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Reston, VA 20191-3844

March 21, 2019

The Honorable Tara Sweeney
Assistant Secretary – Indian Affairs
Department of the Interior
1849 C Street, N.W.
MS-4660-MIB
Washington, DC 20240

Re: Petition of the Southern Sierra Miwok for Federal Acknowledgment

Dear Ms. Sweeney:

This letter is in comment to the *Proposed Finding against Acknowledgement of the Southern Sierra Miwok Nation, of November 16, 2018* (PF). I am a retired staff cultural anthropologist who earlier served as part of the evaluation team of the Southern Sierra Miwok Nation (SSM). I am therefore familiar with the evaluation research conducted with the petitioner. However, I will limit my comments to the above referenced document itself in general administrative context, and hope this letter is sufficient to reflect my disassociation from whatever processes led to this November 16 document.

My first comment involves the application of the single-criterion evaluation, along with the restriction that concentrates only the “present” period within the evaluation. A single-criterion evaluation is allowed under the Departmental Directive of May 23, 2008. The Directive explains that such an evaluation can proceed “[i]f during the evaluation of a petition on active consideration it becomes apparent that the petitioner fails on one criterion, or more, under the reasonable likelihood of the validity of the facts standard [after] setting forth the evidence.” The directive makes explicit the evaluation under a single criterion, and was recently applied to the Tolowa Nation petition. However, the Tolowa Nation evaluation involved the whole historical context of 25 CFR 83.7(b), not just “the present.” Nowhere does the 25 CFR 83 define the term “present.” Such a definition would be unnecessary, most likely, because the term is used throughout the regulations either as a historical endpoint or a single instance in time, not as a duration of time within which to evaluate a petition.

In general, providing historical context allows a more informed evaluation of the evidence under review. If the historical context were provided, the arbitrary establishment of the date of the petition’s receipt as the beginning of the “present” would be unnecessary. Instead, the petition’s evaluator could analyze the “present” as a flexible period as indicated throughout the regulations. It is, more realistically, a period of time recalled from the individual petitioner members’ direct experience. Some of the petitioner’s members were born in the 1920’s while others were born in the 1990s. This range of recalled eyewitness experience would be particularly important in any evaluation. Interestingly, the PF began its criticism of the petitioner from 1971, not 1981. The reason given was “[t]o lay a factual foundation for continuity and the evaluation of community at present.” Evidently, even the PF could not rely on its own date.

My second comment involves the PF’s review of social interaction, which selected restricted examples of social interaction. On page 19, for example, the PF selects one quotation from the speaker regarding the

effects and seriousness of drinking from their own experience. The PF then comments that the interview “did not discuss any particular issues or specific conflicts that may have been the cause of these disagreements to show that the group followed specific steps in resolving conflicts that the member supported.” Why the PF included this one particular quote when it had at least 22 interviews from which to choose is a mystery. For example, the quote suggested that the issue for the speaker was how important the Bear Dance and Spiritual Walk were for clarifying individuals’ sense of life purpose. While certainly not serving as strong stand-alone evidence for social interaction, it could serve as part of a body of evidence showing this Bear Dance and Spiritual Walk were more than simply commemoration. See 25 CFR 83.7(b) for further information.

Thus, the PF gives the impression that the OFA staff simply selected a small sample of specific interview quotes, apparently without examining all of the information reportedly available. It is unlikely that the quote referenced in the PF was the only one available for OFA analysis. Each of the 22 interviews was recorded as part of the site visit conducted during June 2011. As my standard operational procedure, I recorded each one. Then, upon my return to OFA I copied and provided CD’s to each interview to each individual with whom I interviewed. Then, I transcribed significant portions of them for analysis in the evaluation. In accordance with FOIA the only entities to whom I provided a complete copy of the interview, were to the OFA SSM team and these individuals. Thus, they were readily available to OFA staff for verification and analysis.

I have refrained from discussing the evaluation process as it pertains to this petition. However, I do not feel that it is in my best interest to be associated with the evaluation processes suggested by this sort of OFA-originated document. It is not the kind of documentation I remember as typical of the OFA for which I was employed.

Sincerely,

Gordon M. Schoepfle, PhD, Cultural Anthropologist (Ret.)