



United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

JUL 07 2017

In Reply Refer To
Division of Tribal Government

The Honorable M. Brian Cladoosby
Swinomish Indian Tribal Community
11404 Moorage Way
La Conner, Washington 98257-9450

Dear Chairman Cladoosby:

Pursuant to 25 C.F.R. § 81.45, this notice is to advise you of our decision to approve the results of the Swinomish Indian Tribal Community's May 23, 2017 Secretarial election.

We received Swinomish Resolution Number 2017-02-030 on March 1, 2017, officially requesting a Secretarial election to decide twenty-nine proposed amendments to the Constitution of the Swinomish Indian Tribal Community. We found that the request satisfied the submittal requirements at 25 C.F.R. § 81.6. Therefore, on March 2, 2017, Stanley M. Speaks, the Bureau of Indian Affairs (BIA) Northwest Regional Director, directed the Superintendent, Puget Sound Agency, to call and conduct an election. The election was held on May 23, 2017.

This notification meets the requirements of 25 C.F.R. § 81.45(c)(1)-(4):

Election Challenges

Per 25 C.F.R. § 81.43, any registered voter may challenge the results of the election and is provided a five-day period to submit written challenges. The Superintendent reports that with no challenges filed, the results were submitted to us for review and approval.

Voting Results

Our review and approval of the election results is governed by the requirements at 25 C.F.R. § 81.45(a)-(b). With no challenges filed, § 81.45(a) does not apply. Therefore, we move to the requirements at § 81.45(b).

According to our records to perfect your request for a Secretarial election, 247 eligible Swinomish tribal members registered in this election. At least seventy-five eligible voters were needed to cast their vote to meet the thirty percent voter requirement under 25 C.F.R. § 81.45(b)(1). Each proposed amendment had at least 143 valid votes tallied, making the election valid.

Each proposed amendment received the majority of votes in favor of its passage. Therefore in accordance with 25 C.F.R. § 81.45(b)(2), the voters accepted all proposed amendments.

Amendments Approved

As the approval requirements at 25 C.F.R. § 81.45 are met, I have approved each proposed amendment as indicated in the enclosed Certificates of Approval. Proposed Amendments "A" through "AC" are now Amendments "16" through "44," respectively.

As you know, a number of local individuals, groups, businesses, units of local government, and tribes expressed concern over the scope and effect of the proposed amendments relating to Swinomish territory and jurisdiction (Proposed Amendment "B," now Amendment 17). These concerns largely echoed those raised in the BIA's September 13, 2016 review of the proposed amendments: whether the Tribe intended these amendments to, as a matter of law, either (1) expand the size of the Tribe's reservation by deleting all reference to the Executive Order of September 9, 1873; or (2) expand the Tribe's jurisdiction over any off-reservation territories (including those associated with tribal treaty hunting, fishing, and gathering) or with respect to the off-reservation actions or activities of non-tribal members.

In correspondence dated October 5, 2016, the Tribe disputed the validity of the BIA's concerns. Nevertheless, the Tribe proposed language qualifying the Tribe's authority under Proposed Amendment "B" as being "to the fullest extent possible consistent with applicable federal law and the sovereign powers of the Tribe." With this caveat in place, the Tribe suggested that the proposal subsequently could not be found to be "contrary to applicable laws," the only grounds set forth in the Indian Reorganization Act and implementing regulations for not approving proposed amendments. After substantial review, the BIA agreed and determined that none of the Tribe's proposed amendments were "contrary to applicable laws" as drafted. The BIA advised the Tribe of our findings in our letter dated January 24, 2017.

While approving the proposed amendments, we wish to take this opportunity to clarify our understanding of Amendment 17. We do so in light of the BIA's previous concerns with the proposed amendments and the substantial outside interest in preemptively resolving jurisdictional disputes or other misunderstandings between the Tribe and its neighbors.

First, and as you have agreed, nothing in this approval shall be construed as authorizing any action under the Swinomish Constitution that is contrary to federal law.

Second, nothing in this approval shall be construed as altering the Tribe's reservation boundaries. Any claim seeking to challenge or confirm the boundaries of the Swinomish reservation must be evaluated on a case-by-case basis. Absent a formal opinion or federal court decision to the contrary, the United States' position remains that the reservation's boundaries were established by the 1855 Treaty of Point Elliott and subsequently modified by the Executive Order of September 9, 1873.

Third, nothing in this approval shall be construed as expanding, diminishing, or otherwise altering the Tribe's civil, criminal, regulatory, or any other jurisdiction outside of its reservation except as authorized by governing law. Nor shall this approval be construed as changing or otherwise abrogating any previous adjudication concerning the Tribe's access to, or jurisdiction over, any treaty hunting, fishing, or gathering areas.

While you are under no legal obligation to do so, we encourage you and your legal counsel to advise the outside parties of the election results. We also appreciate the Tribe's willingness to both address the BIA's concerns with the proposed amendments and to work with its state, local, and tribal neighbors to ensure an amicable environment in and around Skagit County. We encourage the Tribe to contact us in the future should you require any BIA assistance in furthering your interests or resolving confusion over the scope of the Tribe's constitutional jurisdiction.

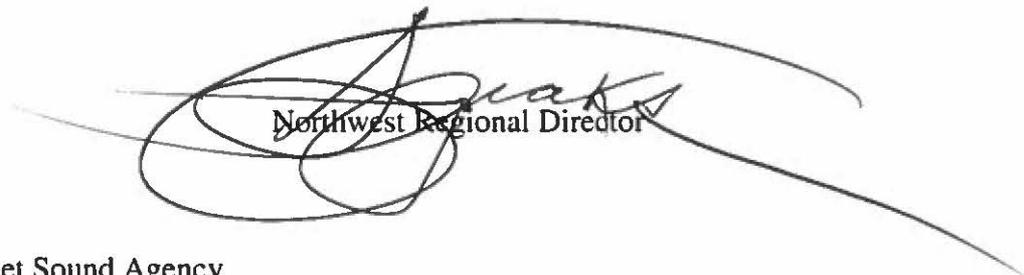
Final Agency Action

This decision constitutes a final agency action for the Bureau of Indian Affairs.

The Secretarial Election Board is to be commended for its work in this election.

If you have further questions, please contact Greg Norton, Tribal Government Specialist, at (503) 231-6723.

Sincerely,


Northwest Regional Director

Enclosures

CC: Superintendent, Puget Sound Agency