



United States Department of the Interior

Office of Inspector General

Washington, D.C. 20240

August 27, 2004

Honorable Christopher Dodd
United States Senate
Washington, D.C. 20510-0702

Dear Senator Dodd:

This is in response to your March 12, 2004 letter in which you requested the Office of Inspector General (OIG) to conduct an investigation into the process associated with the Bureau of Indian Affairs' (BIA) Final Determination decision of Federal acknowledgment as an Indian tribe to a group known as the Schaghticoke Tribal Nation (STN). Your letter referred to allegations in a March 12, 2004 article in the *Hartford Courant*, which criticized the acknowledgment because the group allegedly did not meet all of the mandatory criteria for Federal acknowledgment. In response to your letter, the OIG initiated an investigation. Subsequently, the OIG received a request from the Secretary of the Interior, Gale A. Norton, asking the OIG to give this matter high priority, given its importance and the concerns raised.

The newspaper article alleged that (1) BIA "bent the rules" to grant acknowledgment to the STN; (2) BIA's Office of Federal Acknowledgment (OFA) authored a briefing paper explaining how the STN's petition could be approved; (3) STN supporters influenced BIA officials to award acknowledgment to STN; and (4) an OFA employee had a personal bias against the Connecticut Attorney General's Office that may have influenced the review and acknowledgment process. We reviewed thousands of documents related to the STN petition and interviewed the senior Department of the Interior (DOI) officials involved in the acknowledgment process, officials representing the State of Connecticut and affected Connecticut towns, STN leaders, and supporters of the STN in the Federal acknowledgement process.

Background

In connection with a lawsuit against Connecticut for 900 acres of land adjoining the STN reservation, STN filed a petition for Federal acknowledgment as an Indian tribe with BIA. In May 2001, the U.S. District Court with jurisdiction over the lawsuit issued a court-approved negotiated scheduling order that addressed the group's land claim issue and resolution of the group's recognition status. The group failed to submit adequate documentation to BIA by the court-imposed deadline, and on December 5, 2002, BIA issued its Proposed Finding denying Federal acknowledgment. Subsequent to the issuance of the Proposed Finding, during the comment period, the group submitted additional information to BIA for consideration. With the additional information, BIA issued its Final Determination acknowledging the STN as a Federally recognized tribe on January 29, 2004.

Investigative Findings

Allegation that BIA “bent the rules”

The *Hartford Courant* article alleged that BIA “bent the rules” by granting STN Federal acknowledgment. On December 5, 2002, the former Assistant Secretary – Indian Affairs issued a Proposed Finding that denied STN Federal acknowledgment because the group failed to meet the requirements of the Code of Federal Regulations (CFR) Title 25, Chapter 1, Part 83, “Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.” The Proposed Finding stated that STN did not meet two out of the seven mandatory criteria for obtaining Federal acknowledgment. Specifically, STN did not demonstrate the *continual existence of a distinct community* from 1940 to 1967 and from 1996 to the present, and STN did not *maintain political authority and influence* for specific time periods from 1801 to present.

After the Proposed Finding was issued, the regulations provide for a period in which the petitioner and third parties may submit comments and additional information to BIA. During the comment period, STN did submit additional information to address these two criteria, which was considered by BIA in issuing its Final Determination.

On January 29, 2004, the Principal Deputy Assistant Secretary – Indian Affairs issued a Final Determination acknowledging the STN as a federally recognized tribe. The Final Determination stated that the additional information submitted by STN provided sufficient evidence to meet the requirements of the two criteria that had been lacking. The regulations, as written, are permissive and inherently flexible, and therefore afford latitude in the evidence used and considered to support Federal acknowledgment.

Whether or not the Principal Deputy Assistant Secretary – Indian Affairs acted within her regulatory discretion is not for the OIG to decide. Rather, we note that this matter is on appeal before the appropriate administrative tribunal, the Interior Board of Indian Appeals, which has jurisdiction to adjudicate this issue.

Allegation that briefing paper is a “smoking gun”

An OFA briefing paper, which was contained in the administrative record, was described as a “smoking gun” in various news articles. A team of OFA employees (a historian, a genealogist, and a cultural anthropologist) was responsible for reviewing STN’s application for Federal acknowledgement and preparing the briefing paper for the Principal Deputy Assistant Secretary – Indian Affairs to assist her in making a decision regarding STN’s acknowledgment. The options contained in the briefing paper were discussed in a meeting among the OFA team members, the Principal Deputy Assistant Secretary – Indian Affairs, and an attorney from the Office of Solicitor. Our investigation determined that the team prepared the briefing paper with knowledge that it would be subject to full public disclosure and part of the STN administrative record.

Allegation that STN representatives influenced BIA officials

Our investigation found no evidence to support the allegation that lobbyists or representatives for STN directly or indirectly influenced BIA officials to grant Federal acknowledgment to STN. Interviews with STN's leader and council representatives disclosed that the Federal acknowledgment process cost the group approximately \$12 million. In pursuing its land claim, the group incurred even more costs.

In order to cover these costs, the group sought supporters and ultimately secured several financial backers, including Frederick A. DeLuca, founder of the *Subway* restaurant chain and a member of a small investment group known as the Eastlander Group in Hartford, CT. The Eastlander Group employs Paul Manafort as a consultant who facilitates communications between Eastlander and the STN. Mr. Manafort was reported in at least one article as having lobbied DOI on behalf of STN.

The Eastlander Group's managing director told us that no one from the Eastlander Group had contacted DOI employees regarding STN's Federal acknowledgment. Mr. Manafort also told us he had no contact with DOI employees regarding STN's Federal acknowledgment. The DOI employees we interviewed also denied having been contacted by any STN lobbyist about the STN Federal acknowledgment petition, and our investigation found no independent evidence of any contact.

Allegation of personal bias against the Connecticut Attorney General

Finally, we addressed the allegation that an OFA employee had a personal bias toward the Connecticut Attorney General that may have influenced the review and Federal acknowledgment process. Representatives of the Town of Kent, CT, referred to e-mails in the administrative record authored by one of the OFA staff as evidence of personal bias. Using the Federal Acknowledgement Information Resource database for the STN petition, we searched for and identified 114 e-mails in the STN administrative record. We reviewed each e-mail, regardless of author and found none that could be construed as showing a personal bias toward the Attorney General.

Although the STN recognition decision was highly controversial, we found that OFA and the Principal Deputy Assistant Secretary – Indian Affairs conducted themselves in keeping with the requirements of the administrative process, their decision-making process was made transparent by the administrative record, and those parties aggrieved by the decision have sought relief in the appropriate administrative forum – each, as it should be. Therefore, we are closing this matter.

If you have any questions or additional concerns, please do not hesitate to contact me at (202) 208-5745.

Sincerely,



Earl E. Devaney
Inspector General