	Susan	W.	F	60
3	Ste	Harry	H.	M	53
4	See a halh		W	F	51
5	Eab	Jobe	Son	M	27
6	Thy day		Daugh	F	21
7	Sel let Kanim	John	H.	M	37
8	Bable	Lucy	W.	F	36
9	Hootsack		Mother	"	75
10		Bill Jacobs	H.	M	34
11		Matilda	W.	F	30
12		Ann	Daugh	"	8
13		Sallie	"	"	6
14	Scub Shet	William	H.	M	44
15.		Sophia	W.	F	30
16		George	Son	M.	8
17		John Lyons (Step Son)	"	"	22
18		Edward	"	"	5
—	Sal Kil lalh	Bob (Dec)	H.		
19	Thon ne sath		W	F	46

145		George Barkhouse	Single	M	26
146	Sca de walk	John	H	M	36
147	Collo duck		W	F	42
148		Lizzie	Daugh	"	11
149	Zar Ksenem	Sam	H.	M	34
150		Katy Amelia	W	F.	18
151		Lewis	Son	M	1
152	School abut	Jack	Single	M	24
153		Jessie	Widow	F	21
154		William	Son	M	10
154½	Ste dealb	Old Calf	Single	M	39
156	Ell ha hah	Johny	H.	M	39
157		Hellie	W	F	42
158		Alice	Daugh	"	18
159		August	Son	M	13
160		Alexis	"	"	10
161		Andrew	"	"	2
162	Shoy Kory	Son	H.	M	57
163	Ec lant		W	F.	49
164	Soul lah	George	Son	M	22
165					

Tulalip Agency

1888

Swinomish Indian Reservation Census

No	Name	Relationship	Sex	Age
1	Harry Skeahead	H	m	66
2	Susan	W	f	61
3	Harry Ste	H	m	54
4	Sue a hath	W	f	52
5	Sobe	Son	m	28
6	Thy day	Daugh	f	22
7	John Sellet Hadim	H	m	38
8	Lucy	W	f	37
9	Hootsack	Mother	"	76
10	Bill Jacobs	H	m	35
11	Matilda	W	f	31
12	Sallie	Daugh	f	7
13	William Scub Shet	H	m	45
14	Sophia	W	f	31
15	George	Son	m	9
16	John Lynn	Step "	"	23
17	Edmond	Son	"	6
18	Thom Ice sach	Widow	f	47

144	George Bankhouse	Single	M	27
145	John Scadewalk	H	M	37
146	Calla duck	W	F	43
147	Lizzie	Daugh	"	11
148	Sam Jon Kseneen	H	M	35
149	Katy Amelia	W	F	19
150	Lewis	Son	M	2
151	Jack School about	Single	M	25
152	Jessie	Widow	F	22
153	William	Son	M	11
154	Old Calf Ste death	Single	M	40
155	Johnny Ol ha hah	H	M	40
156	Nellie	W	F	43
157	Alice	Daugh	"	19
158	August	Son	M	14
159	Alexis	"	"	11
160	Andrew	"	"	3
161	Tom Skwy Kwy	H	M	57
162	Son Klah	Son	"	23
163	Mary Ann	Daugh	F	27

Tulalip Agency

1889

Swinomish Indian Reservation Census

(5-128.) Original

Census of the Swinomish - Indians of Tulalip - Agency, W.T. - taken by W. H. Talbott -, United States Indian Agent, June 30", 1889

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
1	Ske-ah-had	Harry	M	Husb'd	67
2		Susan	F	Wife	62
3	Ste	Harry	M	Husb'd	55
4	Su-a-hath		F	Wife	53
5	Tobe		M	Son	29
6	Thy-day		F	Daugh	23
7	Lel-let-Kadis	John	M	Husb'd	39
8		Lucy	F	Wife	38
9		Bill Jacobs	M	Husb'd	36
10		Matilda	F	Wife	32
11		Sallie	"	Daugh	8
12	Scub-shet	William	M	Husb'd	46
13		Sophia	F	Wife	32
14		George	M	Son	10
15		John Lyon	"	Step Son	24
16		Edward	"	Son	7
17	Thom-we-sath		F	Widow	48
18	De-ba-haw	Jim	M	Husb'd	46
19		Lucy	F	Wife	32
20		Amelia	"	Daugh	11
21	—	—	M	Son	3
22	Whi-a-Kuse	Jim	M	Husb'd	36
23		Louisa	F	Wife	36
24		Mary	"	Daugh	8
25		Louis	M	Son	2
26	Swal-a-cat	Jim	M	Husb'd	48
27	Jet-Yook		F	Wife	42

10470 b.—3 m

(5—128.)

Census of the Swinomish Indians of Tulalip Agency, W.T. taken by W.H. Talbott, United States Indian Agent, June 30th, 1889

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
135		George Parkhouse	M	Single	28
136	Sea-de-walk	John	M	Husb'd	38
137	Calla-duck		F	Wife	44
138		Jessie	F	Widow	23
139		William	M	Son	11
140	Clel-ha-hah	Johnny	M	Husb'd	41
141		Nellie	F	Wife	44
142		Alice	"	daugh	20
143		August	M	Son	15
144		Alexis	"	"	12
145		Andrew	"	"	4
146	S'Koy-Koy	Tom	M	Widower	52
147	Kloh-	Son	M	Son	24
148		Mary Ann	F	Daugh	28
149	Sue-la-had	Bob	M	Widower	46
150		Eliza	F	daugh	10
151		Harry Jake	M	Single	24
152	Shugh-buk-tin	John	M	Husb'd	44
153	Cult-ma-ma-ha		F	Wife	40
154		George	M	Son	16
155	Whe-chin	Louie	M	Husb'd	55
156	Clel-ba-dalh		F	Wife	51
157		Sam Rose	M	Husb'd	40
158		Mary Jenny	"	Wife	44
159		William Peter	M	Single	25

1889 b—12 m

Tulalip Agency

1890

Swinomish Indian Reservation Census

(5-128.)

CENSUS of the Swinomish Indians of Tulalip Agency, Wash taken by W. N. Talbott, United States Indian Agent, June 30, 1894

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
1	Ske-ah-had	Harry	M	H	68
2		Susan	F	W	63
3	Ste	Harry	M	H	56
4	See-a-halh		F	W	54
5	Tobe		M	Son	29
6	Thy-day		F	Daugh	24
7	Let-let-Kadim	John	M	H	40
8		Jennie	F	W	28
9		Infant	"	D	1
10		Bill Jacob	M	H	37
11		Matilda	F	W	33
12		Sallie	"	D.	9
13	Seuh-shet	William	M	H.	47
14		Sophia	F	W	33
15		George	M	Son	11
16		John Lyon	"	Step Son	25
17		Edward	"	Son	8
18	Thon-loe-sath		F	Widow	49
19	De-ba-haw	Jim	M	H	47
20		Lucy	F	W	33
21		Amelia	"	D	12
22		James	M	Son	4
23	Whi-a-Kuse	Jim	M	H	37
24		Louisa	F	W	37
25		Mary	"	D	9
26		Louis	M	Son	3

CENSUS of the ..... Indians of ..... Agency, ... taken by ....., United States Indian Agent, ..., 189

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
129	Kool. Ka	Watchman	M	H	47
130		Mary	F	W	47
131	Keous. Kause	Dick Gie	M	H	37
132		Mary	F	W	36
133		Martha	"	D	15
134		John	M	Son	10
135		George Barkhouse	M	Single	29
136	Sea. da. walh	John	M	H	39
137	Calla. Duck		F	W	45
138		Jessie	F	Widow	24
139		William	M	Son	12
140	Clel. ha. kah	Johnny	M	H	42
141		Nellie	F	W	45
142		Alice	"	D	21
143		August	M	Son	16
144		Alexis	"	"	13
145		Andrew	"	"	5
146	Skoy. Koy	Tom	M	Widower	53
147	Kloh	Son	"	Son	25
148		Mary Ann	F	D	29
149	See. la. had	Bob	M	Widower	49
150		Eliza	F	D	11
151		Mary Jake	M	Single	25
152	Sprugh. bah. tin	John	M	H	45
153	Cul. ma. ma. ha		F	W	41
154		George	M	Son	17

Tulalip Agency

1891

Swinomish Indian Reservation Census

CENSUS of the Swinomish Indians of Dwatlip Agency, Washington taken by C. C. Shorrow, United States Indian Agent, June 30, 1891.

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
1	Sue-ah-had	Harry	m	H	69
2		Susan	f	W.	64
3	Sto	Harry	m	H	57
4	See-ah-hah.		f	W	55
5	Sotw		m	Son	30
6	Shy-day		f	D	25
7	Leh-leh. Hadim	John	m	H	41
8		Jenne	f	W	29
9		Girl	.	D	2
10		Bill Jacobs	m	H	38
11		Matilda	f	W	34
12		Sallie	.	D	10
13	Sent-shet	William	m	H	48
14		Sophia	f	W	34
15		George	m	Son	12
16		John Lyon	.	Step Son	26
17		Edward	.	Son	9
18	Shou-wi-sah		f	Widow	50
19	De-ba-hau	Jim	m	H	48
20		Lucy	f	W	34
21		Amelia	"	D	13
22		James	m	Son	5
23	Whi-a-kwie	Jim	m	H	38
24		Louisa	f	W	28
25		Mary	.	D	10
26		Louis	m	Son	4

CENSUS *of the* Swinomish *Indians of* ..... *Agency,* ..... *taken by* ..... *, United States Indian Agent,* ..... *, 189*

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
130	Sa-la-steamm	Joe	m	H	53
131		Sally	f	W	30
132		Edward	m	Son	17
133		Walter	"	"	20
134		Dupont	"	"	1
135	Stool Sla	Watchman	m	H	48
136		Mary	f	W	48
137	Steus-Seause	Dick Sico	m	H	28
138		Mary	f	W	37
139		Martha	"	D	16
140		John	m	Son	11
141		George Borkhausen	m	Single	30
142	Sea-da-walh	John	m	H	40
143	Calla-dush		f	W	46
144		Jessie	f	Widow	20
145		William	m	Son	13
146	Chel-ha-hah	Johnny	m	H	43
147		Nellie	f	W	46
148		Alice	"	D	22
149		August	m	Son	17
150		Alexis	"	"	14
151		Andrew	"	"	6
152	Sicoy-Koy	Tom	m	Widower	57
153	Kloh	Son	"	Son	26
154		Mary	f	D	30

Tulalip Agency

1892

Swinomish Indian Reservation Census

(5—128.)

CENSUS of the Squiximish Indians of Dulalip Agency, Wash taken by C. C. Thornton, United States Indian Agent, June 30, 1892

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
1	Sze ah hud	Sturry	m	H	70
2		Susan	f	W	65
3	Sta	Sturry	m	H	58
4	Sei ah hath		f	W	55
5	Sotty	Jack	m	S	31
6	Shy dary		f	D	26
7	Sea la Hadim	John	m	H	42
8		Jumie	f	W	30
9	Se sun		m	S	8
10		Lucy	f	D	12
11		Julia	f	D	15
12		Bill Jacobs	m	H	39
13		Matilda	f	W	35
14		Sally	f	D	11
15	Sent Shet	William	m	H	49
16		Sophia	f	W	35
17		George	m	S	13
18		Edward	"	"	9
19	Thow we saith		f	Widow	50
20	Se ba hah	Jim	m	H	49
21		Lucy	f	W	35
22		Amelia	"	D	14
23		James	m	S	5
24	Whi a Kuse	Jim	m	H	39
25		Louisa	f	W	39
26			"	D	10
27		Louis	m	S	4
28		Infant	f	D	1

CENSUS *of the* ..... *Indians of*

..... *Agency,* ..... *taken*

by ....., *United States Indian Agent,*

....., *189*...

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
207		Big Billy	m	H.	40
8		Mary	f	W	30
9		Lewis	m	S	6
10		Annie	f	D	5
11		Sampson	m	S	1
212		Little Billy	m	H	35
13	Ya ah hud	Jennie	f	W	30
14		Wm	m	Son	18
15		Joe	"	"	14
16		Louis	"	"	10
17		Jennie	"		5
18		Chassie	f	D	8
219		Tom Wm	m	H	27
20		Maggie	f	W	24
21		Lottie	"	D	8
22		Johnnie	m	S	2
23		Jennie Fisher	f	Sister	20
224		Jas Bartchansen	m	Single	21
225		John Lyon	m	H	28
26	Bable	Lucy	f	W.	36
227	Lone stick Tim	Charley	m	H	30
28		Susan	f	W.	40
229	Sti ka dim	John Davis	m	H	42
30		Ellen	f	W	40
31		Charley	m	S	10
32		Fred	"	"	6

Tulalip Agency

1893

Swinomish Indian Reservation Census

Census of the Swinomish Indians of Tulalip Agency, Washington taken by L. L. Thornton, United States Indian Agent, June 30, 1893.

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
1	She-ah-hud	Harry	M.	H.	71.
2		Susan	F.	W.	66.
3	Ste	Harry	M.	H.	39
4	Su-ah-hath		F.	W.	32
5	Tobe	Jack	M.	S.	32.
6	Thy-day		F.	D.	27.
7	Tze-la-ka-dum	John	M.	H.	43.
8		Jennie	F.	W.	31.
9	Le-ann	David	M.	S.	9.
10		Maia	F.	D.	13.
11		Billy	M.	S.	1
12		Bill Jacobs	M.	H.	40.
13		Matilda	F.	W.	36.
14		Sally	"	D.	12.
15	Scat-shet	William	M.	H.	32.
16		Sophia	F.	W.	36.
17		George	M.	S.	14.
18		Edward	"	"	10
19	Thow-we-saith		F.	Widow	51.
20	De-ka-hah	Jim	M.	H.	50.
21		Lucy	F.	W.	36.
22		James	M.	S.	6.
23	Ahi-a-hum	Jim	M.	H.	40.
24		Louisa	F.	W.	40.
25		Infant	F.	D.	1.
26	Swal-a-cut	Jim	M.	H.	52.
27	Gat-zook		F.	W.	46.

THE NATIONAL ARCHIVES OF THE UNITED STATES

Census of the Swinomish Indians of Agency, taken by , United States Indian Agent, , 188

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
195	Pel-whil-bed	Big Peter	M.	H.	38
96	Sow-sa-li-kah		F	W	34
97		Mary	F	D	7
98		Martin	M.	S	3
99		Joe	M	S	8
200		Lucy	F	D	6
201		Sammy	M.	S	2
202		Infant	M	S	1
203		Tandy Night	M.	H.	34
04		Margret	F	W	30
205		Big Billy	M.	H	4[illegible]
06		Mary	F	W	31
07		Louis	M.	S	7
08		Annie	F	D	6.
09		Joseph	M.	S	2
210		Little Billy	M	H	39
11	Ya-ah-hud	Jenny	F	W	3[illegible]
12		William	M.	S	19
13		Joe	M	S	10
14		Louis	M.	S	11
15		Chinsy	F	D.	13
16		Jimmy	M	S	5
217		Tommy Williams	M.	H	28
18		Lizzie	F	W	24
19		Lottie	F	D	5.
20		Johnny	M.	S	2
21		Infant	M	S	
22		Jenny	F	sister	21
23		George Barkhousen	M	single	31
224		John Lyons	M	H.	28
25	Pable	Lucy	F	W	36
226	Tone-etch-tin	Charley	M	H	40
27		Louisa	F	W	71

Tulalip Agency

1894

Swinomish Indian Reservation Census

Census 1894

Census of the Lummi Indians of Lummi Agency, Wash. taken by L. L. Throckmorton, United States Indian Agent, June 30 1894

NO.	INDIAN NAME.	ENGLISH NAME.	SEX	RELATION	AGE.
1	Ske-ah-hud	Harry	M.	H.	72
2		Susan	F.	W.	67
3	Ste	Harry	M.	H.	60
4	Swah-hah		F.	W.	66
5	Tsiy-day		F.	D.	28
6	Gobe	Jack	M.	H.	33
7		Katie	F.	W.	17
8	Tse-la-ka-diano	John	M.	H.	44
9		Jennie	F.	W.	32
10		Sara	F.	D.	16
11	Le-ans	David	M.	S.	10
12		Billy	M.	S.	2
13		Bill Jacobs	M.	H.	41
14		Matilda	F.	W.	37
15		Sally	F.	D.	12
16	Soal-etet	William	M.	H.	61
17		Sybia	F.	W.	37
18		George	M.	S.	15
19		Edward	M.	S.	11
20	Thow-we-aith		F.	widow	52
21	Ste-ba-hah	Jim	M.	H.	61
22		Lucy	F.	W.	22
23		James	M.	S.	7
24	Ste-ti-kaw	Jim	M.	H.	41
25		Louisa	F.	W.	41
26		Georgie	F.	D.	2

97	Ot-ah-ah-bed	Big Peter	M.	H.	29	
98	Soo-ma-ti-kala		M.	H.	38	
99		Mary	F.	D.	8	
100		Lucy	F.	D.	7	
101		Joseph	M.	S.	6	
102		Martin	M.	S.	5	
103		Sammy	M.	S.	3	
104		Johnny	M.	S.	2	
105		Tandy Straight	M.	H.	30	
106		Margaret	F.	W.	81	
107		Big Billy	M.	H.	42	
108		Mary	F.	W.	32	
109		Annie	F.	D.	9	
110		Louis	M.	S.	8	
111		Joseph	M.	S.	3	
112		Infant	M.	S.	1	
113		Little Billy	M.	H.	40	
114	Ya-ah-hud	Lizzy	F.	W.	82	
115		William	M.	S.	12	
116		Joseph	M.	S.	10	
117		Louisa	F.	D.	14	
118		Chouse	F.	D.	12	
119		Simonise	M.	S.	6	
120		Tommy Williams	M.	H.	29	
121		Lizzie	F.	W.	25	
122		Lottie	F.	D.	6	
123		Johnny	M.	S.	3	
124		Edward	M.	S.	1	
125		Jenny Fisher	F.	single	22	
126		George Backlowen	M.	single	33	

Tulalip Agency

1895

Swinomish Indian Reservation Census

(5-128.)

1

CENSUS of the Siwinamish Indians of Tulalip Agency, Wash taken by C. C. Duncan, United States Indian Agent, June 30th, 1895

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
1	Ske-ah-hud	Harry	M	Father	73
2		Susan	F.	Wife	68
3	Ste	Harry	M	Father	62
4	Su-ah-hah		F	Wife	56
5	Tobe	Jack	M	Father	34
6		Katie	F.	Wife	18
7		Infant	F	Daughter	2 mo.
8	Tze-la-ka-dim	John	M	Father	44
9		Jenny	F.	Wife	33
10		Annie	F	Daugh	17
11		Frank	M	Son	11
12		James Adams	M	Father	44
13	Thy-da		F	Wife	29
14		Bill Jacobs	M	Father	42
15		Mattilka "	F	Wife	38
16		Sally "	F	Daugh	13
17	Scab-shet	William	M	Father	52
18		Sophia	F	Wife	38
19		Edward	M	Son	12
20	Thow-wa-saith		F	Widow	53
21	Dz-ba-hah	Jim	M	Father	52
22		Lucy	F	Wife	38
23		James	M	Son	8
24		Romeo	M	Son	18

84 b—15 m

CENSUS of the Swinomish (Continued) Indians of ..... Agency, ... taken by ....., United States Indian Agent, ..., 189

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
206		Sandy Knight	M	Head	36
207		Margaret "	F	Wife	32
208		Big Billy	M	Head	48
209		Mary	F	Wife	32
210		Annie	F	Dau	10
211		Louis	M	Son	9
212		Joseph	M	Son	4
213		David	M	Son	1
214	Sa-ti-ha	Little Billy	M	Head	41
215		Jenny	F	Wife	38
216		Joseph	M	Son	16
217		Louisa	F	Dau	14
218		Christian	F	Dau	13
219		Jimmy	M	Son	6
220		Tommy Williams	M	Head	30
221		Lizzie	F	Wife	26
222		Lottie	F	Dau	7
223		Johnny	M	Son	4
224		Edward	M	Son	2
225		Jenny Fisher	F	Widow	23
226		Dan	M	Brother	20
227		George Barkhausen	M	Single	34
228		John Lyons	M	Head	31
229	Ba-bel	Lucy "	F	Wife	37
230	Ho-lob-chet	Charley Williams	M	Head	43
231		Louisa	F	Wife	42

Tulalip Agency

1896

Swinomish Indian Reservation Census

No. 6

5-[illegible].

CENSUS *of the* SWINOMISH (Continued) *Indians of* TULALIP *Agency,* WASHINGTON, *taken by* Daniel C. Govan, *United States Indian Agent,* June 30th, 1896, *189*

NUMBER.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
217	Fisher	Jennie	F	Head	24
218	Streit-off	Dan	M	Bro	21
219	Roder	Jim	M	Head	36
220		Mary	F	Wife	40
221		Lizzie	F	Dau	19
222	Barkhausen	George	M	Head	35
223		Andra	F	Wife	30
224		Ernest	M	Son	3
225		Arthur	M	Son	2
226	Lyon	John	M	Head	31
227		Kahalaxay Babel Lucy	F	Wife	38
228	Ho-lob-shet	Charley Williams	M	Head	44
229		Louisa	F	Wife	43
230		Jimmy	M	Son	9
230		Jimmy	M	Son	9
231	Ski-ka-dim	John Davis	M	Head	46
232		Ellen	F	Wife	45
233		Charley	M	Son	14
234		Fred	M	Son	10
235		Joseph	M	Son	8
236	Andrew	John	M	Head	21
237		Theresa	F	Wife	18
238		Josephine	F	Dau	1
239	Saar-sac-ad	Charley Sheastel	M	Head	44
240		Jennie	F	Wife	43
241		Peter	M	Son	15
242		Morris	M	Son	4
243		Infant	M	Son	1
244	Kagey	Joseph	M	Head	22
245		Infant	F	Dau	-
246	Sub-so-ba-se	Albert Tim	M	Head	44
247	Thet-lo-but		F	Wife	44
248	Sneat-lum	Charley George	M	Head	44
249	A-thal	Nellie	F	Wife	43
250		Walter	M	Son	1
251		Christopher	M	Son	4
25x					
252	Sci-ate-suit	Charley Paul	M	Head	35
253		Susie	F	Wife	31
254		Lena	F	Dau	1
255	Stone	John	M	Head	27
256		Lissie Sophia	F	Wife	26
257		Ellen	F	Dau	8
258		Thomas	M	Son	6
259		Francis	M	Son	4
260		Philip	M	Son	2
261		Infant	M	Son	-

Tulalip Agency

1897

Swinomish Indian Reservation Census

#6

CENSUS of the Swinomish SWINOMISH (Continued) Indians of Tulalip Agency, Washington taken by Daniel C. Goven, United States Indian Agent, June 30th 1897

NO.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
214	Fisher	Jennie	F	Widow	25
215	Streit-off	Dan	M	Bro.	22
216	Roder	Jim	M	Head	37
217		Mary	F	Wife	41
218	Sameson	Jimmy	M	Head	22
219		Lizzie	F	Wife	20
220	Bark-hoie-en	George	M	Head	36
221		Andra	F	Wife	31
222		Ernest	M	Son	6
223		Arthur	M	Son	3
224	Lyon	John	M	Head	32
225	Babel	Lucy	F	Wife	39
226	Ho-lob-shet	Charley Williams	M	Head	45
227		Louisa	F	Wife	44
228		Jimmy	M	Adpt.Son	10
229	Ski-ka-dim	John Davis	M	Head	47
230		Ellen	F	Wife	44
231		Charley	M	Son	15
232		Fred	M	Son	11
233		Joseph	M	Son	9
234	Andrew	John	M	Head	22
235		Theresa	F	Wife	19
236	Saar-sac-ad	Sheastal Charley	M	Head	45
237		Jennie	F	Wife	44
238		Peter	M	Son	16
239		Morris	M	Son	5
240		Jimmy	M	Son	2
241	Kagey	Joseph	M	Head	23
242		Lizzie	F	Dau	2
243	Suh-so-ha-so	Albert Tim	M	Head	45
244	Thet-lo-hut		F	Wife	45
245	Sneatlum	Charley George	M	Head	45
246	Se-u-lit	Mary	F	Wife	51
247		Christopher Francis	M	Son	5
248		Walter	M	Son	2
249	Sci-ate-mult	Charley Paul	M	Head	36
250		Susie	F	Wife	32
251	Stone	John	M	Head	28
252		Lizzie Sophia	F	Wife	27
253		Ellen	F	Dau	9
254	Thomas	Thomas	M	Son	7
255		Francis	M	Son	5
256		Philip	M	Son	3

CENSUS of the SWINOMISH (continued) Indians of Tulalip Agency, WASHINGTON taken by Daniel C. Govan United States Indian Agent, June 30th, 1898

NUMBER	INDIAN NAME	ENGLISH NAME	SEX.	RELATION.	AGE.
221	Fisher	Jennie	F	Widow	24
222	Straitoff	Dan	M	Bro	22
223	Roder	Jim	M	Head	38
224		Mary	F	Wife	42
225	Samson	Jimmy	M	Head	28
226		Lizzie	F	Wife	21
227		Infant	M	Son	8 mo.
228	Bark-hous-en	George	M	Head	57
229		Andra	F	Wife	52
230		Ernest	M	Son	7
231		Arthur	M	Son	4
232	Jyon	John	M	Head	55
233		Lucy	F	Wife	40
234	Ho-lobe-shet	Charley Williams	M	Head	46
235		Louisa	F	Wife	44
236		James	M	Adp'tson	11
237	Ski-ka-dim	John Davis	M	Head	48
238		Ellen	F	Wife	45
239		Charles	M	Son	16
240		Fred	M	Son	12
241		Joseph	M	Son	10
242	Andrew	John	M	Head	35
243		Theresa	F	Wife	30
244		Josephine	F	Dau	4
245		Joseph	M	Son	1
246	Saar-sac-ad	Charley Sheastal	M	Head	46
247		Jennie	F	Wife	45
248		Peter	M	Son	17
249	Sub-so-ha-so	Albert Tim	M	Head	46
250	Thet-lo-but		F	Wife	46
251	Sneat - lum	Charley George	M	Head	46
252	Se-u-l[illegible]	Mary	F	Wife	52
253		Christopher Francis	M	Son	6
254		Walter	M	Son	3
255	Sci-ate-silt	Charley Paul	M	Head	32
256		Susie	F	Wife	33
257	Stone	John			

CENSUS of the Swinomish Indians of Tulalip, Wash. Agency, taken by Edward Mills, United States Indian Agent, JUN 30 1899, 189

NUMBER.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
309	Roder	Jim	M	Head	39
310		Mary	F	Wife	45
311	Sampson	Jimmy	M	Head	34
312		Lizzie	F	Wife	21
313		Infant	M	Son	2mo.
314	Bartholomew	George	M	Head	39
315		Anna	F	Wife	35
316		Ernest	M	Son	8
317		Arthur	M	Son	5
318	Lyon	John	M	Head	34
319		Lucy	F	Wife	41
320	Ho-lobo-shot	Charley William	M	Head	47
321		Louisa	F	Wife	48
322	Tat-ko-lim	John Dayton	M	Head	39
323		Ellen	F	Wife	46
324		Fred	M	Son	18
325		Joseph	M	Son	12
326		Stella	F	Dau	1
327		Elwood Calhoun	M	Nephew	16
328	Arlecan	John	M	Head	24
329		Theresa	F	Wife	31
330		Josephine	F	Dau	1
331		Infant	M	Son	6mo.
332	Sam-mo-mal	Charley Shenantal	M	Head	47
333		Jenie	F	Wife	46
334		Peter	M	Son	14
335		William	M	Son	5
336		Ellen Kenney	F	Sister	[illegible]
337	Sih-so-ha-so	Albert Tim	M	Head	47
338	Chatelonkit	[illegible]	F	Wife	47
339	Shoot Tim	Charley George	M	Head	47
340	So-lalit	Mary	F	Wife	51
341		Francis	M	Son	7
342		Walter	M	Son	4
343		Marie Paul	F	Widow	70
344	Stone	John	M	Head	30
345		Lizzie Sophia	F	Wife	27
346		Ellen	F	Dau	11
347		Thomas	M	Son	9
348		Francis	M	Son	7
349		Philip	M	Son	5
350		Infant	M	Son	1mo
351	Mebeol	Jim	M	Head	35
352		Sarie	F	Wife	42
353	Thomas	John	M	Head	[illegible]

7-464.

TWELFTH CENSUS OF THE UNITED STATES. B

SCHEDULE No. 1.—POPULATION.

INDIAN POPULATION.

State: Washington
County: Skagit

Supervisor's District No. 285
Enumeration District No. ~~104~~ 253
Sheet No. 2

Township or other division of county: Swinomish Reservation [Insert name of township, town, precinct, district, or other civil division, as the case may be. See instructions.]

Name of Institution, X

Ward of city, X

Name of incorporated city, town, or village, within the above-named division,

Enumerated by me on the 29 day of June, 1900, F. E. White, Enumerator.

	Location: In cities: Street.	Location: In cities: House number.	Number of dwelling-house, in the order of visitation.	Number of family, in the order of visitation.	Name of each person whose place of abode on June 1, 1900, was in this family. Enter surname first, then the given name and middle initial, if any. Include every person living on June 1, 1900. Omit children born since June 1, 1900.	Relation of each person to the head of the family.	Color or Race.	Sex.	Date of Birth: Month.	Date of Birth: Year.	Age at last birthday.	Whether single, married, widowed, or divorced.	Number of years married.	Mother of how many children.	Number of these children living.	Place of birth of this Person.	Place of birth of Father of this person.	Place of birth of Mother of this person.	Year of immigration to the United States.	Number of years in the United States.	Naturalization.	Occupation, trade, or profession of each person ten years of age and over. (See instructions below.)	Months not employed.	Attended school (in months).	Can read.	Can write.	Can speak English.	Owned or rented.	Owned free or mortgaged.	Farm or home.	Number of farm schedule.
			1	2	3	4	5	6	7		8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
21			16	16	Ye-Duet	Wife	In	F		1845	55	M	7	1	1	Washington	Washington	Washington				Basket maker Clam digger	4		No	No	No				
22			17	17	McLeod, Jim	Head	In	M		1864	36	M	15			Washington	Washington	Washington				Day Labor	4		No	No	No			H	
23					——— Susie	Wife	In	F		1857	43	M	15	0	0	Washington	Washington	Washington					4		No	No	No				
24			18	18	Barkhousen Geo	Head	In	M		1861	38	M	10	2	2	Washington	Indiana	Washington				day labor	3		yes	yes	yes	O		H	
25					——— Andra	wife	W	F		1866	34	M	10	2	2	Oregon	not known	not known					4		yes	yes	yes				
26					——— Ernest	son	In	M		1891	9	S				Washington	Washington	Oregon				at school	3	3	yes	yes	yes				
27					——— Arthur	son	In	M		1894	6	S				Washington	Washington	Oregon													
28			19	19	Tom	Head	In	M	not known	1836	64	M	20			Washington	Washington	Washington				cutwood	6		No	No	No	O		H	
29					Thal-Thal-Mam	Wife	In	F	"	1836	64	M	30	0	0	Washington	Washington	Washington							No	No	No				
30			20	20	Morrison Joe (1)	Head	In	M	"	1856	44	M	5			Washington	Washington	Washington				fishermen	3		No	No	No			H	
31					——— Susie	Wife	In	F	"	1861	39	M	5	0	0	Washington	Washington	Washington					4		No	No	No				
32					Johnson Lucy	Sister	In	F	"	1854	16	S				Washington	Washington	Washington				Zelle			No	No	No				
33			20	20	Andrew John	Head	In	M	"	1875	25	M	7			Washington	Washington	Washington				day labor	4		yes	yes	yes	O		H	
34					——— Theresa	wife	In	F	"	1878	22	M	7	2	1	Washington	Washington	Washington					4		yes	yes	yes				
35					——— Josephine	daughter	In	F		1894	6	S				Washington	Washington	Washington				at school					yes				
36			21	21	Sampson Jimmie	Head	In	M		1825	25	M				Washington	Washington	Washington							No	No	yes			H	
37					——— Benedict	son	In	M		1897	3	S				Washington	Washington	Washington													
38			22	22	Tim Albert	Head	In	M		1852	48	M	10			Washington	Washington	Washington				Farmer	4		No	No	yes			F	
39					——— Mary Jane	Wife	In	F		1862	48	M	10	7	0	Washington	Washington	Washington				about Tim	4		No	No	No				
40			23	23	Cayt-tat-Lized	Head	In	F		1820	80	W		0	0	Washington	Washington	Washington				comfort her	4		No	No	No			H	

SCHEDULE No. 1.—POPULATION—Continued.

SPECIAL INQUIRIES RELATING TO INDIANS.

	Other name, if any.	Nativity: Tribe of this Indian.	Nativity: Tribe of Father of this Indian.	Nativity: Tribe of Mother of this Indian.	Mixed Blood: Has this Indian any white blood? If so, how much? (0, ½, ¼, or ⅛.)	Conjugal Condition: Is this Indian, if married, living in polygamy?	Citizenship: Is this Indian taxed? (See instructions.)	Citizenship: Year of acquiring citizenship.	Citizenship: Was citizenship acquired by allotment?	Dwellings: Is this Indian living in a fixed or in a movable dwelling?
	29	30	31	32	33	34	35	36	37	38
21	Ye-Duet	Samish	Samish	Samish	0	No	No			fixed
22	McLeod Jim	Skagit	Skagit	Skagit	0	No	No			"
23	——— Susie	Swinomish	Swinomish	Swinomish	0	No	No			"
24	Barkhousen, Geo	Swinomish	White man	Samish	1/2	No	No			"
25	——— Andra	White woman	" "	White woman		No	No			"
26	——— Ernest	Swinomish	Swinomish	White woman	1/4					
27	——— Arthur	Swinomish	Swinomish	White woman	1/4					
28	Buch-Beh-hid	Skagit	Skagit	Skagit	0	No	No			fixed
29	Thal-Thal-Mamal	Swinomish	Swinomish	Swinomish	0	No	No			"
30	Morrison, Joe	Skagit	Skagit	Skagit	0	No	No			fixed
31	——— Susie	Skagit	Skagit	Skagit	0	No	No			"
32	Johnson, Lucy	Skagit	Skagit	Skagit	0	No	No			"
33	Andrew, John	Swinomish	Swinomish	Swinomish	0	No	No			"
34	——— Theresa	Swinomish	Swinomish	Swinomish	0	No	No			"
35	——— Josephine	Swinomish	Swinomish	Swinomish	0					"
36	Sampson Jimmie	Samish	Samish	Samish	0	No	No			"
37	——— Benedict	Swinomish	Samish	Samish	0					
38	Tim Albert	Swinomish	Swinomish	Swinomish	0	No	No			fixed
39	——— Mary Jane	Swinomish	Swinomish	Swinomish	0	No	No			"
40	Cayt-tat-Lized	Swinomish	Skagit	Skagit	0					

INSTRUCTIONS FOR FILLING THIS SCHEDULE.

(CONTINUED FROM "A" SIDE OF SHEET.)

The following instructions apply to columns 29 to 38:

COLUMN 29.—Write the Indian name, if the person has one, in addition to the English name given in column 3. If the Indian has only one name, Indian or English, repeat the name in this column.

COLUMNS 30, 31, AND 32.—If the Indian was born in this country answers should be obtained, if possible, to inquiries 13, 14, and 15, relating to the state of birth of the person and of his or her parents. In any event secure the name of the tribe with which the person is connected and the name of the tribe of his or her parents, and enter the same in columns 30, 31, and 32.

COLUMN 33.—If the Indian has no white blood, write 0. If he or she has white blood, write ½, ¼, ⅛, whichever fraction is nearest the truth.

COLUMN 34.—If the Indian man is living with more than one wife, or if the Indian woman is a plural wife or has more than one husband, write "Yes." If not, write "No." If the Indian is single, leave the column blank.

CITIZENSHIP.—If the Indian was born in this country, no entry can be made in columns 16, 17, or 18; but for columns 35, 36, and 37 answers must be obtained. If the Indian was born in another country, answers will be made both in columns 16, 17, and 18, and in columns 35, 36, and 37, in accordance with the facts.

COLUMN 35.—An Indian is to be considered "taxed" if he or she is detached from his or her tribe and living among white people as an individual, and as such subject to taxation, whether he or she actually pays taxes or not; also if he or she is living with his or her tribe but has received an allotment of land, and thereby has acquired citizenship; in either of these two cases the answer to this inquiry is "Yes."

An Indian on a reservation, without an allotment, or roaming over unsettled territory, is considered "not taxed," and for such Indians the answer to this inquiry is "No."

COLUMN 36.—If the Indian was born in tribal relations, but has acquired American citizenship, write the year in which it was acquired. If he or she has not acquired citizenship, leave the column blank.

COLUMN 37.—If the Indian acquired citizenship by receiving an allotment of land from the Government, write "Yes." If he or she acquired citizenship by other means, write "No." If he or she has not acquired American citizenship, leave the column blank.

COLUMN 38.—If the Indian is living in a tent, tepee, or other temporary structure, write "movable". If he or she is living in a permanent dwelling of any kind, write "fixed."

Tulalip Agency

1901

Swinomish Indian Reservation Census

Original

CENSUS of the Swinomish Indians of

Agency, taken

by , United States Indian Agent,

, 190

NUMBER.	INDIAN NAME.	ENGLISH NAME	SEX.	RELATION.	AGE.
1	Ske-ah-hud	Harry	M.	Head	79
2		Susan	F.	Wife	73
3	To-be	Jack Harry	M.	Head	38
4		Lizzie	F.	Wife	19
5		Infant	F.	Daw	1
6	Tze-la-ka-dim	Long John	M.	Head	50
7		Jenny	F.	Wife	38
8		David	M.	Son	16
9		Lousia	F.	Daw	6
10		James Adams	M.	Head	50
11		Elizabeth	F.	Wife	38
12	Ife-ba-hah	Jim	M.	Head	58
13		Lucy	F.	Wife	44
14		Emil	M.	Son	14
15		Romeo	M.	Head	24
16		Jennie	F.	Wife	21
17	Uhoi-a-cuse	Jim	M.	Head	48
18		Louisa	F.	Wife	48
19		Infant	F.	Daw	2
20	Swal-u-cut	Jim	M.	Head	60
21		Julia	F.	Wife	53
22	Sw-ha-had	Bob Took	M.	Head	56
23	Co-las-o-wood		F.	Wife	54
24		Susanna	F.	Daw	25
25		John Damian	M.	Head	27
26		Eliza	F.	Wife	22
27		Infant	F.	Daw.	1
28		Charley Edwards	M.	Head	35
29		Febea	F.	Wife	35
30		Annie	F.	Daw	13
31		Alfred	M.	Son	6
32		Bill Jacobs	M.	Head	48
33		Mary	F.	Wife	40
34		Sally	F.	Daw	19

9

CENSUS of the Quinault Indians of ..... Agency, ... taken by ....., United States Indian Agent, ..., 190..

NUMBER.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
205	Duel-ta-me	Sullivan	M	Head	80
206	Duz-qualth	Jennie	F	Wife	70
207	Buh-bah-hud	Tom	M.	Head	65
208	Thal-thal-smal		F	Wife	65
209		Thomas Williams	M	Head	36
210		Lizzie	F	Wife	32
211		Lottie	F	Daw	13
212		John	M	Son	10
213		Edward	M	Son	8
214		Grant	M	Son	6
215		Fred	M	Son	5
216		Albert	M	Son	2
217		Jennie Fisher	F	Widow	27
218		Dan Straightoff	M	Bro	25
219		Jim Roder	M.	Head	41
220		Mary	F	Wife	45
221		Jimmy Sampson	M	Head	26
222		Lizzie	F	Wife	24
223		Benedict	M	Son	2
224		George Barkhouse	M	Head	40
225		Anna	F	Wife	35
226		Ernest	M	Son	10
227		Arthur	M	Son	7
228		John Dyon	M	Head	36
229		Lucy	F	Wife	43
230	Hoe-lobe-shut	Charley Williams	M	Head	49
231		Louisa	F	Wife	48
232	Ski-ka-dim	John Davis	M	Head	50
233		Ellen	F	Wife	48
234		Fred	M	Son	15
235		Joseph	M	Son	13
236		Stella	F	Daw	3
237		Infant	F	Daw	1
238		Edward Calhoun	M	Nephew	18

CENSUS of the SWINOMISH Indians of TULALIP Agency, Washington, taken by Dr. Charles M. Buchanan, United States Indian Agent, June 30, 1902. 190...

NUMBER.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
256	Quil-ta-me	Sulivan	M	Head	61
257	Gil-peuse	Mary	F	Head	70
258	Buh-bah-hud	Tom	M	Head	71
259	Thal-thal-smal	Thalrthalz Smal	F	Wife	66
260	Dilt-ha-dim	Tom Martin	M	Head	73
261	Scir-uet		F	Wife	57
262		George Barkhousen	M	Head	41
263		Andra	F	Wife	36
264		Ernest	M	Son	11
265		Arthur	M	Son	8
266		John Nepoleon	M	Head	40
267		Kittie Jane	F	Wife	27
268		Hazel	F	Dau	7
269	Sneat-lum	George	M	Head	51
270		Isabella	F	Wife	36
271		Joe Morison	M	Head	50
272		Susie	F	Wife	55
273		Timothy Bob	M	Head	27
274		Lilly	F	Wife	23
275	Te-ah-bia	Kitty	F	Head	65
276		John McKinney	M	Head	35
277		Edward Frank	M	Head	21
278		Christina	F	Wife	15
279	Wikes	Old Sam	M	Head	74
280		Charley Jim	M	Head	38
281		Mary	F	Wife	34
282		Wilson	M	Son	12
283		Thomas	M	Son	8
284		James	M	Son	7
285		Jimmy Thompson	M	School boy	14
286	Slail-liah	Mrs Stuttle Jim	F	Head	70
287		Willie James	M	Orphan	6

CENSUS *of the* SWINOMISH - Continued *Indians of* TULALIP *Agency,* AGENCY, *taken by* CHARLES M. BUCHANAN, *United States Indian Agent,* June 30, 1903, *189*

NUMBER.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
254	Quilt-ka	Watchman	M	Head	60
255		Martha	F	Wife	60
256	Quil-ta-ma	Sulivan	M	Head	82
257	Gil-peuse	Mary (widow)	F	Head.	71
258	Bah-buh-hud	Ton	M	Head	74
259	Thal-thal-smal		F	Wife	67
260	Dilt-hu-dim	Tom Martin	M	Head	73
261	Skir-eut		F	Wife	58
262		George Barkhausen	M	Head	42
263		Andre	F	Wife	37
264		Ernest	M	Son	12
265		Arthur	M	Son	9
266		John Nepoleon	M	Head	41
267		Kittie Jane	F	Wife	28
268		Hazel	F	Dau	8
269		Blind Bill	M	Head	55
270		Joe Morrison	M	Head	51
271		Susie	F	Wife	56
272		Timothy Bob	M	Head	28
273		Lilly	F	Wife	24
274	Te-ah-bia	Kittie	F	Head	66
275		John McKinney	M	Head	36
276		Edward Frank	M	Head	22
277		Christina	F	Wife	17
278		Rosie	F	Dau	1
279		Charley Jim	M	Head	39
280		Mary	F	Head	37
281		Thomas	M	Son	9
282		James	M	Son	8
283	Slail-laih	Mrs. Stuttle Jim (widow)	F	Head	71
284		Leo Billy	M	Orphan.	9
285		Jim Roder	M	Head	43
286		Mary	F	Wife	47
287		Martha Maulch (Widow)	F	Head	
288		Fredrick	M	Son	10
289		Algena	F	Wife	9
290		John Brown	M	Head	30
291		Katie	F	Wife	22
292		Alexander	M	Son	1

CENSUS of the SWINOMISH (Continued) Indians of TULALIP Agency, WASHINGTON, taken by CHARLES M. BUCHANAN United States Indian Agent, June 30, 1904.

NUMBER.	INDIAN NAME.	ENGLISH NAME.	SEX.	RELATION.	AGE.
247	Sal i ka dim	Doctor Joe	M	Head	68
248		Joseph	M	Son	14
249		Annie	F	Wife	34
250		Andrew	M	Son	13
251		Emily	F	Dau	8
252		David	M	Son	5
253		Camelia	F	Dau	4
254	Quil ka	Watchman	M	Head	61
255		Martha	F	Wife	61
256	Thal thal smal	Mary (Ba bah huh)	F	Head	68
257	Dilt ha dim	Tom Martin	M	Head	74
258	Skit eut		F	Wife	59
259		George Barkhausen	M	Head	43
260		Andre	F	Wife	38
261		Ernest	M	Son	13
262		Arthur	M	Son	10
263		John Nepoleon	M	Head	42
264		Kittie Jane	F	Wife	29
265		Hazel	F	Dau	9
266		Bill Morrison	M	Head	51
267		Susie	F	Wife	56
268		Edward Frank	M	Head	23
269		Christina	F	Wife	18
270		Rosie	F	Dau	2
271		Charley Jim	M	Head	40
272		Mary	F	Wife	38
273		Thomas	M	Son	10
274		James	M	Son	9
275	Te ah bia	Kittie	F	Head	67
276		Jim Roder	M	Head	44
277		Mary	F	Wife	48
278		Martha Maulch	F	Head	34
279		Fredrich	M	Son	11
280		Algena	F	Dau	10
281		John Brown	M	Head	31
282		Katie	F	Wife	23
283		Alexander	M	Son	2
284	Infant son of Joseph Sampson'- No name				1 mo.
283					

CENSUS of the SWINOMISH (Continued) Indians of TULALIP Agency, WASHINGTON taken by CHARLES M. BUCHANAN, United States Indian Agent, JUNE 30, 1905

NUMBER.	INDIAN NAME.	ENGLISH NAME	SEX.	RELATION.	AGE.
193		John Pauk	M	Head	44
194	Se talth	Maggie	F	wife	42
195	Keuse Keuse	Dick Gives	M	Head	52
196		Ellen	F	wife	51
197	Su i ah		F	Rel've	83
198		Alexis Edge	M	Head	27
199		Emily EZZZZZZZZZZZZ	F	wife	36
200		Elizabeth	F	Dau	11
201		Mariah	F	Dau	5
202		Agnes	F	Dau	3
203		Theodore	M	son	1
204		Joseph Sampson	M	Head	54
205		Susa	F	wife	42
206		Martin	M	son	19
207		Alfonso	M	son	10
208		Potter	M	son	1
209		Lee Billy	M	Rel've	11
210	Te ba	Jack Harry	M	Head	42
211		Lizzie	F	wife	23
212		George	M	son	3
213		Maggie	F	Dau	1
214		Joseph Billy sr.	M	Head	37
215		Amelia	F	wife	32
216		Clarance	M	son	6
217	Sub so has se	Albert Tim	M	Head	52
218	Thet so hub	Mary Ann	F	wife	62
219	I see	Charley	M	Head	69
220		Nancy	F	wife	58
221	T'la thuse	Charley Willup	M	Head	62
222		Annie	F	wife	59
223		Ignitious	M	son	22
224		Jimmy Sampson	M	Head	32
225		Mary	F	wife	22
226		Elsie Andrews	M	Head	48
227		Martha	F	wife	35
228		Fredrich Maulch	M	Stepson	12
229		Algena "	F	" Dau	11
230	Swal i ket	Jim	M	Head	64
231		Annie	F	wife	59
232	Quis ta dia	Mary Gilpeause	F	widow	73
233	Tee Whil ka dim	Jim	M	Head	64
234		Lucy	F	wife	38
235		Aggie	F	Dau	15
236		Salena	F	Dau	11
237		Samuel	M	son	9
238	Sal i ka dim	Dr. Joe	M	Head	59
239		Annie	F	wife	36
240		Joseph	M	son	15
241		Andrew	M	son	14
242		Emily	F	Dau	9
243		David	M	son	6
244		Camelia	F	Dau	5

CENSUS of the SWINOMISH (Continued) Indians of TULALIP Agency, WASHINGTON taken by CHARLES M. BUCHANAN, United States Indian Agent, June 30, 1903.

NUMBER.	INDIAN NAME.	ENGLISH NAME	SEX.	RELATION.	AGE.
240	Quil ta	Watchman	M	Head	83
241		Martha	F	wife	84
242	Thal thal smal	Mary Buh buh hud	F	widow	70
243	Dilt ha dim	Tom Martin	M	Head	78
244	Sir i eut		F	wife	41
245		George Barkhuisen	M	Head	45
246		Andre	F	wife	40
247		Ernest	M	son	15
248		Arthur	M	son	12
249		Joe Morrison	M	Head	53
250		Sisie	F	wife	53
251		Edward Frank	M	Head	25
252		Christina	F	wife	20
253		Lillie	F	Dau	1
254	Te a bia	Kittie	F	widow	39
255		Jim Roder	M	Head	45
256		Mary	F	wife	50
257		John Brown	M	Head	33
258		Katie	F	wife	25
259		Jimmy Charles	M	Orphan	21
260		Jimmy Moore	M	Head	43
261		Jennie	F	wife	48
262		Nellie	F	Dau	12
263		Dula	F	Dau	5
264		Stanley	M	son	1
265		John Frank	M	Head	44
266		Mary	F	wife	35
267		Dora Williams	F	Stepdau	12
268		Rose ann	F	Dau	12
269		Thomas	M	son	8
270		Adaline	F	Dau	6
271		Annie	F	Dau	5
272		Billy Bob	M	Head	55
273		Emma	F	wife	48
274		Johnson	M	son	6
275		Maggie	F	Dau	5

CENSUS of the SWINOMISH (Continued) Indians of TULALIP Agency, WASHINGTON taken by CHARLES M. BUCHANAN, United States Indian Agent, JUNE 30, 1907.

NUMBER	INDIAN NAME	ENGLISH NAME	SEX.	RELATION.	AGE.
240	Quil ta	Watchman	M	Head	64
241		Martha	F	wife	65
242	Dilt ha dim	Tom Martin	M	Head	77
243	Sir i eut		F	wife	62
244	Thal thal smal	Mary Buh buh hud	F	widow	71
245		George Barkhausen	M	Head	46
246		Andre	F	wife	41
247		Ernest	M	son	14
248		Arthur	M	son	11
249		Joe Merrison	M	Head	54
250		Susie	F	wife	59
251		Edward Frank	M	Head	26
252		Christina	F	wife	21
253		Lillie	F	Dau	2
254		Infant	F	Dau	1
255	Te a bia	Kittie	F	widow	70
256		John Brown	M	Head	34
257		Katie	F	wife	26
258		Jimmy Charles	M	Orphan	22
259		Jimmy Moore	M	Head	47
260		Jennie	F	wife	47
261		Nellie	F	Dau	13
262		Dula	F	Dau	6
263		Stanley	M	son	2
264		Tommy Tom	M	Head	20
265		Mary	F	wife	21
266		Billy Bob	M	Head	56
267		Jennie	F	wife	49
268		Emma	F	Dau	6
269		Justina Peter (Daughter of Big Peter)	F	Dau	1
270		Arthur Joe (Son of Romald Joe)	M	son	3
271		Alexander Willup (Son of Patrick Willup)	M	son	1
272	Saw si kah	(Big Peter's Mother-in-law)	F	G.Mother	69
273		Elizabeth Adams (With George Williams)	F	Relative	13

MALES OVER 18 YEARS OF AGE----85
MALES UNDER 18 YEARS OF AGE---57
FEMALES OVER 14 YEARS OF AGE--88
FEMALES UNDER 14 YEARS OF AGE-43
TOTAL MALES----------142
TOTAL FEMALES ----------131

Boys 6 to 18 years-------40
Girls 6 to 18 years------25
Children 6 to 16 years---61
Boys 5 to 21 years-------45
Girls 5 to 21 years -----30

CENSUS of the S W I N O M I S H (continued) Indians of TULALIP Agency, WASHINGTON taken by Charles M. Buchanan, United States Indian Agent, JUNE 30, 1908

NUMBER.	INDIAN NAME.	ENGLISH NAME	SEX.	RELATION.	AGE.
237	Quilta	Watchman	M	Head	65
238		Martha	F	wife	66
239	Thal thal smal	Mary Bub bun hud	F	Head	72
240	Dilt ha dim	Tom Martin	M	Head	75
241	Sir ieut		F	wife	63
242		George Barkhousen	M	Head	47
243		Andre	F	wife	41
244		Ernest	M	son	19
245		Arthur	M	son	12
246		Joe Morrison	M	Head	55
247		Susie	F	wife	60
248		Edward Frank	M	Head	27
249		Christina	F	wife	22
250		Lillian	F	Dau	5
251		Orelia	F	Dau	1
252	To a bia	Kittie	F	widow	71
253	Saw si kah		F	widow	69
254		John Brown	M	Head	35
255		Katie	F	wife	27
256		Jimmy Moore	M	Head	45
257		Jennie	F	wife	45
258		Nellie	F	Dau	14
259		Dula	F	Dau	7
260		Stanley	M	son	5
261		Tommy Williams	M	Head	35
262		Aggie	F	wife	25
263		Dick Williams	M	Head	25
264		Mary	F	wife	22
265		Mattie	F	Dau	5
266		Nellie	F	Dau	6
267		Teddy	M	son	2
268		George Williams	M	Brother	10
269		Billy Bob	M	Head	57
270		Jennie	F	wife	50
271		Emma	F	Dau	7
272		Elizabeth Adams (Relative of Geo. Williams)	F		14
273		Landas, (son of Little Bob No. 25)			1
274		Alfred (son of Charley Edwards No 94)			13

CENSUS of the S W I N O M I S H (Continued) Indians of TULALIP Agency, WASHINGTON taken by CHARLES M. BUCHANAN, United States Indian Agent, June 30, 1909

NUMBER	INDIAN NAME	ENGLISH NAME	SEX.	RELATION.	AGE.
234		George Barkhousen	M	Head	46
235		Andra	F	Wife	42
236		Ernest	M	Son	16
237		Arthur	M	Son	13
238		Joe Morrison	M	Head	56
239		Susie	F	Wife	61
240		Edward Frank	M	Son	28
241		Christina	F	Wife	22
242		Lillian	F	Dau	4
243		Orelia	F	Dau	2
244	Te hi ah	Kittie	F	Widow	72
245		John Brown	M	Head	36
246		Katie	F	Wife	27
247		Jimmy Moore	M	Head	49
248		Jennie	F	Wife	49
249		Nellie	F	Dau	15
250		Iula	F	Dau	8
251		Stanley	M	Son	4
252		Billy Bob	M	Head	58
253		Jennie	F	Wife	51
254		Maggie	F	Dau	8
255		Billy Edwards	M	Head	54
256		Lucy	F	Wife	48
257		James Morris	M	Head	22
258		Aggie	F	Wife	22
259		No name	F	Dau	6 mo.
260		Samuel Kadim	M	Bro.	13
261		Jennie George	F	Aunt	53
262		Kate O'Brien	F	Head	55
263		Jimmy	M	Son	20
264		Elizabeth Frank (relative of Geo. Williams)	F		15
265		Archie Son of Jack & Lizzie Harry	M		1
266		Mrs. Jim Roder	F	Head	62
267		Emil James	M	Head	23
268	Oalah	Mary	F	Head	77

Males over 18---- 81
Males under 18--- 58 total. 139

Females over 14-- 91
" under 14-- 38 " 129 total population 268.

Boys 6 to 18----- 33
Girls 6 to 18----- 19 total 52

Boys 5 to 21----- 39
Girls 5 to 21----- 24 " 63

Children 6 to 16 43

CENSUS of the Swinomish Indians of Swinomish Reservation, Tulalip Agency, Wash.,

on July 1, 1911., 19...., taken by Charles M. Buchanan., Superintendent, etc.
(Name.) (Official title.)

NUMBER. Last.	NUMBER. Present.	INDIAN NAME.	ENGLISH NAME.	RELATIONSHIP.	AGE.	SEX.
1	1		Alexander, George	Husband	48	M
2	2		Alexander, Theresa	Wife	45	F
3	3		Andrews, Elsie	Husband	54	M
4	4		Andrews, Martha	Wife	41	F
5	5		Andrews, Lucinda	Daughter	3	F
6	6		Mauloh, Fred	Step-son	18	M
7	7		Mauloh, Regina	Step-dau.	17	F
8	8		Barkhausen, George	Husband	50	M
9	XX	(WHITE)	Barkhausen, Andra	Wife	45	F
10	9		Barkhausen, Ernest	Son	20	M
11	10		Barkhausen, Arthur	Son	17	M
32	11		Billy, Bob (Edwards)	Husband	51	M
33	12		Billy, Lucy	Wife	49	F
12	13		Billy, Charles	Widower	32	M
16	14		Billy, Joe	Husband	43	M
17	15		Billy, Amelia	Wife	34	F
18	16		Billy, Clarence	Son	11	M

CENSUS of the Swinomish *Indians of* Tulalip *Agency,* Wash.,

on July 1, 1912, *19*..., *taken by* Charles M. Buchanan, (Name.) Superintendent. (Official title.)

NUMBER. Last.	NUMBER. Present.	INDIAN NAME.	ENGLISH NAME.	RELATIONSHIP.	AGE.	SEX.
xx	1		Adams, Jimmy	Husband	62	M
210	2		Adams, Maggie	Wife	53	F
xx	3		Adams, Elizabeth	Daughter	18	F
211	4		Peter, Justina	Step-dau.	5	F
1	5		Alexander, George	Husband	49	M
2	6		Alexander, Theresa	Wife	46	F
3	7		Andrews, Elsie	Husband	55	M
4	8		Andrews, Martha	Wife	42	F
6	9		Maulch, Fred	Step-son	19	M
7	10		Maulch, Regina	Step-dau.	18	F
8	11		Barkhausen, George	Husband	51	M
xx	xx	WHITE	Barkhausen, Andra	Wife	46	F
9	12		Barkhausen, Ernest	Son	21	M
10	13		Barkhausen, Arthur	Son	18	M
11	14		Billy (or Edwards) Bob	Husband	52	M
12	15		Billy, (or Edwards) Lucy	Wife	50	F
14	16		Billy, Joe	Husband	44	M
15	17		Billy, Amelia	Wife	35	F
16	18		Billy, Clarence	Son	12	M

CENSUS of the Swinomish Indians of Tulalip Agency,

on July 1, 1913, 19, taken by Charles M. Buchanan, (Name.), Superintendent (Official title.)

NUMBER. Last.	NUMBER. Present.	INDIAN NAME.	ENGLISH NAME.	RELATIONSHIP.	AGE.	SEX.
1	1		Adams, Jimmy	Husband	63	M
2	2		Adams, Maggie	Wife	54	F
3	3		Adams, Elizabeth	Daughter	19	F
	4		Adams, Myrtle	Daughter	xx	F
4	5		Peter, Justina	Step-dau.	6	F
5	6		Alexander, George	Husband	50	M
6	7		Alexander, Theresa	Wife	47	F
7	8		Andrews, Elsie	Widower	56	M
9	9		Maulch, Fred	Step-son	20	M
11	10		Barkhausen, George	Husband	52	M
xxx		WHITE	Barkhausen, Andra	Wife		
12	11		Barkhausen, Ernest	Son	22	M
13	12		Barkhausen, Arthur	Son	19	M
14	13		Billy, Bob	Husband	53	M
166	14		Billy, Cecilia	Wife	60	F
19	15		Billy, Joseph B.	Husband	24	M
20	16		Billy, Louisa	Wife	22	F
21	17		Billy, Bessie	Daughter	5	F
22	18		Billy, Madeline	Daughter	3	F
23	19		Billy, Mabel	Daughter	2	F

CENSUS of the Swinomish Indians of Tulalip Agency, Wash.,

on July 1, 1914, taken by Charles M. Buchanan, Superintendent, etc.
(Name.) (Official title.)

NUMBER. Last.	NUMBER. Present.	INDIAN NAME.	ENGLISH NAME.	RELATIONSHIP.	DATE OF BIRTH.	SEX.
2	1		Adams, Maggie	Widow	1859	F
3			" Elizabeth	Step-dau.	7/ 4/94	F
4	2		" Elvina Myrtle	Dau.	10/24/12	F
5	3		Peter, Justina	Dau.	1/15/07	F
6	4		Alexander, George	Husb.	1863	M
7	5		" Theresa	Wife	1866	F
8	6		Andrews, Elsie	Husb.	1857	M
	7		" Katie	Wife	1854	F
10	8		Barkhausen, George	Husb.	1861	M
		(WHITE)	" Andra	Wife	1866	F
11	9		" Ernest	Son	1891	M
12	10		" Arthur	Son	1894	M
13	11		Billy, Bob	Single	1860	M
14	12		Billy, Cecilia	Single	1853	F
15	13		Billy, Joseph B.	Husb.	1889	M
16	14		" Louisa	Wife	1891	F
17	15		" Bessie Regina	Dau.	2/12/08	F

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REGISTER OF INDIAN FAMILIES, Tulalip Agency, Snoqualmie Reservation, November, 1901

No. on this Register.	Indian Name.	English Name.	Name on Allotment Roll.	Age.	Blood or Nationality.	Tribe or Allegiance by Citizenship.	Relation in Family.	Married, Single, Widow, Widower, Divorced.	Date of Marriage.	How Married.	Name of Father.	No. on this Register.	Name of Mother.	No. on this Register.	Remarks.
241	Too-whit-na-dim	Jim	Too-whit-na-dim (Jim)	61	Full Blood	Snoqualmie	Head	Married	About 1858	Catholic Priest	C-o-dut		Tsa-ut-sid		Died Nov. 25, 1898.
242		Lucy		35	" "	B. C.	Wife	"	"	"	Capt. George Dick		Ulsh-ma-ma		Lucy went to visit her people
243		Aggie		12	" "	"	Daughter	Single			Jim Too-whit-na-dim	241	Lucy	242	in B.C. more than a year ago and
244		Salena	Died at Tulalip School Feb. 16, 1899.	8	" "	"	"	"			"	241	"	242	has not yet returned. Her children
245		Samuel		6	" "	"	Son	"			"	241	"	242	daughter Salena died while at Tulalip June 20, 1901
246	Sal-la-ha-dim	Doctor Joe	Sa-lish-ta-dim (Joe)	56	Full Blood	Snoqualmie	Head	Married	1889	Catholic Priest	Se-y-dut		Tsche-tolk-tsche		Died Aug. 21, 1904.
247	Quil-is-ad	Annie		37	" "	B. C.	Wife	"	"	"	Quil-al-tektum				Dr. Joe's wife went to her people
248		Joseph		17	" "	"	Son	Single			Doctor Joe	246	Annie	247	in B.C. nearly two years ago and
249		Andrew		11	" "	"	"	"			"	246	"	247	to visit her children with
250		Edmond		6	" "	"	Daughter	"			"	246	"	247	her and has not yet returned.
251		William		3	" "	"	Son	"			"	246	"	247	
252	(Ambrose)	~~Camille~~		2	" "	"	~~Daughter~~ Son	"			"	246	"	247	June 25/01
253	Quil-ka	Watchman	Quallka or Watchman	59	Full Blood	Snoqualmie	Head	Married	About 1860	Catholic Priest	Tes-lite-sis		Whe-at-qual		Died Aug. 4, 1904
254		Marcha	Marcha	59	" "	"	Wife	"	"	"	Se-y-dut		Tsche-tolk-tsche		died Aug. 11, 1904
255	Quel-tis-ma	Sullivan		81	Full Blood	Straits	—	Widower	Sullivan is old and decrepit, it is not practically to get at statistics concerning his marriage, further than to say he is a relative of and resides with John Dominic. No. 170.						
256	Sit-pensel	Mary Gilpinsel	Mary (McCoy)	70	Full Blood	Snoqualmie	Head	Widow	About 1860	Catholic Priest	Se-y-dut		Tsche-tolk-tsche		Lived with Jim Sual-a-kah
257	Bach-kah-hud	Tom		71	Full Blood	Straits	Head	Married	About 1870	Catholic Priest	Unknown		Unknown		
258	Shal-chal-mud			66	" "	"	Wife	"		"	"				

255	Sual-ka-mu	Unknown					Skagit	—	Widower	Sullivan is old and decrepit, it is not practicable to give all statistics meaning his marriage, parentage, etc. He is a relative of and resides with John Samuel. No. 170.			
256	Sil-pensa	Mary Gilpinsel	Mary (~~McCoy~~)	70	Full	Blood	Swinomish	Head	Widow	About 1860	Catholic Priest	Se-y-dut	Tsche-tolsta-lu	Lives with Jim Sual-a-kah.
257	Baich-kah-hud	Tom		71	Full	Blood	Skagit	Head	Married	About 1870	Catholic Priest	Unknown	Unknown	
258	Thal-that-smul			66	"	"	"	Wife	"	"		"	"	
259	Dill-ha-dim	Tom Martin		73	Full	Blood		Head	Married	About 1894	Catholic Priest			Not on Reservation at this time. Form 30 of 1. Address Marysville, Wash.
260	Sair-ull			57	"	"		Wife	"					
261		George Barchouse	George Barchouse	41	½	Blood	½ Swinomish	Head	Married	1890	Justice of Peace	H. C. Barchouse	Julia	George Barchouse does not live on his allotment. His home is near Tulalip a few miles north of the Reservation at this writing June 25/9
262		Andrea		36	White		White	Wife	"	"	"	Orney	Unknown	
263		Ernest		11	"		"	Son	Single			George Barchouse 261	Andrea	262 Their address is Marysville
264		Archie		8	"		"	"	"			" " 261	"	262 Wash. near Tulalip Reservation
265		John Napoleon		40	Full	Blood	Swinomish	Head	Married	About 1893				Has not lived on Reservation for
266		Katie Jane		27	"	"	"	Wife	"	"				several years. His present P.O.
267		Hazel		7	"	"	"	Daughter						address is Lyman, Wash.
268		George Breathen	George Breathen	51	Full	Blood	Tulalip	Head	Married					George Breathen has an allotment on this Reservation, but at
269		Isabelle		36	"	"	"	Wife	"					present is living on Tulalip Reservation
270		Joe Morrison		50	Full	Blood	Skagit	Head	Married		Indian Custom	Unknown	Cir-ah-lus	Joe and his squaw are veritable nomads. They have no permanent
271		Susie		55	"	"	"	Wife	"			Died	Unknown	home, but belong to this Reservation.
272		Timothy Bob		27	Full	Blood	Skagit	Head	Married	About 1894	Catholic Priest	Billy Bob	Unknown	
273		Lilly		23			"	Wife	"		"	Joseph Sampson 210	Susie	211 Died May 12, 1910.

Page 8 - Bottom

REGISTER OF INDIAN FAMILIES, Tulalip Agency, Swinomish Reservation

No. of Family	Indian Name	English Name	Name on Allotment Roll	Age	Blood or Nationality	Tribe or Allegiance by Citizenship	Relation to Family	Married, Single, Widow, Widower, Divorced	Date of Marriage	How Married
245	Bar-Wil-ka-dum	John	John Tow-wil-ka-dum	61	Full Blood	Swinomish	Head			
246		Lucy		35	" "	B. C.	Wife	Married	About 1885	Lack Priest
247		Oscar		12	" "	"	Daugh			
248		Salome	Died at Tulalip School Feb. 16, 1909.	8	" "	"	"	Single		
249		Samuel		6	" "	"	Son			
250										
251	Bal-la-ka-dum	Doctor Joe	John Sq-lah-ka-dum	56	Full Blood	Swinomish	Head			
252	Paul-ca-ne	Annie		37	" "	B. C.	Wife	Married	1889	Lack Tu
253		Joseph		17	" "	"	Son			
254		Andrew		11	" "	"	"	Single		
255		Emma		6	" "	"	Daugh			
256		William		3	" "	"	Son			
257	(Ambrose)	~~Lucille~~		2	" "	"	~~Daugh~~ Son			
258										
259	Quell-ka	Watchman	Quell-ka or Watchman	59	Full Blood	Swinomish	Head			
260		Marcha	Marcha	59	" "	"	Wife	Married	About 1860	Lack
261										
262	Paul-ka-one	Sulioan		81	Full Blood	Skagit		Widower		Sulloa
263	Gil-pone	Mary Gilpone	Mary (McCoy)	70	Full Blood	Swinomish	Head			
264	Pach-kah-hud	Tom		71	Full Blood	Skagit	Head	Widow	About 1860	Lack
265				66	" "	"	Wife	Married	About 1890	Lack
266										
267	Dill-ka-dum	Tom Martin		73	Full Blood		Head			
268	Sair-all			57	" "		Wife	Married	About 1894	Lack
269										
270		George Barthomew	George Barthomew	41	Fr Blood	Not Swinomish	Head			
271		Anna		36	White	White	Wife	Married	1890	Justu
272		Ernest		11	"	"	Son			
273		Arthur		8	"	"	"	Single		
274										
275		John Napoleon		40	Full Blood	Swinomish	Head			
276		Katie Jane		27	" "	"	Wife	Married	About 1893	
277		Hazel		7	" "	"	Daugh			
278										
279		George Breachend	George Breachend	51	Full Blood	Tulalip	Head	Married		
280		Isabelle		36	" "	"	Wife	"		
281										
282		Joe Morison		50	Full Blood	Skagit	Head	Married		Jus
283		Susie		55	" "	"	Wife	"		
284										
285		Timothy Bob		27	Full Blood	Skagit	Head	Married	About Apr	Lac
286		Lilly		23	" "	"	Wife	"		

Marriage Number	Date of Marriage	Place of Marriage	Name of Husband	No. of Card Husband	Name of Wife	No. of Card Wife	Remarks
Married	About 1888	Catch Priest	Tom Abel		Jennie Abel		
"			Capt Jim Abel		Unknown		Died Nov. 28, 1908
"			Jim Abel Sr.	2001	Lizzie	2001	Long period to read the people
"			"	2001	"	2001	on Bl. were about as good age and
"			"	2001	"	2001	has not yet returned the box. but
							daughter Johnson wrote in June 1907
Married	1890	Catch Priest	Benjy Abel				
"			Frank Abel		Jackie Abel		
"			Doctor Joe	2006	Annie	2007	Died Aug. 21, 1909.
"			"	2006	"	2007	Dr. Joe's wife would like her pension
"			"	2006	"	2007	on Bl. nearly two years ago and
"			"	2006	"	2007	from time of her absence until
"			"	2006	"	2007	she and her not yet returned
"			"	2006	"	2007	June 25/10
Married	About 1860	Catch Priest	Tom Lake		Hilaire Lake		Died Aug. 9, 1904
"			Benjy Abel		Jackie Lake		Died Aug. 11, 1904
Widower		Southern Indian					
Married	About 1860	Catch Priest	Benjy Abel		Jackie Lake		Lives with Jim Lake at Kak
Married	About 1890	Catch Priest	Unknown		Unknown		
"			"				Not on Reservation at this time
"							Jerry 2/10/1. Address Coupville, Wash
Married	1890	Justice of Peace	H. C. Bartholomew		Julia		
Single			Oney		Unknown		George Bartholomew does not live on
"			George Bartholomew	261	Anna	262	his allotment but lives on real
"			"	261	"	262	Indian fee within north of the
							Reservation at this writing June 1910
							His address is Marysville
							Wash. near Tulalip Reservation
Married	About 1890						
"	"						Has not lived on Reservation for
							several years. His present P.O.
							address is Lynnwood, Wash.
Married							
"							George Dougelum has an allot-
							ment on the Reservation but at
							present is living on Tulalip Reservation
Married		Indian Customs	Unknown		Oir ah hue		Jim and his squaw are veritable
"			Dick		Unknown		nomads. They have no permanent
							home but belong to the Reservation
Married	About 1890	Catch Priest	Billy Bob		Unknown		
"			Joseph Dampson	210	Susie	211	Died May 12, 1910.

Tulalip Indian Agency, Wash.,

Swinomish Reservation,

For the month of February, 1915.

MAR 1 REC

REPORT OF BIRTHS

Date	Names of Parents	Name of Child	Sex	Ind. Bld.	Tribe
3026 7th	Alexis Edge Emily Edge	Ida Frances	F	Full B.	Swinomish

REPORT OF DEATHS

Date	Name	Age	Sex	Ind. Bld.	Tribe	Cause of Death
3rd	George Barkhausen	53	M	½	Clallam	Bright's Disease.

Alexander B. Roscoe

Farmer in Charge.

State of Washington.
County of Snohomish.

I, Otto Henry Barkhausen, being first duly sworn, depose and say that I am an Indian of the quarter-blood, belonging to the Clallam tribe of Indians of western Washington.

That I was born on October 11, 1893.

Father. That my father was George Barkhausen, a half-blood Clallam Indian, son of Henry Barkhausen, white, and Julia Barkhausen, full-blood Clallam Indian, living. P.O.address, Anacortes, Wash., Route 2. My father was born about 1862, and died on Feb. 5, 1915. For his history and the family history of my grandmother, Julia Barkhousen, I hereby refer to affidavit signed by her.
My father married Audrey Omeg, white woman, about the year 1891. She is a white woman, still living, at Summit, Wash.
I have one brother, Ernest G.Barkhausen, born August 24, 1891. He is single, and lives with my mother at Summit, Wash.

Marriage. I was married on July 3, 1916, at Everett, Wash., to Hazel Bowen, a white woman, with whom I am now living. We have no children.

That neither I, nor my brother, ~~and my father~~, nor my grandmother, ever received any land or benefits from the United States Government; and that I hereby make application that my brother, Ernest G.Barkhausen, and I be enrolled with the Clallam tribe of Indians and receive benefits with said tribe.

Otto Henry Barkhausen

Subscribed and sworn to before me this 12 day of May 1918.

W. W. Massey
Notary Public for Washington.

P.O.Address. Otto Henry Barkhausen.
Everett, Wash.
2915 Nassau St.

P.O.Address. Ernest G.Barkhausen.
Summit Park, Wash.

Schedule of Unenrolled Indians. Clallam Tribe.
January 1, 1919.

Name	Blood	P.O.Address.
Adams, Richard S.	1/2	Port Townsend, Wash.
Eliza Allabush	Full	Neah Bay, Wash.
Julia Seahome-Fitzhugh-Barkhausen	Full	Anacortes, Wash.
Julia ~~Reed~~ Fitzhugh-Reed	3/4	Port Townsend, Wash.
Ten Children	3/8	
(George Barkhausen deceased.	1/2)	
Ernest G.Barkhausen	1/4	Summit Park, Wash.
Otto Henry Barkhausen	"	Everett, Wash.
Maria Barkhausen-McGibbons	1/2	LaConner, Wash.
Walter McGibbons	1/4	
Isabelle McGibbons-Brewer	"	
Arthur McGibbons	"	
Frederick McGibbons	"	
William McGibbons	"	
Eva Marie McGibbons	"	
Belle Barkhausen-Matters	1/2	Anacortes, Wash.
May Matters-LaFleur	1/4	" "
Blanche Matters	"	" "
Helen Matters	"	" "
Julia Matters	"	" "
Pearl Matters	"	" "
Henry Barkhausen	1/2	Fidalgo Island, Wash. Anacortes, Wash.
Fred Barkhausen	"	Firdale, Wash.
Louise Barkhausen-Chatfield	"	Summit Park, Wash.
John Henry Chatfiled	3/8	" "
Wayne Wesley Chatfiedl	"	" "
Marion Marshall Chatfiedld	"	" "
Daniel Barkhausen	1/2	Anacortes, Wash.
June Rose Barkhausen	1/4	" "
James Daniel Barkhausen	"	" "
Freda A.Barkhausen	"	" "
Alice Louella Barkhausen	"	" "
Margaret Barkhausen	"	" "
Daniel Bracken	1/2	New Castle, Colorado
Charles Bracken	"	
Edward Bracken	"	
Thomas Bracken	"	
Matilda Bracken-Webber	"	Port Townsend, Wash.
Anna Weber	1/4	" "
Florence Weber	"	" "
Grace Weber	"	" "
Carl Weber	"	" "

INDIAN AFFAIRS RECEIVED FEB -8 1919 11837

Barkhausen Family

Taholah Indian School.
Taholah, Washington.
December 20, 1918.

OFFICE OF INDIAN AFFAIRS
RECEIVED
FEB -8 1919
11837

I hereby certify that the attached applications of Julia Barkhausen and the members of her family for adoption by the Indians of the Quinaielt Indian Reservation, Washington, was presented by me at a meeting of the Quinaielt Indian Tribal Council, held at Taholah, Washington, on December 18, 19 and 20, 1918; and that the said applications ~~was~~ were unanimously rejected by the said Quinaielt Tribal Council.

Chas E Roblin
Special Indian Agent.

Full Blood

Julia Barkhausen 2/15/17
Quaartes Route 2
about 72 yrs old - at Clallam
in Jefferson Co. —

Father Sehome — dead - Full blood
Clallam Indian — an old time
Chief of the Clallam Indians —

Mother - T'si's-Wah-use — dead
Full blood Clallam

Married — — Fitzhugh - white
man - in Bellingham - ~~and~~
white man now. —
1 Child. Julia Reed - Liv
in Port Townsend or in
Dungeness — about 60 yrs old -
Married - Charles Reed white -
Ten children —

Married to Henry Barkhausen -
87 yrs old. living - Born 1835
white — R.F.D. 2 Quaartes —
Married about 55 yrs ago.
at Mt Vernon — Legally married.
6 Children living —

George Barkhausen - 54 yrs
living - dead. — Feb 3. 1915 -
Married 26 yrs ago.
Audrey Owen! white woman
living

2 children. Ernest B. - Aug 24 - 91
Otto Henry B. Oct 11 - 1893.

Audrey B. lives at Dunnigan Park of Wn - Ernest lives with mother - Quigley —
Otto is married.

Otto Bankhouse married.
July 3 - 1916 - Everett.
to Hazel Bowen, white,
20 yrs old.
no children

P.O. 2915 Nassau St
Everett Wn

Maria B. McGibbons has
2 children - See her
history obtained at Stanwood

Belle B. Matters. - June 8 1870
at Fidalgo Wn.
P.O. Old. Anacortes, Wn

Married January 15 - 1892 - Fidalgo
by Judge Pelace. - Thomas Matters
white man - 54 —
children —
May ~~Roy~~ Matters Lafever Anacortes RD 2
June 22 - 1893 - Anacortes
married - Nov 21 - 1914 at

Anacorte Mission -
Just Harry Lafleur - 27
white man -
No children

Blanche Matters - Sept 14 1895 - Fidalgo.
Single.
Julia M Matters Aug 14 - 1898 Fidalgo
Single.
Helen Matters Mar 22 - 1903 - Fidalgo
single -
Pearl Matters Sept 20 - 1915 Fidalgo

Live on Fidalgo Island.
P.O. Anacortes R.F.D. 2

Have of their children went to
Grade School.
Live on farm owned by
Husband.

Henry Bankhouser - Living - about
45 years old - Fidalgo Island.
Single - no children

Fred Bankhouser Living about
43 - Fidalgo.
Married wife living - married.
about 1909 - Seattle.
Carrie Newberry - older than
Fred. about 50 - Just Peace
white woman - no children

P.O. Anacortes R.D. 2

Louise Barkhouse Chalfield.
June 21 - 1880 - Fidalgo -

Married Oct 21 - 1901 - Bellingham
J.F. John Chalfield. 1/4 Blood
Indian - Klickitat -
Lettie J. Archer, part Indian
Blood. — 1/2 Bl. Klickitat -
Moth. Sarah - Sylvan Chal-
field - Clark - McKerr. - Pullet
White - woman. —
John Chalfield is living Nov 24 - 1881
3 children. —

John Henry Chalfield Dec 8. 1902
Wayne Wesley Mar 7 - 1909
~~Marion Marshall~~ July 17 1912
Marion Marshall born in Bellingham
John and Wayne born at Fidalgo -
Lives on Fidalgo Island. - on land
Own

Daniel Barkhouse July 4 - 1884
Fidalgo Island.
P.O. Anacortes R.F.D 2
Married Nov 4 - 1907 - Vancouver B.C.
Minnie —
Lela Crandall, 26 White.
Living -
3 children —

Daniel Backhouse Cont'd. -
June Rose B. June 1-1908
James Daniel Feb 28-1910
Freda A. July 18-1912
Alice Lonella May 28-1914
Margaret Mar. 27-1916
All Born on Tulalip Island
Live on corner of father's place -

Julia Backhouse has two sisters -
Ruth Shelton - On Lulalip Reservation # 360 Lulalip.
Sarah Ochan # 332 Lummi
These are full sisters of Julia -

Maria McGibbons 1/2 2/7/17
P.O. La Conner Wn
Born Fidalgo - near Anacortes
June - 1866 -

Father Henry Barkhousen. White.
Living in Summit Park -
(Fidalgo).

Mother Julia - Q.Y. - ayo a cortes -
Living with Henry B.
about 75 or 80 yrs old. -
Full blood Clallam. -
Father was a chief of Sea-horse.
Mother unknown -
Mother came to Bellingham
from Clallam County and
was married in Bellingham.
married about 55 or 56 yrs
ago. Oldest brother was 54 at
death Feb 5 - 1915.

Bro - List. Fred Barkhousen -
P.O. add. ~~Fidalgo~~. Dody. Wn
Married white woman no
children.

Henry Barkhousen. Lives
at Port Angeles. Single. No
children.
Daniel Barkhousen Lives
at Summit Park. Fidalgo.
White wife 5 children

Sisters
Louisa Chalfield - wife of
John Chalfield. — Lives at
Summit Park, Hidalgo Co.
P.O. Alvarado. — 3 Children
Chalfield is 1/4 Indian. —
3 children —
Belle Matters wife of Thomas
Matters white. Lives at
Hidalgo. - 15 children

Married Allan McGibbons
White — Living.
Married at Lakemor
Mar 17 - 1888 - Justice Peace
6 children

1 Walter McGibbons Feb 6th 1889
Isabelle, wife of Earl Brewer
Jany 11 - 1891 -
Allan McG. May 3 - 1892
Frederick " Apl 9 - 1901
William " ~~July~~ June 29 - 1908
Eva Marie " Aug 11 - 1910

All born in Lakemor except
Allan - born in Hidalgo.

Have got any land our mother
has. Just have one in Lakemor
no land. Many never
attended Indian School.

See my Page

Mary McGibbons.

Walter, Isabelle and Allan went to Chemawa came home 8 yrs ago was there 4 yrs.

Walter & Isabelle went to Puyallup 2 yrs before going to Chemawa

Puyallup 2 yrs
Chemawa 4 "
Home 8 yrs ago.

Clallam

{ Sehome - Full Clallam
Isiswahlnse Full Clallam } dog

Julius Barkhausen Full Clallam - Born at Clallam
Anacortes Route 2 about 1845 (75 or 80 yrs old in 1917)

Married - Fitzhugh, white
one child
Julia Fitzhugh Reed, 1/2 Clallam (about 60 yrs old ? not taken 3/15/17)
Married Charles Reed, white man. Lives at
Port Townsend or Dungeness. Ten children -

Married about 1862 at Mount Vernon Wn Legally
to Henry Barkhausen, white, born 1835 - Living -
six children living

(1) George Barkhausen 1/2 Clallam, born 1862 died
July 3 - 1915
Married about 1891 to Audrey Omey - white -
Living
2 children

See Snohomish Census
Summit Park Wn Ernest G. Barkhausen 1/4 Aug 24 - 1891 - Single
Everett Wn Otto Henry " " 1/4 Oct 11 - 1893 - Married
See Snohomish Census
Audrey Barkhausen + Ernest live at
Summit Park Wn

Otto Henry Barkhausen 1/4 lives at
2915 Nassau St Everett Wn
married July 3 - 1916 at Everett
Hazel Bowen - white - No children

(2) Maria Barkhausen McGibbons 1/2 Born Fidalgo near Anacortes
P.O. La Conner Wn June - 1866
Married at La Conner Mar 17 - 1888 by Just Peace. to
Allan McGibbons, white - living.
6 Children
1 Walter McGibbons 1/4 Feb 6 - 1889 Born La Conner
2 Isabelle McG. Brewer 1/4 Jan 11 - 1891 - wife of Earl Brewer Born La C.
3 Allan McGibbons 1/4 May 3 - 1892 born Fidalgo Island
4 Frederick " 1/4 Apr 9 - 1901 " La Conner
5 William " 1/4 June 29 - 1908 " "
6 Eva Marie " 1/4 Aug 11 - 1910 " "

Barkhausen Conto 2

(3) Belle Barkhausen Matters 1/2 born June 8-1870 at Fidalgo Wn
P.O. Anacortes # 2
married January 15-1892 at Fidalgo justice Thomas Matters - white 54 yrs old.
5 Children
1 May Matters La Fleur 1/4 P.O. Anacortes # 2 born June 22 1893
married Nov 21-1914 at Anacortes by min. to Henry La Fleur - white 27 - no children -
2 Blanche Matters 1/4 Sept 14-1895 at Fidalgo Single
3 Helen " 1/4 Mar 22-1903 " "
4 Julia " 1/4 Aug 14-1898 "
5 Pearl " 1/4 Sept 30-1915

(4) Henry Barkhausen 1/2 about 1872 Living on Fidalgo Do. Single
5) Fred Barkhausen 1/2 about 1874 Living at Fidalgo
married about 1909 at Seattle to Carrie Newberry - white - older than Fred. No children
6) Louise Barkhausen Chatfield 1/2 Lives on Fidalgo P.O. ~~Anacortes~~ Summit Park Wn June 21-1880 at Fidalgo.
married Oct 21-1901 at Bellingham by J.P. to John Chatfield.
Klickitat Indian 1/4 blood. Living
3 children
1 John Henry Chatfield 3/8 Dec 8-1902 at Blaine Wn
2 Wayne Wesley " 3/8 Mar 7-1907 "
3 Marion Marshall 3/8 July 17-1912 "

(2) Daniel Barkhausen 1/2 July 4-1884 Fidalgo Island P.O. Anacortes # 2
married Nov 4-1907 Vancouver B.C. Minister Lila Crandall 26 white Living
5 children
1 June Rose Barkhausen 1/4 June 1-1908
2 James Daniel " 1/4 Feb 28-1910
3 Freda A " 1/4 July 18-1912
4 Alice Lonella " 1/4 May 28-1914
5 Margaret " 1/4 Mar 27-1916
} on Fidalgo Island

Julia Barkhausen
Full Clallam
Anacortes Wash
Rte # 2

State of Washington.
County of Skagit.

I, Julia Barkhausen, being first duly sworn, depose and say that I am an Indian of the full-blood, belonging to the Clallam tribe of Indians.

That I was born at Clallam, Jefferson Co., Wash., about 1840 or 1841.

Father. That my father was named Sehome, or Sea-home, and was an oldtime chief of the Clallam Indians. He died many years ago. He was a full-blood Indian.

Mother. That my mother was Tsis-wahl-use, a full-blood Indian and a member of the Clallam tribe of Indians. She is dead.

Marriage. That I was married to Henry Barkhausen, a white man, born in 1835, and still living. That we were married legally about 1862, at Mount Vernon, Skagit Co., Wash., and are still living together.

That my marriage to Henry Barkhausen was my second marriage. My first marriage was to ____Fitzhugh, a white man. We were married at Bellingham, Whatcom County, Wash. legally.

Children. That I have one child, living, from my first marriage, named Julia Fitzhugh Reed, now about sixty years of age. She is the wife of Charles Reed, white man, and lives at Port Townsand, Jefferson Co., Wash., or in Dungeness, Clallam Co., Wash. She has ten children.

That I have six children, living, from my second marriage, as follows:-

Maria Barkhausen McGibbons, born June, 1866, at Fidalgo, Skagit Co., Wash. She is married to Allan McGibbons, white man, and lives at LaConner, Skagit Co., Wash. She has six children.

Belle Barkhausen Matters, born June 8, 1870, at Fifalgo, Skagit Co, Wash. She is matried to Thomas Matters, white man, and lives in Skagit Co., Wash. She has five children.

Henry Barkhausen, born about 1872. Lives at Fidalgo, Wash. He is single, and has no children.

Louise Barkhausen Chatfield, born June 21, 1880, at Anacortes, Skagit Co., Wash. She is married to John T.Chatfield, a quarter-blood Indian of the Klickitat tribe of Indians, She has ~~five~~ three children.

Daniel Barkhausen, born July 4, 1884, at Fidalgo, Skagit Co., Wash. P.O.Anacortes, Route No. 2. He is married, and has five children. See second Page for Fred Barkhausen, son.

Woman living Rd # 48

I had another son by my second marriage, George Barkhausen, born in 1862. He died on Feb,3, 1915. He was married about 1891 to Audrey Omeg, a white woman, still living, at Summit, Skagit Co., Wash. He left two children, now living, as follows:-

Ernest G.Barkhausen, born August 24, 1891. Lives with his mother. Single.

Otto Henry Barkhausen, born Oct. 11, 1893. He was married on July 3, 1916, at Everett, Wash., to Hazel Bowen, a white woman. He has no children. P.O.address, 2915 Nassau St., Everett, Wash.

That neither I nor any of my children nor grandchildren has ever received any land or other benefits from the United States Government.

That my grandchildren, not mentioned above, are as follows:-

Julia Barkhausen. Affidavit. W. 2.

Children of Maria Barkhausen McGibbons.
Walter McGibbons, born Feb.6, 1889, at LaConner, Wash.
Isabelle McGibbons Brewer, born Jan.11, 1891. at LaConner, Wash.
Wife of Earl Brewer.
Allan McGibbons, born May 3, 1892, at Fidalgo, Wash.
Frederick McGibbons, " Apr. 9, 1901, at LaConner, Wash.
William McGibbons " June 29, 1908, " " "
Eva Marie McGibbons, " Aug. 11, 1910, " " "
Children of Belle Barkhausen Matters.
May Matters LaFleur, born June 22, 1893, at Anacortes, Wash.
Wife of Henry LaFleur, white man. P.O., Anacortes, Route 2.
Blanche Matters, born Sept.14, 1895, at Fidalgo, Wash. Single.
Helen Matters, " Mar. 22, 1903, " " " "
Julia Matters, " Aug. 14, 1898, " " " "
Pearl Matters, " Sept.30, 1915, " " "
Children of Louise Barkhausen Chatfield.
John Henry Chatfield, born Dec.8, 1902, at Blaine, Wash.
Wayne Wesley Chatfield, " Mar.7, 1907, " " "
Marion Marshall Chatfield, born July 17, 1912, at Blaine, Wash.
Children of Daniel Barkhausen.
June Rose Barkhausen, born June 1, 1908, at Fidalgo, Wash.
James Daniel Barkhausen, " Feb.28, 1910, " " "
Freda A.Barkhausen, " July 18, 1912, " " "
Alice Louella Barkhausen, " May 28, 1914, " " "
Margaret Barkhausen, " Mar. 27, 1916, " " "

That I hereby make application that I and my children and my grandchildren be enrolled with the Clallam tribe of Indians and receive benefits with said tribe.

her
Julia X Barkhausen
mark

Witness
W. W. Beard
Julia Matters.

Subscribed and sworn to before me this 13 day of April 1918.

W. W. Beard
Notary Public for Washington.

Notary Public in and for the State of Washington, residing at Anacortes, Wash.

P.O.Address.
Anacortes, Wash.
Route No.2.

Postscript. Affiant, Julia Barkhausen, further states that another son was omitted from the list in above affidavit, to-wit:- Fred Barkhausen, born about 1874, at Fidalgo, Wash. That he was married in Seattle, Wash., about 1909, to Carrie Newberry, white woman, by a Justice of the Peace. Has no children.

her
Julia X Barkhausen
mark

1

Territory of Alaska.

~~State of Washington.~~
~~County of Skagit.~~

I, Daniel Barkhausen, being first duly sworn depose and say that I am an Indian of the half-blood, belonging to the Clallam tribe of Indians of western Washington.

That I was born at Fidalgo, Skagit County, Wash., on July 4, 1884.

Father. That my father is Henry Barkhausen, white man, living.

Mother. That my mother is Julia Barkhausen, an Indian of the full-blood, living, belonging to the Clallam tribe of Indians of western Washington. For her history I hereby refer to an affidavit signed by her.

Marriage. That I was married at Vancouver, B.C., by a minister, on November 4, 1907, to Lela Crandall, a white woman, about 27 years of age, still living.

Children. From this marriage I have five children, as follows:-

June Rose Barkhausen,	born June 1, 1908,	at Fidalgo,	Wash.
James Daniel Barkhausen,	" Feb.28, 1910.	"	"	"
Freda A.Barkhausen,	" July 18,1912.	"	"	"
Alice Louella Barkhausen,	" May 28, 1914.	"	"	"
Margaret Barkhausen,	" Mar.27, 1916.	"	"	"

That neither I, nor any of my children, nor my mother, ever received any land or other benefits from the United States Government, and I hereby make application that I an my children be enrolled with the Clallam tribe of Indians and receive benefits with that tribe.

Daniel Barkhausen

Subscribed and sworn to before me this 18 day of May 1918.

S J Kane. for Alaska
Notaty Public ~~for Washington.~~
My Commission Ex pires July 8/1919

P.O.Address.
Anacortes, Wash.
Route No.2.

State of Washington.
County of Skagit.

I, Ernest G.Barkhausen, being first duly sworn depose and say that I am an Indian of the quarter-blood, belonging to the Clallam tribe of Indians of Western Washington.

That I was born on August 24, 1891.

Father. That my father was George Barkhausen, a half-blood Clallam Indian, son of Hnery Barkhausen, white, and Julia Barkhausen, a full-blood Clallam Indian, living. P.O.Address, Anacortes, Route No.2. My father was born about 1862 and died on Feb.3, 1915. For his history, and the family history of my grandmother, Julia Barkhausen, I hereby refer to an affidavit signed by her.

That I am not married and have no children.

That my father married Audrey Omeg, a white woman, about the year 1891. That from this marriage two children are living, affiant, Ernest G.Barkhausen, and my brother, Otto Henry Barkhausen.

That neither I, nor my brother, nor my father, nor my grandmother, ever received any land or other benefits from the United States Government; and I hereby make application that I be enrolled with the Clallam tribe of Indians, and receive benefits with said tribe.

_____

Subscribed and sworn to before me this day of 1918.

_____
Notary Public for Washington.

P.O.Addres.
.....

State of Washington.
County of Skagit. I, Fred Barkhausen, being first duly sworn, depose and say that I am an Indian of the half-blood, belonging to the Clallam tribe of Indians, of western Washington.

That I was born at Fidalgo, Wash., on 1874

Father. That my father is Henry Barkhausen, white man, living.

Mother. That my mother is Julia Barkhausen, a full-blood Indian belonging to the Clallam tribe of Indians of western Washington.

Marriage. That I was married at Seattle, Wash., by ~~a Justice of the Peace~~ Minister, on Sept. 1910 to Miss Carrie Newberry, a white woman. That we have no children.

That neither my mother nor I ever received any land or other benefits from the United States Government; and I hereby make application that I be enrolled with the Clallam tribe of Indians and receive benefits with said tribe.

Fred Barkhausen sign F

Fred Barkhausen

Subscribed and sworn to before me this 19 day of April 1918.

Gus F. Thacker

Notary Public for Washington.

P.O. Address.
Fidalgo ~~Anacortes~~, Wash.
Route No. 2.

/

State of Washington.
County of Skagit.

I, Henry Barkhausen, being first duly sworn, depose and say that I am an Indian of the half-blood, belonging to the Clallam tribe of Indians of western Washington.

That I was born at Fidalgo, Wash., on March 24, 1872

Father. That my father is Henry Barkhausen, white man, living.

Mother. That my mother is Julia Barkhausen, a full-blood Indian belonging to the Clallam tribe of Indians. For her history I hereby refer to an affidavit signed by her.

That I am not married and have no children.

That neither my mother nor I have ever received any land or other benefits from the United States Government; and that I hereby make application that I be enrolled with the Clallam tribe of Indians and receive benefits with said tribe.

Henry Barkhausen age 3

Henry Barkhausen

Subscribed and sworn to before me this 11th day of May 1918.

William F. Raymond
Notary Public for Washington.
Residing at Clallam Bay

P.O. Address.
Anacortes, Wash.
Route 2.

- - - - - - - - - - - -

Apr. 30. 1918.

Mr. Chas E Roblin, Spl. Ind. Agt.,
Tacoma, Wash.

Dear Sir:

I am writing you in behalf of my husband, Otto H. Barkhausen, who received an application blank for enrollment with the Clallam tribe of Indians from you some time ago. He doesn't know what to do about it as in the applecation he is to swear that neither he

nor his brother, father or Grand mother ever received land or benefits from the Government.

His father, George Barkhausen did receive land some twenty five or Thirty years ago. My Husband wishes to know, if he and his brother Ernest Barkhausen, being Quarter blood Indians of the Clallam Tribe, are entitled to Land or benefits.

Respectfully, Mrs Otto Barkhausen
2910 Nassau, Everett
Wash.

Tacoma, Washington.
403 California Building. May 2, 1918.

Mrs. Otto Barkhausen,
2915 Nassau St.,
Everett, Wash.

Madame:-

Your letter of April 30 is received.

In reply I will state that I have not been advised before that either George Barkhausen or any others of the children of Julia Barkhausen received any land from the Government.

If the land which George Barkhausen got was an Indian allotment, given to him by the Government because of membership in an Indian tribe, then the affidavit I prepared for Otto to sign is wrong. But if the land was a homestead, taken up by George Barkhausen and proved up by him the same as by any other American citizen, after five years residence, etc., then the affidavit is all right and Otto can sign it with a clear conscience.

The "Land" which I meant when I prepared the affidavit is an Indian allotment, and does not have reference to a homestead.

Please find out whether George Barkhausen's land was an allotment or a homestead, and then advise me in the matter.

If it was a homestead, Otto should sign the affidavit, acknowledge it before a Notary, and send it to me.

If it was an Indian allotment, then he should cross out the words "nor my father", and then sign it and send it to me.

I cannot answer your question as to whether Otto and Ernest are entitled to lands or other benefits. All I am doing is to make an enrollment of all Indians in western Washington who are not now enrolled at any of our Agencies. The matter of their rights will be determined at Washington. The degree of Indian blood is not the deciding question. A person of one-sixteenth, or one-thirty-second, Indian blood, or even a white person with no Indian blood, would have the same right as a full-blood Indian, provided he could show that he was a recognized member of a tribe. Of course the right only extends to the property which the tribe owns. If the tribe to which he belongs does not own any property, his "right" would not do him any good.

Yours very truly,

CER. Special Indian Agent.

Ex. 2 to Slonim Response

State of Washington.
County of Snohomish.

I, Otto Henry Barkhausen, being first duly sworn, depose and say that I am an Indian of the quarter-blood, belonging to the Clallam tribe of Indians of western Washington.

That I was born on October 11, 1893.

Father. That my father was George Barkhausen, a half-blood Clallam Indian, son of Henry Barkhausen, white, and Julia Barkhausen, full-blood Clallam Indian, living. P.O.address, Anacortes, Wash., Route 2. My father was born about 1862, and died on Feb. 3, 1915. For his history and the family history of my grandmother, Julia Barkhousen, I hereby refer to affidavit signed by her.
My father married Audrey Omeg, white woman, about the year 1891. She is a white woman, still living, at Summit, Wash.
I have one brother, Ernest G.Barkhausen, born August 24, 1891. He is single, and lives with my mother at Summit, Wash.

Marriage. I was married on July 3, 1916, at Everett, Wash., to Hazel Bowen, a white woman, with whom I am now living. We have no children.

That neither I, nor my brother, ~~nor my father~~, nor my grandmother, ever received any land or benefits from the United States Government; and that I hereby make application that my brother, Ernest G.Barkhausen, and I be enrolled with the Clallam tribe of Indians and receive benefits with said tribe.

Otto Henry Barkhausen

Subscribed and sworn to before me this 13 day of May 1918.

J. W. Norman
Notary Public for Washington.

P.O.Address. Otto Henry Barkhausen.
Everett, Wash.
2915 Nassau St.

P.O.Address. Ernest G.Barkhausen.
Summit Park, Wash.

Everett, Wash.
May 13, 1918

Mr. Chas E. Roblin, Spl. Ind. Agt.
Tacoma Wash.

Dear Sir:

Enclosed you will find the affidavit, which my husband, Otto Barkhausen has signed, and in regard to the land claimed by his father George Barkhausen will say, it was not a homestead, but an Indian allotment No. 48 on the Swinomish Indian Reservation, Wash. containing

80 acres, and was alloted to him on April the 1st 1885, records are filed in the Office of Indian Affairs, Wash. D.C., and at Tulalip Indian Agency, Tulalip, Wash.

Thanking you I am

Mrs. Otto Barkhausen
2910 Nassau St.

STATE Of WASHINGTON)
)SS:
COUNTY Of WHATCOM)

WE; the undersigned; John T. Chatfield an Indian of the quarter-blood; and Mrs Louesa Chatfield; husband and wife; here-by make applications for enrollment and allottment for ourselves and for our three monor children on the Quinaielt Indian Reservation;

Now comes John T. Chatfield who certifies that he is an Indian of the Quarter-blood; his FATHER being an Indian of the half-blood, he was born he was born near Rock Creek; Kittitat County; Wash; his mother (my grand-mother on my father's side was an Indian of the full-blood and a member of the Klickitat Indians and a member there duly enrolled there. My father died at Klickitat, when I was real small, June 1883 I was born on the on the 24 day of Nov. 1881, and am a farmer by ocupation, now comes Mrs Louese Chatfield; who certifies that I am an Indian of the half-blood; that I was born on the 21 day of June 1881, at Anacortas; Wash; and that my mother was named Julia Ethome and she was an Indian of the full-blood; she was a member of the Lummi Tribe of Indians and a duly enrolled member there, and was born at Fidalgo-Skaget County; Wash; but was always called a Lummi Indian.

My name befor- marriage was Louise Barkhousen; on the 21st, day of Oct 1901, we married at Bellingham; Wash, and to this union were born three children; their dates of births &c; follow;.

Henry Chatfield born on the 8th, day of Dec; 1902, at Blaine; Wash;.
Wayne Chatfield, " " " 27, " " " March 1907, " " "
Marion Chatfield, " " " 17th, day of July, 1912, " " "

WE; will refer you to the three following named persons who know that we are Indians as represented in the above application; Mr Henry Steve of Marysville; Wash; Mr Sam Allen of Potlach; Wash; and Mr Thomas G. Bishop, of Tacoma, Wash,

WE; each of us certify that we have never had a Government home-stead or an Indian allottment; and now therefore petition you for enrollment and allottment for each of us and for each of our minor children; certifying that we are people of good moral character; and are hard working people; we certify that we will live up to all the laws and rules governing the said Quinaielt Reservation if given an allottment there to the very best of our ability.

Signed .

John T Chatfield
Mrs. Louisa Chatfield.

Signed before me a Notary Public this 22nd day of August, A.D., 1914.

M B Smart

Notary Public in and for the State of Washington, residing at [redacted], Bellingham in said State

State of Washington.
County of Skagit.

I, Belle Barkhausen Matters, being first duly sworn, depose and say that I am an Indian of the half-blood, belonging to the Clallam tribe of Indians.

That I was born on June 8, 1870, at Fidalgo, Wash.

Father. That my father is Henry Barkhausen, white man, living.

Mother. That my mother is Julia Barkhausen, and Indian, living of the full-blood, belonging to the Clallam tribe of Indians. For her history I hereby refer to an affidavit signed by her.

Marriage. That I was married on January 15, 1892, at Fidalgo, Wash., by a Justice of the Peace, to Thomas Matters, white man, now about 55 years of age.

Children. That from this marriage we have five children, as follows:-

May Matters LaFleur, born June 22, 1893, at Anacortes, Wash. Married Nov.21, 1914, to Harry LaFleur, a white man, now about 28 years of age. No Children. P.O.Address, Anacortes, Wash. Route No.2.

Blanche Matters, born Sept. 14, 1895, at Fidalgo, Wash.

Julia Matters, born August 14, 1898, at Fidalgo, Wash.

Helen Matters, born March 22, 1903, at Fidalgo, Wash.

Pearl Matters, born Sept. 30, 1915, at Fidalgo, Wash.

That neither my mother, nor myself nor any of my children ever received any land or other benefits from the United States Government.

That I hereby make application that I and my children be enrolled with the Clallam tribe of Indians and receive benefots with said tribe.

Belle Barkhausen Matters

Subscribed and sworn to before me this 13 day of April 1918.

W M Beard
Notary Public for Washington.

P.O.Address.
Anacortes, Wash.
Route 2.

Notary Public in and for the State of Washington, residing at Anacortes, Wash.

State of Washington.
County of Skagit.

I, Maria Barkhausen McGibbons, being first duly sworn, depoase and say that I am an Indian of the half-blood belonging to the Clallam tribe of Indians.

That I was born in June, 1866, at Fidalgo, Skagit Co., Wash.

Father. That my father is Henry Barkhausen, white man, living.

Mother. That my mother is Julia Barkhausen, living, an Indian of the full-blood, belonging to the Clallam tribe of Indians. For her history I hereby refer to an affidavit signed by her.

Marriage. That I was married at LaConner, Skagit Co., Wash., on March 17, 1888, by a Justice of the Peace, to Allan McGibbons, white man, now about 63 years of age, living.

Children. That from this marriage we have six children, as follows:-

Walter McGibbons, bor Feb.6, 1889, at LaConner, Wash.
Isabelle McGibbons Brewer, born Jan.11, 1891, at LaConner, Wash.
Wife of Earl Brewer.
Allan McGibbons, born May 3, 1892, at Fidalgo, Wash.
Frederick McGibbons, born April 9, 1901, at LaConner, Wash.
William McGibbons, born June 29, 1908, at LaConner, Wash.
Eva Marie McGibbons, born Aug. 11, 1910, at LaConner, Wash.

That neither my mother, nor myself, nor any of my children ever received any land or other benefits from the United States Government, except as follows:- Walter and Isabelle attended Puyallup Indian School for two years, and Walter, Isabelle and Allan attended Chemawa Indian School for four years. They returned home from Chemawa nine years ago.

That I hereby make application that I and my children be enrolled with the Clallam tribe of Indians, and receive benefits with said tribe.

Maria Barkhausen McGibbon

Subscribed and sworn to before me this 11th day of April 1918.

W S Pannell
Notary Public for Washington.
Residing at La Conner Wash

P.O.Address.
LaConner, Wash.

Roblin Roll Information: Julia Barkhousen and Children
Compiled by Theresa Trebon, SITC Archivist

Roblin Roll Page #	Document	Who	Julia parentage
3	Notes on Julia Barkhousen	Notes dated 2-15-1917. Unknown who compiled notes. Possibly Bishop.	Father: full-blood Clallam Mother: full-blood Clallam Julia born at Clallam, Jefferson County
11	Notes on Julia Barkhousen	No date. Unknown who took notes.	Julia is full-blood Clallam. Born at Clallam.
13	Affidavit, 4-13-1918	Julia Barkhousen.	Julia is full-blood Clallam. Her father and mother were full-blood Clallam.
15	Affidavit, 5-18-1918	Daniel Barkhousen, son of Julia.	Julia is full-blood Clallam. Refers reader back to her original affidavit.
16	Affidavit, undated, unsigned	Ernest Barkhousen, son of Julia.	Julia is full-blood Clallam. Refers reader back to her original affidavit.
17	Affidavit, 4-19-1918	Fred Barkhousen, son of Julia.	Julia is full-blood Clallam
18	Affidavit, 5-11-1918	Henry Barkhousen, son of Julia.	Julia is full-blood Clallam. Refers reader back to her original affidavit.
22	Affidavit, 5-13-1918	Otto Barkhousen, son of George Barkhousen, grandson of Julia Barkhousen.	Julia is full-blood Clallam. Refers reader back to her original affidavit.
25	Affidavit, 8-22-1914	John and Louise [Barkhousen] Chatfield. Louise is daughter of Julia.	Julia is full-blood Lummi. Enrolled at Lummi. Born at Fidalgo Island.
26	Affidavit, 4-13-1918	Belle Barkhousen Matters, daughter of Julia Barkhousen.	Julia is full-blood Clallam. Refers reader back to her original affidavit.

27	Affidavit, 4-11-1918	Maria Barkhousen McGibbons, daughter of Julia Barkhousen.	Julia is full-blood Clallam. Refers reader back to her original affidavit.

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Alexandra Harmon

Indians in the Making

Ethnic Relations and Indian Identities around Puget Sound

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learned that land might be available on the Quinault Reservation.[28] He collected a batch of applications for allotments at Quinault and sent them to the commissioner of Indian Affairs in 1916. The applicants' statements linked them by ancestry or association to more than forty Indian tribes. Bishop warned that there were two or three thousand Indians of western Washington in similar need of land.

Although a Quinault Reservation council was initially receptive to this request for allotments, an Interior Department solicitor advised that Quinault land was intended solely for Indians on the Pacific Coast. The commissioner then appointed a special agent to locate landless Indians elsewhere in western Washington and to help them prepare formal requests for enrollment. The result, in 1919, was Charles Roblin's list of more than four thousand names, most of which had not appeared before on Indian rolls.[29]

The people who came to Indian Office attention in this manner could hardly have been more diverse if Roblin had picked them at random. They apparently shared only the belief that at least one ancestor was an Indian. Many had not previously proclaimed or emphasized their Indian identity; others had no basis for claiming to be anything other than Indian. Some had a lifelong attachment to an aboriginal community where both parents were raised, while others had drifted from place to place.

Roblin divided the people on his roll into three rough categories: those who had stayed in ancestral territory instead of settling on a reservation, allottees' offspring who lacked allotments of their own, and descendants of women who had married pioneers. Indians in the first category came in several varieties. Nooksack and Skagit River groups, made up largely of "full bloods," had some land and seemed to be doing well. Klallams along Hood Canal and the Strait of Juan de Fuca elicited Roblin's sympathy because they lived as squatters on sandspits and beaches. Scattered through the San Juan Islands were people whose Lummi, Klallam, and Samish ancestors had mixed "inextricably" with Europeans and with Indians from the Columbia and Cowlitz Rivers, Canada, and Alaska. They called themselves the Mitchell Bay Tribe. Of people in the third category—descendants of women who had married pioneers—Roblin said, "In many cases these applicants and families have never associated or affiliated with any Indian tribe or tribes for several decades or even generations."

Following guidelines from the commissioner, Roblin listed everyone who alleged a possible basis for claiming benefits under the nineteenth-century treaties. Besides possession of "Indian blood," an applicant was supposed to prove membership in a treaty tribe or descent from an ac-

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knowledged member. But Roblin did not articulate a test either of tribal existence or of tribal membership. For information regarding a person's ancestry and tribal connections, he relied on Bishop or on elderly natives, many of whom Bishop identified as tribal leaders or historians.[30]

Samuel Eliot reported to colleagues on the Board of Indian Commissioners that Bishop had set aside selfish interests to help the lost Indians, but Roblin was more cynical about the motives of the people asking to be counted as Indians. A probable reason for the "sudden interest of persons of mixed Indian blood, in obtaining their 'rights' and 'what is justly due them,'" Roblin said, was a widespread belief that any person with Indian ancestry would receive six thousand dollars. Blaming people who had stayed off the reservations for their own predicament, Buchanan similarly charged them and their advocates with intent to profit from claims against the government. An occasional claim would have "personal merit," he conceded, but "[d]eserving, landless Indians with treaty guarantees of land" should get allotments only if they agreed to reside there.[31]

Since there was no land or money to allot, few, if any, people benefited immediately from inclusion on Roblin's list. In 1922 the unattached Indians still did not appear on Tulalip agency rolls. Despite some increased government attention to their conditions, they mostly continued to fend for themselves, their status with respect to Indian programs as uncertain as ever.[32]

In fending for themselves, the unattached Indians were not much different from their cousins who were technically under federal protection. Virtually all western Washington Indians were self-sufficient, and their self-sufficiency complicated both their own and government efforts to determine what federal guardianship meant for them. It was hard to make sense of statements that Indians were wards of the government when very few of the supposed Indians depended on government for support or for help coping with non-Indians.

Officials had long marveled, as a field inspector did in 1890, at the ability of western Washington Indians to support themselves.

> These Indians are workers and not lazy or leading lives of idleness and dependency. Numbers of them are working in the woods, and at the various saw mills on the Sound, and as they are good workers they receive the same compensation as white laborers. Those who do not work regularly in the mills farm to a limited extent and cut cord wood for sale to steamers on the Sound. Their greatest source of revenue is from fish which they obtain in large quantities, and utilize for home consumptions and sale to canneries and individuals. These Indians are

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> apparently well to do. They dress well, have an abundance to eat, and the majority of them have more or less money.[33]

Wage work and their own industry still sustained most people of native descent in 1921, when Malcolm McDowell investigated conditions around Puget Sound for the Board of Indian Commissioners. McDowell concluded that Indians were "of considerable importance in the manufacturing, commercial, and transportation industries of western Washington." "In every city and town," he wrote, "I saw Indians at work and talked to a number, who told me that Indians, like white men, are leaving the rural districts in increasing numbers for the cities." McDowell found Indians on city docks, in railroad yards, in logging camps, at sawmills, and in canneries. He met Indian auto mechanics, gas station attendants, and truckers. On steamers he saw Indian petty officers, engineers, firemen, and deckhands. Reports like his were too common to be dismissed as the puffery of assimilation's official salesmen. Besides, reports to the opposite effect were nonexistent.[34]

Charles Roblin's roll also attests to Indians' confident involvement in the general economy. Applicants for enrollment identified themselves as loggers, stevedores, sawyers, farmers, fishers, clam diggers, and general laborers. They included a cook, a farm labor contractor, a tailor, a bridge builder, a blacksmith, and a steamboat fireman as well. Jennie Harmon, born to two "full Duwamish" Indians in 1865, listed the occupations of her five children: George worked in the logging camps, Frank was a laborer, William had a job in a Seattle candy factory, Hattie was married and keeping house at Suquamish, and Henrietta worked at St. Joseph Hospital in Tacoma.[35]

Most people of Indian ancestry were far from wealthy. Few, Eliot said, rose above "the lower grades of an industrial society."[36] Yet there is anecdotal evidence that the ability to earn money was still a source of pride for Indians. When asked to tell their life stories, Indians who reached their prime between the 1880s and the 1930s talked at length of the work they were paid for. Jerry Meeker said that in 1882, at age twenty-one, he began farming at Puyallup. Over the next three decades he also worked as a carpenter and contractor, reservation policeman, school disciplinarian, and real estate broker. Nooksack Valley resident George Swanaset, Meeker's junior by a decade, recited the opportunities he found to make money on both sides of the Canadian border, fishing for canneries, cutting wood, driving shingle bolts downriver, baling hay, working on steamboats, and raising stock. Still younger Indians had similar résumés. In 1911 ten-year-old Emma Tom hired on at a cannery, where she and five other Indian girls

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earned ten cents an hour. By the time she retired in the 1970s, she was a hand packer earning considerably more. When Lawrence Webster left Indian boarding school in 1916, he tried successive jobs in a bakery, laundry, and hardware store. Realizing that he preferred outdoor work, he spent most of the next decade either longshoring in Seattle or logging.[37]

If wage work was unavailable, Webster usually went home to the Port Madison Reservation to dig clams and fish. And fishing remained as vital to most other Indians' well-being and self-image as it did to Webster's. For generations, despite the disruptions associated with American settlement, their ancestors not only had subsisted on fish but also had harvested enough for commercial trade. Since the 1890s, fishing and canning fish for white-owned companies, particularly in north Puget Sound, had given many of them an additional source of income. Well into the twentieth century, therefore, fishing complemented intermittent wage work in the economic strategy that most western Washington Indians pursued.[38]

The strategy had dangers, which gave Buchanan an excuse to repeat Indian Office dogma that Indians would be more secure if they farmed. Big investors and machines, he warned, were displacing small entrepreneurs and laborers in the industries that most Indians relied on.[39] Relying on fish appeared particularly perilous. As whites moved into commercial fishing and canning, they eliminated more opportunities for Indians than they created. Close behind the white fishers came state regulators, who enforced limits on Indian harvests but allowed whites to build traps that preempted aboriginal fisheries. Non-Indians also built dams and undertook other engineering projects that obliterated fishing sites and jeopardized salmon survival. For example, a new canal from Lake Washington to the Sound lowered the lake's surface in 1916, eliminating the Black River. As the obstacles to fishing in traditional places and manners increased, federal officials heard more complaints from Indians who were surprised and dismayed to be pushed out of an economic sphere they had long monopolized.[40]

Another latent threat to Indians' economic arrangements—race prejudice—had little recorded impact on their ability to find employment until mechanization and depression changed the labor market. The prejudice that whites directed at Indians in public schools is well documented.[41] There is almost no evidence, however, of bigots refusing to hire Indians before the 1920s or 1930s. In 1909 H.H. Johnson said, "Employers report to me that their Indian laborers are fully as satisfactory as the whites." He even claimed that Indians received preference for some jobs. And the memoirs of Indians who sought work just before and after World War I

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are remarkably free of complaints about discrimination. Lawrence Webster attributed the cold shoulders he sometimes received as much to bias against loggers and Wobblies as to anti-Indian sentiment. He said in 1982 that he figured out quickly "how to deal with the non-Indian problem" and succeed in the working world. Although a few dozen interviews that lack references to discrimination do not prove an absence of discrimination, it seems safe to conclude that systemic racism did not keep many Indians out of the labor force in the first quarter of the century. As long as businesses needed numerous unskilled and semiskilled seasonal and temporary laborers, there were openings for Indians.[42]

Openings were particularly abundant during World War I, when Washington industries and agriculture profited from demand for lumber, ships, and food. The Puyallup superintendent reported in 1918 that all but the oldest Indians in his area were gainfully employed. While high wages drew many Indians out of their fields and canoes, high prices for fish, timber, and produce lured others back to farms and fishing grounds. At Tulalip, Superintendent Buchanan and the Fidalgo Island Packing Company found themselves pulling in opposing directions on Indians' arms. The cannery was desperate to hire packers, while Buchanan was avid to wean Indians from fish-related pursuits and saw the wartime market for farm products as his chance. The opportunities for Indians to work persisted into the 1920s, at least in some industries and locations. In 1927 Tulalip superintendent Walter Dickens remarked that he had never been at an agency where employment was so plentiful.[43]

When the jobs that Indians preferred grew scarce, however, Indians could not prevent employers from favoring whites. According to ethnohistorian Daniel Boxberger, the Carlisle cannery in Bellingham instituted a whites-only hiring policy during the 1920s. A barber's refusal to serve the Indian principal of the Tulalip school convinced Dickens that prejudice was rampant. Prejudice fed on a desire for economic advantage, he said, because Indians of his region were not isolated or pitiable curiosities but serious players in the general economy. "The door of the lower round of the social ladder is easily opened to [the Indian]," Dickens wrote, "but ... pretty firmly closed a short way up and only thru the assistance of friends can he rise to the social level of decent society."[44]

By the time that economic change and discrimination were undermining Indians' niches in the economy, Indians' legal status was again in question too, thanks in large part to World War I. Events during the war stimulated many people, especially Indians, to rethink Indians' status. Scores of Puget Sound Indians—noncitizens as well as citizens—served in

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the military. When they returned, particularly from the East Coast or France, many had new perspectives on their communities and themselves. William McCluskey reported from the Lummi Reservation in 1919, "The boys [*sic*] experience over abroad and at camps are the frequent subject of our people." What the people said when reviewing wartime experiences McCluskey did not reveal.[45] But during the war several of them were not reticent about voicing their views; for pro-war propaganda and conscription provoked a lively debate about wardship, citizenship, and Indians' proper relation to the government.[46]

According to Charles Buchanan, some residents of the Lummi, Swinomish, and Port Madison Reservations "were particularly contumacious" when the draft registrars came. Three of the "contumacious" men showed up at an army training camp near Tacoma, telling Indian recruits they had no right to be there. Buchanan responded by pressing sedition charges. For the accused men, the issue was not whether they had subverted the U.S. war effort but whether the government was subverting Indians' special status. In response to the charges, Lummi Thomas Jefferson made the paradoxical argument that military service was inconsistent with Indians' subordination to the United States. It was at odds with the role American leaders had assigned his people. At the treaty conference Stevens had made Lummis promise to stop fighting, both with whites and with Indians, and Jefferson would not renege on his parents' promise. Instead, he declared, he intended to play the role Stevens had given Indians. And he would keep waiting for the government to fulfill the role of protector and provider in return.[47]

Chief Charles Jules of Tulalip, who consulted frequently with Buchanan, thought otherwise: Indians belonged in the U.S. military. Like Jefferson, Jules drew on memories of earlier times to form an opinion about Indians' proper role, but Jules remembered different events of the past. In olden times, he said, Indians had to fight to save their wives and children from enslavement by enemies. If a hostile tribe was large and powerful, other tribes united to preserve their liberties. The German threat to the liberties of Indian women and children, Jules concluded, called for the same kind of response.[48]

To drum up enthusiasm for the war, federal officials exhorted Indians to reject reasoning like Jefferson's. Far from neglecting Indians, they argued, American leaders had included Indians among the people who enjoyed all the benefits of citizenship. In a eulogy for a Suquamish soldier, Buchanan cited Father Chirouse's labors among Indians as a reason for those Indians' descendants to help the French in the war. The Suquamish

man, Buchanan wrote, "requited by service and sacrifice even unto death, the supreme debt of his people."[49]

Wartime conditions sapped the influence of people who argued for continuing Indian wardship and energized the proponents of citizenship and integration. While Indians gained economic clout, their official guardian lost it. Employees as well as students left western Washington Indian schools to take high-paying jobs or join the armed forces. Staff vacancies, inflation, and reduced funding, aggravated by successive epidemics, sent the boarding school at Puyallup into an irreversible tailspin.[50]

Inspired by Indians' support for the war and integration into white military units, the champions of assimilation—Indian and non-Indian—rededicated themselves to ending Indians' legal disabilities. After prevailing on Congress to offer citizenship to Indian veterans, they introduced a bill for universal Indian citizenship. Thomas Bishop, advocate for Washington's landless Indians, was a prominent lobbyist for the measure. Historian Brian Dippie calls the resulting Indian Citizenship Act of 1924 "the symbolic high point of the assimilationist era."[51] Typical of people who viewed the act as confirmation that Indians had adapted completely to American life was F. S. Hall, director of the Washington State Museum. Hall said of western Washington Indians in 1924:

> All signs of the aboriginal inhabitants have disappeared except in certain allotted reservations and the occasional visits to our cities of the wrinkled-faced old basket sellers and of members of the younger generation, who are as much Americanized in dress and appearance as their white neighbors. . . . Practically all the ancient tribal customs and observances have disappeared except in a few isolated cases.[52]

The federal wardship apparatus nevertheless survived, exerting drag on assimilationism's renewed momentum. Influential people thought that some Indians still needed protection and supervision. For a decade after the war, therefore, government practice in western Washington was nearly indistinguishable from prewar practice—a capricious mix of paternalism and neglect. In 1922, for example, Superintendent Dickens used the proceeds of timber sales at Tulalip to clear individuals' land, build homes for them, and buy them farm equipment. He also reported that he was attending to the needs of some off-reservation Indians. In the next breath, complaining that Indians had "been paternalized to the extent that they are almost without character," Dickens said he was encouraging them to become taxpayers.[53]

One service that Indians repeatedly requested from their federal guardian—preservation of their access to fish—the government did not

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reliably provide. Before the war Buchanan at least championed Indians' right under the treaties to fish for food without interference. He pleaded with state lawmakers to exempt Indians from some fishing regulations, denounced state harassment, and prevailed on federal lawyers to represent Indian fishers who resisted prosecution and non-Indian incursions into reservation waters. Even before Buchanan's death in 1920, however, adverse court decisions prompted him to advise Indians that they would have to obey state fishing laws. His successors, claiming that the courts had tied their hands, offered harried fishers negligible aid.[54]

Understandably, many people continued fishing for advantages from their status as federal wards and steering around the disadvantages where possible. Inspector Flora Seymour was amused and encouraged by one man's reaction when the superintendent denied him permission to spend trust funds on a car: he contracted to do some logging and soon bought a fifteen-hundred-dollar automobile with his earnings. Dickens, on the other hand, was unhappy when three educated allottees realized that they could rely on federal law to keep state authorities from entering their lands to collect judgments. Like others here, Dickens said, one of the men "disregards and questions Federal authority and seeks its protection according to the personal desires of the moment."[55]

Dickens was almost comically ambivalent about whether such Indians needed a guardian. His ambivalence reflected both the contradiction embedded in federal policy and his own contradictory impressions of the Indians he supervised. He could not match the enterprising people of his area with the images of Indians that justified either wardship or complete emancipation. In Dickens's view, Puget Sound Indians were at once the most progressive in the United States and maddeningly resistant to important civilizing influences. None of the twelve tribes he had worked with before Tulalip, he said, were so like non-Indians in manner, dress, and willingness to work hard. Young Washington Indians had constant contact with whites and adopted whites' economic practices, even in the heart of large reservations. Yet no apparently civilized Indians in Dickens's experience had retained "the traditional traits of the original aborigne [*sic*]" as these had. (What those traditional traits were Dickens did not say.)[56]

If Dickens was uncertain whether the people in his charge were moving into white society or remaining Indians, so were many of those people themselves. By then the meager advantages and considerable problems associated both with wardship and with legal emancipation were fully apparent to the descendants of western Washington natives. Equally apparent was whites' ambivalence about each status and their reluctance to

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let Indians choose one. For the people already identified as Indians, this situation was uncomfortable at best. If they were to be Indians in a society dominated by whites, they needed to define that identity more clearly and less demeaningly.

Between 1910 and 1930, an alternative interpretation of Indian identity did gain the approval of most Indians around Puget Sound. Transcending significant differences in perspective and experience, they reached agreement that the treaties of 1854 and 1855, more than either citizenship or wardship, must be the basis for their relations with whites and hence for their distinction from whites.

It is worth emphasizing that the people who forged this apparent consensus were far from homogeneous. Profiles of populations at the different reservations—residents' occupations and economic conditions, their uses of land, the extent of their ties to non-Indians, and their relations with outsiders and with government—varied considerably. Off-reservation populations added to Indians' diversity. Fifty years of radical change had produced different occupational, educational, social, and legal profiles for successive generations of Indians as well.[57]

Acutely aware of their diversity and the tensions it generated, some descendants of indigenous people consciously looked for commonalities. An incident in the Nooksack Valley exposed both the tensions between dissimilar Indians and the desire for emblems that all Indians could display with pride. Three men led by George Swanaset, billing himself as chief of the Nooksacks, complained in 1928 that Upper Skagit, Swinomish, Lummi, and Canadian Indians had recently held a two-day "war dance," over their objections but with the protection of Tulalip agency police. The three men's letter to the commissioner read:

> The Nooksack tribe, as you know, have had their citizenship restored to them and are not living on a reservation and have always followed the more civilized way and desires [*sic*] to continue to advance themselves and keep progress with the white men's civilization and an affair of this nature conducted in our community leaves the wrong kind of an impression to the outside world.[58]

Based on interviews and his officers' observations, Tulalip superintendent F. A. Gross concluded that the supposed "war dance" was a social event rather than a pagan rite. Sponsors of the gathering, he said, had acted on a felt need to commemorate their Indian heritage. Other Indians of the Sound regularly brought their old people joy by celebrating the treaties with songs, dances, feasts, and speeches from Indian and white

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friends; but because the Nooksacks had not entered a treaty, they had no such celebrations. Gross thought the protesting chiefs were miffed not by the dancing but by the young people's failure to consult them.[59]

Gross's interpretation of the dances may have been naive. Two ethnographers have noted a surge in the number of north Sound Indians singing warrior power after the turn of the century. If the people who danced in 1928 were included in that number, they could have riled Swanaset—a devout Methodist—whether or not they consulted him. But the superintendent's comment on the Indians' aim was perceptive. Both dancers and the old chiefs wanted to identify features of Indian life that had positive meanings for most Nooksacks and for outsiders.[60]

Gross stimulated another discussion about bringing diverse Indians together when he called a meeting of Swinomish Reservation residents and asked them to decide whether to rebuild a burned community hall. Several people backed his contention that the hall would symbolize the desire of people from formerly separate bands to unite for progress. But an old chief and "leader of the 'smoke house' faction" spoke against the proposal. Several people then told Gross that they did not want to choose between the factions favoring and opposing the hall.[61]

Sometimes Indians found new ways to symbolize and celebrate their past without having to choose between competing factions. Ironically, even non-Indian traditions offered themselves for this purpose. American holiday observances, for instance, did not invite government repression or upset Indians who objected to aboriginal ceremonies, yet they could take on positive connotations for Indians of various persuasions. At Memorial Day services on the Swinomish Reservation in 1925, a speaker explained "that while they celebrated the Memorial Day of the white man, they combined with it a much older Indian custom of tribute to their dead."[62]

The white promoters of a 1926 Northwest Indian Congress agreed that some images of the past could inspire Indians to unite for progress in the future. Hoping to demonstrate the Indian race's ability to "take on culture and civilization," they invited mostly young, well-educated people to the conference, but they also moved to forestall discontent by including some "old Indians." In the latter category Walter Dickens nominated William Shelton to represent Tulalip. Shelton, Dickens wrote, was "one of the outstanding characters of the Sound country, being an original aborigine, a maker of totem poles, the author of a number of Indian legend stories, *progressive* and one of the most honorable Indians I ever knew."[63] Perhaps unwittingly, the Tulalip superintendent had nominated a man who thought he knew which symbols of Indian identity would have broad ap-

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peal among the diverse descendants of Puget Sound natives, young as well as old.

Late-nineteenth-century reformers would have considered Dickens's characterization of Shelton a contradiction in terms. But Shelton was indeed both an old Indian—born in 1868—and progressive in assimilationists' sense of the word. His parents had sponsored potlatches at their Whidbey Island home and taught him other traditions of the indigenous upper class, but he entered the Tulalip mission school as an adolescent because he saw a need to learn white ways, and he worked many years as the agency millwright. According to his daughter, Shelton advocated using whites' knowledge to elevate Indians, as Indians, to a status they could be proud of. In this respect Shelton was in tune with an assortment of his contemporaries, around Puget Sound and nationwide. In western Washington it was this cohort of "progressive" older Indians who led organized responses to the confusing conditions of the teens and 1920s.[64]

The most important organized response was the Northwestern Federation of American Indians (NFAI). The federation's architect and first president was Thomas Bishop, the man who urged the government to enroll and allot "unattached Indians." Bishop and the NFAI's other early leaders had come of age during the years when the promise of citizenship for Indians was new and largely untarnished by demeaning conditions. Like William Shelton, all had spent some time in school, where they must have heard hope-inspiring rhetoric about human progress and equality. Many had also heard their elders speak of Isaac Stevens's treaty pledge to provide the homes, schools, doctors, and money that would make Indians as good as whites. But after a youth full of promise, organizers of the NFAI found in middle age that their status was problematic and their economic opportunities were eroding.[65]

A similar blend of hope and disappointment, of positive and negative feelings about being Indian, motivated people who initiated a national movement for Indian advancement during the first decade of the century. Desiring the benefits of American prosperity and citizenship but also needing to take pride in their heritage and fearing that government policy condemned Indians to poverty and second-class citizenship, educated men and women from numerous tribes founded the Society of American Indians (SAI) in 1911. The SAI was the hardiest of several pan-Indian organizations born during the same period. SAI members aimed to resolve the tensions they felt by making a place in American society for a redefined Indian, one who combined the best of aboriginal and white American cultures.[66]

National meetings of pan-Indian groups inspired several people to organize Indians in Washington State on the same basis. After attending a conference of the Brotherhood of North American Indians, Chief Mason of the Quinaults professed an intent to devote his life and fortune to the organization's goals: unifying Indians, perpetuating aboriginal traditions, and securing personal rights and liberties "equal to all people and inferior to none." Mason sent circulars about the Brotherhood to all Northwest tribes and set up meetings with Indians in Clallam and Whatcom Counties. Thomas Bishop joined the pan-Indian movement and, in 1916, moved to Washington, D.C. In 1920 he became secretary-treasurer of the Society of American Indians.[67]

The ideological debt that Bishop and his NFAI associates owed to the national movement, as well as to nineteenth-century assimilationism, is apparent from the NFAI constitution, adopted in 1914. Copying nearly word for word the provisional constitution of the SAI, NFAI founders declared that the honor of the race and the good of the country were paramount. They gave themselves the following mission:

> 1) To promote and co-operate with efforts looking to the advancement of the Indians in enlightment [*sic*] which leaves him free as a man to develope [*sic*] according to the natural laws of social evolution. 2) To provide, through our open conference, the means for a free discussion on all subjects bearing on the welfare of the race. 3) To present in a just light a true history of the race, to preserve its records and to emulate its distinguishing virtues. 4) To promote citizenship among Indians and obtain the rights thereof.

The NFAI also adopted the same membership criteria as the SAI, thus endorsing explicitly the notion that Indians were a single race defined by biological ancestry. Active membership was open to all adults "of Indian blood." "Indian associate" status was for Indians from countries besides the United States and for persons of less than one-sixteenth Indian blood not on any tribal roll.[68]

The identical wording of their membership requirements masked an important difference between the SAI and the NFAI. Indians participated in the SAI as individuals rather than as members of tribes, but the NFAI organized its membership by tribal groups. The NFAI had active chapters at all Tulalip agency reservations and in several off-reservation communities. By the 1920s it was dealing with government officials principally through representatives of those chapters, which it equated with tribes.[69]

The NFAI's form was dictated by its most important focus—claiming and clarifying members' treaty rights. Although various NFAI spokesmen

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later had different memories of the group's original purpose, all recalled that they resolved early to investigate their rights under the treaties and to get what the government owed them. Since the government conceived of the treaty parties as tribes or bands, it would consider individuals' claims only as derivatives of tribal claims. Therefore, by the time that special enrolling agent Charles Roblin was asking landless Indians about their tribal affiliations, the need for tribe-by-tribe organization of the NFAI was clear. Around the Sound people responded by holding councils and choosing men to represent them as tribes at regional meetings. Some Indians later described the resulting organizations as their reservations' first formal governments.[70]

NFAI affiliates did not consist of reservation groups only. The 1915 meeting to select a board of directors for the Duwamish Tribe took place in Tacoma. The board included NFAI activists Peter James and Charles Alexis, who lived on and sometimes represented the Lummi and Port Madison Reservations, respectively, but it also included Joseph Moses from the town of Renton and James Tobin of Olympia. In 1916 seventy-five people calling themselves the Snoqualmie Indians gathered at Tolt in the Cascade foothills, and several voiced a desire for land in that vicinity. The Duwamish and Snoqualmie organizations compiled membership lists that contained some names already on reservation censuses, plus the names of hundreds more people in small towns throughout Puget Sound country.[71]

The need to sort NFAI's individual constituents by tribe presented a hefty challenge, as is exquisitely clear from the data Roblin collected. Roblin's seemingly simple test of a person's eligibility for treaty benefits—membership in a tribe or descent from a tribe member—was rarely simple to apply. Most of his applicants had ancestral and social connections to several groups. Even a single Indian ancestor could have more than one possible tribal designation—the name for the village or extended community where she was born, the group she lived with as an adult, or a parent's tribe. Catherine McKinney, wife of a Swinomish "half breed," could have called herself a Mud Bay Indian, because her father was born at Mud Bay of Mud Bay parents. She could have enrolled as Squaxin, because Squaxin Island was the reservation intended for Mud Bay Indians, or she could have enrolled with her husband. Instead, McKinney sought membership in the Puyallup Tribe, saying that her mother (who had a Yakima father and a Cowlitz mother) was born among the Puyallups.[72]

When they designated their tribes, most Indians probably applied some general principles; but it appears from Roblin's records that different

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people applied different principles. Peter Rogers determined his tribe by his father's community of origin (Duwamish), not by his mother's ascribed parentage (Suquamish and Skykomish), nor by his residence at Suquamish. But Edward Davis claimed membership in the Snoqualmie Tribe through his mother's father, even though he identified both his parents and his birthplace as Duwamish; and James Thomas identified with the community of his birth and lifelong residence—Snohomish—rather than with the Yakima and Duwamish communities where his parents were born. On Roblin's list were people who claimed affiliation with an ancestor's original tribe even though the ancestor had left that tribe at a tender age; but there were also people who claimed affiliation with a Puget Sound tribe solely because a kinsman had joined the group as an adult.[73]

Many of the people who contacted Roblin had vague ideas about tribes and tribal makeup. Some identified their tribes by naming villages or small bands—Slo-slo-ose, LaQualah, Smalk-kamish, Nookachamps—rather than the larger aggregations on the Indian Office's list of tribes. Members of a nuclear family did not always agree on tribal designations for each other. In fact, a measure of the ambivalence and flexibility with which people approached the question of tribal membership is the sizable number of siblings who claimed or accepted different ascriptions. Julia Barkhousen, listed as an unallotted Klallam, had one sister on the Tulalip roll and another on the Lummi roll.

The people who joined the NFAI, contacted Roblin, or otherwise asked to be included on Indian rolls during the 1920s had a new motivation to identify themselves as Indians. They wanted to be counted because they wanted to share in what the government owed Indians of the treaty tribes—perhaps allotments, perhaps cash, perhaps respect.[74] They did not have strong incentives, however, to identify with one Indian tribe rather than another. If they believed that land or money would be awarded in uniform amounts per capita, as Roblin surmised, no particular tribal designation seemed to offer a material advantage over other designations. The effort to compile tribal rolls encouraged people of native descent to document their lineage, and it got them thinking about the basis and significance of group affiliations; but it did not draw impassable boundaries between the several interlinked communities that could claim their loyalties. Indeed, the need to divide Indians into tribes had a powerful counterweight in the treaties themselves. Except in their descriptions of land ceded and reserved, the treaties of the 1850s were virtually identical. It made sense to mount a regionwide, pan-Indian campaign to redeem the promises made in those treaties.

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Thus, by the 1920s many people of different communities and ancestries had pinned their hopes for the future on decades-old treaties. In retrospect it seems as if the strategic choice they made was an obvious one, ordained by the treaties themselves. That the choice was not inevitable, however, is evident from the history of NFAI demands and decisions. It took a decade for Indians of western Washington to develop and organize around a coherent chronicle of broken treaty promises. Recalling how NFAI leadership galvanized communities to define themselves by their treaty rights, Lawrence Webster said, "History could have died if Tommy Bishop did [not] start asking questions."[75]

The origins of the NFAI campaign may include fireside tales told by Indians who remembered the treaty conferences. According to one account, for instance, the native man who interpreted at Point Elliott called Indians together shortly before his death in 1881 and exhorted them not to forget Governor Stevens's unfulfilled promises. In any case, when whites displaced some Indian fishers during the 1890s, aging natives did remember Stevens's 1855 promise to permit fishing, and they protested its breach. But non-Indians share the credit for perpetuating interest in the treaties after that. At the behest of aggrieved hunters and fishers, government lawyers invoked the treaties in the Lummi fish trap and Squaxin tidelands litigation. Officials also promoted Treaty Day celebrations and described the new Tulalip school as a belated fulfillment of treaty promises. Not surprisingly, when the Board of Indian Commissioners sent Samuel Eliot to western Washington in 1915, many Indians wanted to tell him about other treaty promises that were yet unfulfilled.[76]

By 1915 Thomas Bishop was recording elderly Indians' memories of U.S. promises and comparing them to the text of the treaties. That year Bishop published "An Appeal to the Government to Fulfill Sacred Promises Made 61 Years Ago." There he reproduced a copy of the Point No Point Treaty, a letter about his interviews with "the few remaining Indians who were present at the signing of this treaty," and affidavits from two men who said they had heard Stevens promise two buckets of gold and land for every person in the Duwamish Tribe. Bishop's stated aim was to educate officials who had either forgotten the treaty promises or ignored the troubles plaguing Indians sixty years later.[77]

The grievances Bishop recited in 1915 were eclectic: the state legislature had curtailed Indian hunting and fishing privileges, the government had given Indians fewer and cheaper presents than they expected, whites had razed Indian homes and disturbed burial grounds, the reservations did not encompass land enough for all Indians who desired allotments, and

red tape prevented Indians from using their trust lands and moneys. As late as 1922, Tulalip superintendent Dickens said that there existed among Indians "a hodge podge of ideas as to the promises of the government." By that time, however, NFAI leaders had settled on a strategy of suing the government and were recasting their memories to fit the required legal mold.[78]

Once again Indians confronted the contradictory consequences of federal guardianship. Federal law precluded suit unless Congress gave the Court of Claims jurisdiction. So Bishop asked congressmen for help. In 1919 Washington representative Lindley Hadley obliged Bishop by proposing the authorizing legislation, but it took six more years and cooperation from the Indian Office to get a bill passed.[79] Cooperation was hard to come by because OIA personnel were initially hostile to the NFAI. Besides privately impugning Bishop's motives, Buchanan publicly criticized him for publishing false allegations that the government had neglected particular Indians. Buchanan's successor also belittled the NFAI. How could Bishop represent people who had conflicting claims and no unity of interest? Walter Dickens asked.

Yet Dickens could neither deny nor dampen the widespread interest in the federation's agenda. Late in 1921 he acceded to an NFAI request that he call a meeting for Indians of the Point Elliott Treaty tribes, and five hundred people came. They resolved to back Bishop's bill, thanked him for his help, and left further lobbying to him. Dickens consoled himself with a passage in the resolution that conceded Bishop's fallibility and excessive zeal. The resolution took this swipe at Bishop because other NFAI officers wanted Indian Office help and knew that Bishop's affiliation with the Society of American Indians was a deterrent, since some SAI leaders wanted to abolish the OIA. In 1923, after Bishop died, NFAI representatives from Swinomish and Tulalip told Dickens they had lost hope of pushing a bill through Congress without Indian Office assistance. Once assured that the organization would not call for an end to federal wardship, Dickens and his superiors cooperated with the NFAI.[80]

Dickens contended that the OIA's "position of technical guardianship, possible donor and 'Big Brother'" entitled him to attend NFAI meetings and to demand evidence that the federation actually represented a majority of the people it claimed as constituents, even if those people had neither trust land nor other relations with an Indian agency. After Congress authorized suit the Tulalip agency assumed an even more intrusive role, claiming power as guardian to limit, direct, or dismiss the tribes' lawyers. The irony of looking for help to the same people they intended to sue was

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not lost on NFAI leaders. Harriette Shelton later said, "We were wards of the government kind of, they're supposed to take care of us . . . , and in the court our adversary is the same attorney."[81]

The effects of this OIA meddling and assistance are difficult to discern, but they included some influence on the ways Indians depicted their past. According to George Swanaset, Dickens "was the one to tell us that the Nooksacks weren't treaty Indians. He thought the treaty Indians should form a separate case altogether."[82] Surely the government's most important means of shaping the Indians' story was to send them into the Court of Claims, where statutes and judicial precedent focused their attention on the actions and events that might entitle them to cash compensation.

When Congress finally gave the green light for a lawsuit, the road it opened seemed broad. It permitted the court to hear "all claims of whatsoever nature" from Indians named in four Washington treaties and from several tribes "with whom no treaty has been made." (It excepted only Klallams, who had arranged both separate counsel and a separate statute awarding them four hundred thousand dollars.) However, attorney Arthur Griffin ultimately steered his clients into a narrower lane. Claiming that the Muckleshoot, Nooksack, Chinook, Upper Chehalis, and San Juan Islands Indians had not endorsed a treaty, he petitioned only for the value of their original lands. On behalf of fourteen other plaintiffs, twelve of them from the Puget Sound area, Griffin charged the United States with violating specific treaty clauses. The government, he alleged, had not paid Indians all it had pledged for their lands, had not compensated them for having to abandon off-reservation property, had not reserved all the land it had promised, had not financed the clearing and fencing of the reservations, had not promptly built an industrial school or provided farmers and physicians, and had not consolidated Indians on a central reservation. In other words, the lawsuit emphasized those treaty provisions that embodied a desire to make Indians more like whites.[83]

In his 1915 "Appeal" Bishop had drawn attention to a treaty provision of a different sort. He had urged the commissioner to ask the courts for a "humane and logical interpretation" of the promise to let Indians continue their customary hunting, fishing, and gathering. However, by the time the tribes were in the Court of Claims, Indians had cited that promise in state court as a defense to charges of illegal fishing and had lost. When Griffin and his clients opted to focus on provisions for land, schools, and annuities, they may have had these losses in mind. In addition, it was easier to assign compensable values to land and schools than to fishing and hunting privileges.

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Despite the unfamiliar and inhibiting rules of the legal forum, the treaty claims case gave Indians a welcome opportunity to describe and invite public respect for their heritage. Preparing and prosecuting the claims involved scores of people in re-creating their history. Indians appeared twice before congressional committees: in 1922 Bishop testified, and in 1924 the witnesses were NFAI activists Wilfred Steve, Peter James, Charles Wilbur, and Charles Alexis, plus Nooksack spokesman George Swanaset. In 1923, with the help of interpreters William Shelton and Henry Steve, Dickens preserved testimony by taking statements from seven old men. Finally, for the Court of Claims itself, 113 additional men and women from the Puget Sound region gave depositions in 1927.

The questions these witnesses responded to obliged them to present their history not as a complex drama but as a skit with a simple moral. Dickens and attorney Arthur Griffin wanted only vignettes on a few subjects. Dickens focused on land, asking whether the old men had received allotments, knew Indians who had not received allotments, or knew Indians who had tried to keep their off-reservation land instead of coming to reservations. Griffin guided his witnesses through descriptions of cedar houses destroyed by settlers or abandoned when the occupants removed to reservations. He prompted elders to delineate their tribes' territories, and he invited general statements that Indians' numbers had declined steeply since treaty time.

Although such questioning may have induced people to caricature their history, it did not get them to recite a standardized text composed just for judges. In fact, the stories that witnesses told were hardly uniform. People from the different communities took pains to distinguish themselves. Witnesses routinely said that their knowledge was limited to their own families' traditions and that other people's territories and customs were for those people to describe. Indians of the Nooksack Valley, Muckleshoot Reservation, San Juan Islands, and Sauk River explained in varying ways why their ancestors did not sign a treaty.

Furthermore, not everyone gave testimony advancing the story that NFAI leaders and lawyers had sketched out. While many witnesses did swear that the government had given them little or nothing since the treaties, others recalled regular distributions of tools and supplies. Jack Wheeler accused American officials of lying—promising Indians houses, cows, sheep, and the lands they "hollered out" but leaving most Indians landless. But at the same hearing, Snoqualmie Jim asserted that Indians had received what they were promised. "It isn't the white man's fault," Jim said. "It is the Indians [*sic*] fault that they didn't get land." Even when

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Griffin orchestrated trial testimony, occasional witnesses failed to follow the score. A few people, expected to say that they had waited anxiously for their own plots of land, said instead that they had come away from the treaty unaware of the government's plan to assign them individual tracts.[84]

Most significantly, many witnesses used their time in the spotlight to expound spontaneously on aspects of their history that were important to them. For Jerry Meeker, it was Leschi's refusal to approve a reservation with insufficient pasture. For William Shelton, testifying was a chance to mention a potlatch house where high-class Indians gave things away to the poor, and to recall old chiefs who counseled parents to promote good relations with whites by declining to teach their children "what Indians teach."[85]

Many people wanted especially to talk about hunting and fishing. Again and again, whether or not Griffin gave them an opening, witnesses lamented that whites were driving Indians out of their "natural grounds." Among those who declared that Isaac Stevens had promised Indians' their accustomed foods was eighty-seven-year-old William Kanim, who re-created at length his uncle's exchange with the governor:

> "I want all the game, such as elk and deer, ducks, clams, fish, berries; until you agree to grant us all these I have just named where we make our livelihood, then I will answer to your proposition of buying our land. I want the dry cedar which I could use to make canoes and to make lumber; I want the dry fir for its bark. I am telling you what I want and then I will answer what you want." Then Governor Stevens answered that it would be all right, that he could have all he wanted to reserve.[86]

Yet even with respect to fish and game, these diverse people told stories with varied twists. Kanim was intent on preserving access to a stretch of the Snoqualmie River and the place where his people dried their catch. Annie Lyons was upset to be driven away from shellfish beds near her Samish village and obliged to labor in canneries. William Rosler, a San Juan Island farmer, was concerned that trapmen and canneries were depleting salmon runs. August Martin gloried in the time that a judge had listened to Henry Kwina describe the treaty fishing clause, then "opened the book and he find this was correct."[87]

In the end, the process of re-creating Indians' history for the claims litigation was more rewarding than the litigation itself. The plaintiffs sought money that might raise them to the status their forebears expected as a result of the treaties. But in 1934 the Court of Claims dashed their hopes. Although it did not wholly repudiate either the history they told or their

argument that certain government lapses were violations of the treaty, the court decided that the United States owed the plaintiffs nothing. The bases for this judgment were several technical interpretations of the law, a refusal to assign monetary value to some treaty violations, and a finding that government spending on Indians' behalf had far exceeded any losses they could quantify.[88]

The plaintiffs had accomplished something significant nonetheless. They had collaborated in composing a narrative that could serve as the basis for a common, honorable identity. As Harriette Shelton said, the Indians lost, but at least there were a lot of meetings. At those meetings and later during their case, many individuals from many communities described for each other who they had been and who they had become during eighty years of interaction with Americans. The lobbying and litigation meant putting people who asserted an Indian identity on display and allowing them to articulate what made them Indians. The various hearings thus became what anthropologist Barbara Myerhoff calls "definitional ceremonies" in which people could "show themselves to themselves."[89]

Many witnesses in the lawsuit consciously displayed marks of the Indian identity they embraced. The "old Indians" testified through an interpreter. Several stated explicitly what made them "real" Indians: they could not give dates or they could not read or write, they said, because they were Indians. Asked how he knew about methods of building longhouses he had never seen, Charley Blowl (Belole) said, "The Indian is not like you white men; you write down what your fathers used to do a long time ago. The Indian, his father takes his son and he tells him all the history of the tribe. . . ."[90]

On the other hand, participants in the litigation did not reach a comprehensive consensus about how to characterize themselves. Even though they agreed on a historical backdrop for their Indian identity, their "definitional ceremonies" did not produce a single picture of Indians so much as a collage of images. At the various hearings each speaker could show a different picture and suggest different symbols around which Indians should rally. For many of them land—the land Indians had lost and the land they had intended to reserve—had taken on greatest symbolic value; for others the more meaningful emblems of Indianness were the foods they now had trouble obtaining. Some witnesses—although they identified themselves as Indians by participating in the lawsuit—even referred to Indians in the third person, as if Indians were from another culture or time. Most such witnesses were young and educated, but several elderly people also spoke

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of Indians as if the young were not included in that category. Skookum George was blunt. "What the Government ought to do," he said, "is to fulfil [sic] their promises that they made to the Indians because the Indians will soon all be gone."[91]

All who participated in the ceremonies believed that they were entitled to do so because they shared with the others a history of disappointing relations with non-Indian Americans. Most also believed that the old treaties symbolized their hope of better relations in the future. To Lawrence Webster, this was the primary import of the movement that the NFAI started. "The tribes up here didn't have nothin' goin' for 'em where they could get together, except their treaty," he said in 1982. Even people who thought their ancestors had not signed treaties included themselves in the movement by asserting that those ancestors deserved and would have accepted a treaty acknowledging their status as distinct peoples.[92]

Implied in the suit, then, was a belief that the treaties expressed a relationship between Indians and non-Indians less demeaning than the wardship of the 1920s. Even so, the plaintiffs did not agree on whether to speak positively of the treaty terms or of the Indians who acceded to them. Were the Indian negotiators naive victims of American duplicity or shrewd and foresighted people who exacted a respectful acknowledgment of their abilities and needs? Snoqualmie Jim said, "I believe the bargain was a good one for the Indians because the old Indians were smart and knew what they were doing." Many other witnesses were equally eager to say that the ancestors who entered into the treaties were dignified and knowledgeable. In contrast, Bishop and other NFAI leaders depicted the native treaty signers as ignorant of white ways and so weak that they had no choice but to concur. William Wilton, born in 1862, testified, "I pity those old people. If Mr. Stevens had written 'In 75 years your offspring will be exterminated,' they would have signed that, with all the knowledge they had about transacting business."[93]

Whether they praised or doubted their ancestors' acumen, the plaintiffs agreed on the need to pity and help surviving Indians who had not received their due. They wanted what the government had promised, many witnesses said, so that the old Indians would not live their last days in poverty. For young Sam Kadim, secretary of the Swinomish Tribe, the government's failures were "very embarrassing for the Indians." If the government had lived up to its promises, he said, "the Indians would have been far more progressive today than they are."[94]

Most of the Indians Kadim knew were indeed people in an embarrassing situation. Disabled by law and racial prejudice from demonstrating

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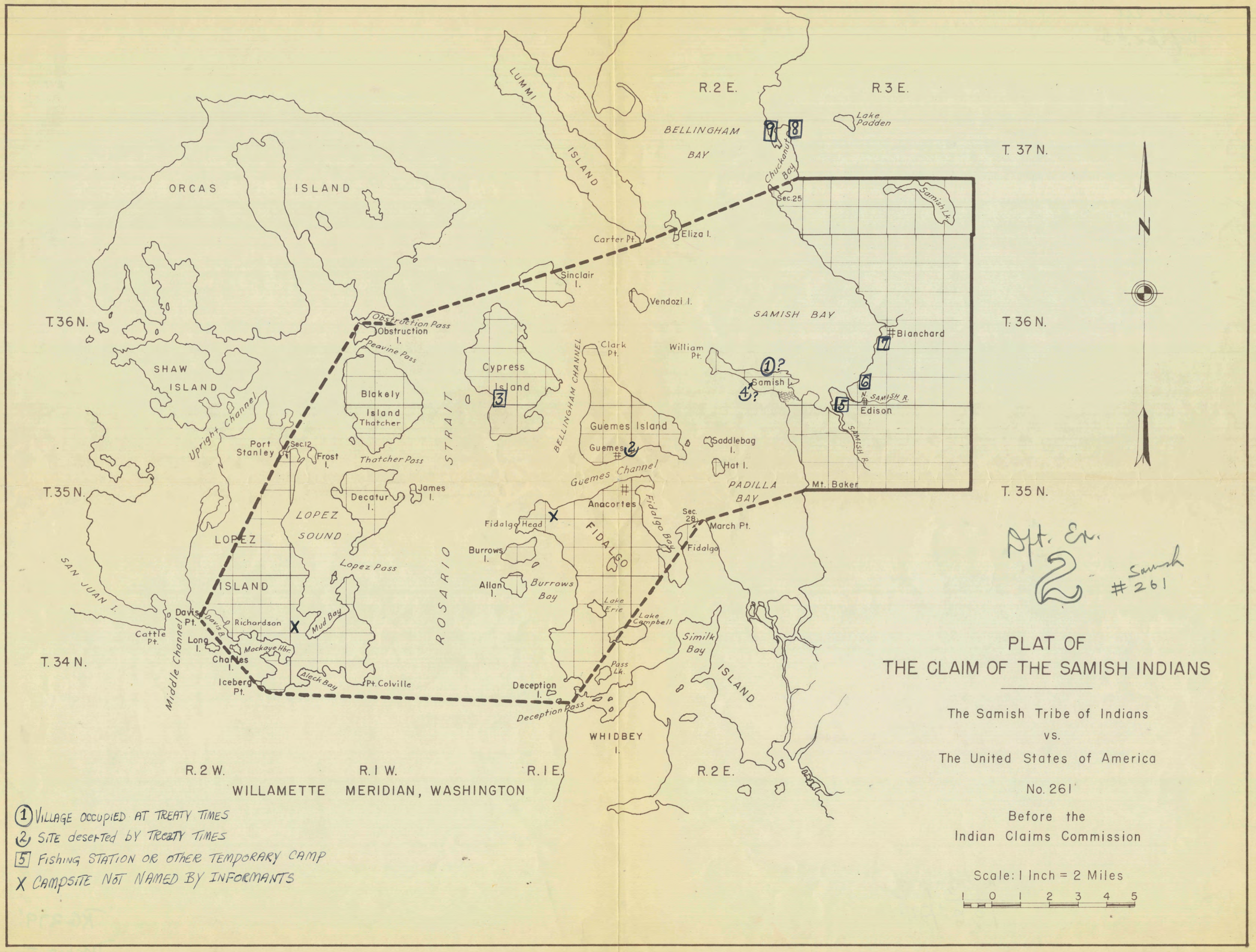
fully the kinds of power that had won their ancestors respect, they had sought or submitted to government protection. But instead of lending them strength, that protection had ensured and signified their weakness and low status. A desire to redefine this humiliating relationship energized the campaign and litigation that the Northwestern Federation of American Indians initiated. By calling attention to the old treaties and insisting that the government honor them, NFAI members suggested a more palatable way to conceive of Indianness. They constructed a collective history that acknowledged their indigenous forebears but offered people like Sam Kadim the hope of leaving those forebears' world behind. In effect, while unapologetically acknowledging that Indians were different from non-Indians, they demanded legal and economic parity with other Americans. By differentiating between old Indians and Indians of the future, they could proclaim pride in their Indian heritage.



Pft. Ex. 2 Samish #261

PLAT OF THE CLAIM OF THE SAMISH INDIANS

The Samish Tribe of Indians
vs.
The United States of America

No. 261

Before the
Indian Claims Commission

Scale: 1 Inch = 2 Miles

1 0 1 2 3 4 5