

Phase I – Positive Proposed Finding

Muscogee Nation of Florida
Petitioner #32

Prepared in Response to the Petition
Submitted to the Assistant Secretary – Indian Affairs
for Federal Acknowledgment as an Indian Tribe

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(Date)



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TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS	3
INTRODUCTION	4
Regulatory Procedures	4
Summary of Administrative Action.....	5
Membership Lists.....	8
CONCLUSIONS UNDER THE CRITERIA (25 CFR § 83.11)	10
Criterion 83.11(d)	11
Criterion 83.11(e).....	14
Criterion 83.11(f)	22
Criterion 83.11(g)	24
BIBLIOGRAPHY	25

ACRONYMS AND ABBREVIATIONS

AS-IA	Assistant Secretary-Indian Affairs
BAR	Branch of Acknowledgment and Research
BIA	Bureau of Indian Affairs
CFR	<i>Code of Federal Regulations</i>
FD	Final Determination
FR	<i>Federal Register</i>
FTECI	Florida Tribe of Eastern Creek Indians
ICC	Indian Claims Commission
MNF	Muscogee Nation of Florida
NARA	National Archives and Records Administration
OFA	Office of Federal Acknowledgment
PF	Proposed Finding
TA	Technical Assistance

INTRODUCTION

The Office of Federal Acknowledgment (OFA), within the Office of the Assistant Secretary–Indian Affairs (AS-IA), in the Department of the Interior (Department), issues this Phase I positive Proposed Finding (PF) in response to the petition the Department received from the group known as the Muscogee Nation of Florida (Petitioner #32), headquartered in Bruce, Florida. The petitioner seeks Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR Part 83), “Procedures for Federal Acknowledgment of Indian Tribes.”

Based on the evidence submitted by MNF, as well as evidence Department staff obtained through its verification and evaluation process, MNF meets the four mandatory criteria reviewed during Phase I: criteria 83.11(d) *Governing document*, 83.11(e) *Descent*, 83.11(f) *Unique membership*, and 83.11(g) *Congressional termination*. An explanation of the Department’s evaluation of the claims and evidence under each criterion is presented in the sections that follow this introduction.

Regulatory Procedures

The Department’s regulations under 25 CFR Part 83 establish the procedures and criteria by which a group may seek Federal acknowledgment as an Indian tribe, establishing a government-to-government relationship with the United States. To be entitled to such a political relationship with the United States, the petitioner must submit evidence documenting that the group meets criteria 83.11(d), 83.11(e), 83.11(f), and 83.11(g) and must either:

- (a) demonstrate previous Federal acknowledgment under § 83.12(a) and meet the requirements of § 83.12(b); or
- (b) meet criteria 83.11(a) *Indian entity identification*, 83.11(b) *Community*, and 83.11(c) *Political influence or authority*.¹

Section 83.26 describes the two phases of the process for reviewing the criteria in § 83.11. During the Phase I review, OFA determines if the petitioner meets criteria 83.11(d), 83.11(e), 83.11(f), and 83.11(g). OFA has completed its Phase I review, and OFA is issuing a Phase I positive proposed finding (PF) and proceeding to Phase II.² During the Phase II review, OFA will determine if the petitioner meets criteria 83.11(a), 83.11(b), and 83.11(c).

¹ 25 CFR §§ 83.43(a), 83.5.

² See 25 CFR § 83.26(a)(4) (stating that “OFA will publish a positive proposed finding and proceed to Phase II if it determines that the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria”); *id.* § 83.32(a)(1) (stating that, following Phase I review, OFA must “either issue a negative proposed finding and publish a notice of availability in the Federal Register, or proceed to review under Phase II”).

Pursuant to § 83.22(c), this Phase I positive PF will be “[p]ublish[ed] . . . to the OFA Web site.” Comments on the Phase I positive PF will be accepted after issuance of the Phase II PF, consistent with the procedures that apply following issuance of a “Phase I negative proposed finding” or a “Phase II proposed finding.”³

Summary of Administrative Action

In June 1978, the Federal Acknowledgment Project, part of the Bureau of Indian Affairs (BIA), received a request for Federal acknowledgment on behalf of the Florida Tribe of Eastern Creek Indians (FTECI), an organization that was a predecessor to MNF.⁴ On June 19, 1978, the FTECI submitted materials for Federal acknowledgment, supplemented by more documents on November 21, 1978. These 225 pages of materials contained a narrative, a governing document, and membership affidavits for 772 people.⁵ On September 5, 1978, the Department officially published the regulations governing the administrative process for Federal acknowledgment.⁶ On January 9, 1979, the Department returned all the materials to the FTECI so the group could review, revise, and re-submit them under the new regulations.⁷

The acknowledgment regulations under 25 CFR Part 83 were revised effective March 28, 1994.⁸ The FTECI submitted a petition on September 28, 1995.⁹ The 620-page petition consisted of a historical narrative, a governing document, a mailing list with the names of 2,140 members, and other materials. On April 11, 1996, OFA’s predecessor, the Branch of Acknowledgment and Research (BAR), provided the FTECI with a technical assistance (TA) review letter that reviewed both the 1978 and 1995 materials.¹⁰ The letter outlined obvious deficiencies under criteria 83.7(a), 83.7(b), 83.7(c), and 83.7(e).¹¹ Under criterion 83.7(a), the TA review letter advised the petitioner there was a lack of evidence that external observers had identified it as an American Indian entity from 1900 to the 1970s. Under criterion 83.7(b), the TA review letter advised the petitioner it needed to show there were significant social interactions and/or social relationships not only within immediate or extended families or among close kinsmen, but also

³ 25 CFR §§ 83.33–40.

⁴ Juanita S. Felter (Exec. Dir., Northwest Florida Creek Indian Council), letter to AS–IA, Jun. 2, 1978.

⁵ Florida Tribe of Eastern Creek Indians (FTECI), “Petition for Recognition of the Florida Tribe of Eastern Creek Indians,” received Jun. 19, 1978.

⁶ 43 FR 39361–64.

⁷ Federal Acknowledgment Project, letter to James E. Waite (Pensacola, Florida), Dec. 5, 1978. *See also* Office of Indian Services, to Senator Paula Hawkins (Washington, D.C.), Mar. 25, 1981; Office of Indian Services, to Congressman Don Fuqua (Washington, D.C.), Dec. 26, 1985.

⁸ 59 FR 9280.

⁹ FTECI, “Petition for Acknowledgment of the Florida Tribe of Eastern Creek Indians,” received Sep. 28, 1995.

¹⁰ Acting Director, Office of Tribal Services, BIA, letter to John C. B. Thomas, Apr. 11, 1996 (hereinafter cited as “1996 TA Review Letter”).

¹¹ Prior to the 2015 revision of 25 CFR Part 83, the seven mandatory criteria that a petitioner must satisfy to become federally acknowledged were located at § 83.7.

across kin group lines and other social subdivisions. Under criterion 83.7(c), the TA review letter cautioned the group it showed only leadership within family groups and no political leadership over the petitioner as a whole since FTECI formed in 1978, and no evidence of political authority or influence from the 19th century to 1978. Under criterion 83.7(e), the TA review letter informed the group it had not provided evidence of descent from a historical Indian tribe.¹²

In January 2001, the group petitioning for Federal acknowledgment submitted a new governing document that reflected a shift in the name and membership of Petitioner #32. Petitioner #32, previously known as the “Florida Tribe of Eastern Creek Indians,” became the “Muscogee Nation of Florida,” comprised of only a subset of FTECI’s members.¹³ Fourteen months later, the Department received the MNF’s response to the 1996 TA review letter. It contained over 2,000 pages, including a narrative, a membership list of 1,083 members, ancestry charts, and other documents.¹⁴ In May 2002, the petitioner informed the Department it wished to go on the list of petitions “Ready, Waiting for Active Consideration” (Ready List).¹⁵ In June 2002, the petitioner submitted additional petition materials. The Department confirmed receipt of the materials and placed the petitioner on the Ready List in January 2003.¹⁶

The Department began active consideration of the group’s petition on December 5, 2011. At this time, the Department allowed the petitioner to supplement its petition.¹⁷ On February 3, 2012, the Department received additional materials from the petitioner. The estimated 7,600 pages of materials included narratives, exhibits, analyses, membership files, and a membership list of 594 members.¹⁸

On June 21, 2013, the AS-IA announced a “preliminary discussion draft of potential revisions to Part 83.” By letter dated May 31, 2013, the Department provided the petitioner the option to request a suspension of consideration of its petition during the upcoming process of revising the regulations or to continue under the existing Part 83 regulations.¹⁹ By letter dated August 20, 2013, received at OFA on August 26, the petitioner requested to proceed with a PF under the

¹² 1996 TA Review Letter.

¹³ “Constitution of the Muscogee Nation of Florida,” adopted January 21, 2001. Over 100 members of the FTECI resigned their membership in 2001. Hereinafter cited as “MNF Constitution.”)

¹⁴ MNF, “Response to TA Review letter of April 11, 1996 by the Muscogee Nation of Florida (formerly known as Florida Tribe of Eastern Creek Indians),” by letter to BAR dated Feb. 20, 2002, received Mar. 19, 2002.

¹⁵ Ann D. Tucker (Acting Chief, MNF), letter to U.S. Dept. of the Interior, BIA, May 27, 2002.

¹⁶ BAR, letter to Ann D. Tucker, Jan. 31, 2003.

¹⁷ OFA, letter to Ann D. Tucker, Nov. 28, 2011; *see also* 70 FR 16514 (stating that the Department “will provide a 60-day time period” for the petitioner and third parties to submit additional material once active consideration has begun).

¹⁸ MNF, supplement to petition submissions, received Feb. 3, 2012; OFA, letter to Ann D. Tucker, Feb. 7, 2012. The 2012 membership list was certified by the governing body in a separate letter dated Feb. 18, 2012.

¹⁹ OFA, letter to Ann D. Tucker, May 31, 2013.

existing regulations.²⁰ A series of extensions by the Office of the AS-IA for additional review of the petition during active consideration extended the due date to July 29, 2015.²¹

On July 1, 2015, the Department issued a final rule revising 25 CFR Part 83.²² Section 83.7 of the revised regulations (2015 regulations) required OFA to notify each petitioner that had submitted a complete documented petition as of the time of the revision but had not yet received a final agency decision that it must proceed under the 2015 regulations unless it elected by September 29, 2015, to complete the petitioning process under the previous version of the acknowledgement regulations (published in 1994). The petitioner elected to proceed under the revised regulations by letter received on September 15, 2015, and OFA published notice of this decision in the Federal Register on November 27, 2015.²³ The following day, OFA posted the petitioner's narrative to its website, initiating a 120-day comment period, during which third parties had the opportunity to submit comments and evidence supporting or opposing the petitioner's request for acknowledgment.²⁴ The 120-day comment period ended on March 28, 2016; the petitioner's 90-day response period ended on June 27, 2016.²⁵

Active consideration of the petition under the revised regulations began on June 27, 2016.²⁶ On October 25, 2016, OFA provided MNF with a Phase I TA review letter under § 83.26(a)(1)(i), detailing deficiencies that would prevent the petitioner from meeting criterion § 83.11(e). In the TA review letter, OFA explained that “[t]he evidence . . . does not at this point demonstrate that the MNF petitioner descends from the Creek Indian tribe, a historical Indian tribe, or any Indians.”²⁷ The OFA received response materials on March 21, 2023.²⁸ On May 11, 2023, OFA transmitted additional documents to MNF, containing “evidence OFA may consider that the petitioner does not already have” as required by § 83.26(a)(2)(i). The OFA also requested a current membership list and genealogical database in readable electronic format and notified the

²⁰ OFA, letter to Ann D. Tucker, Aug. 28, 2013.

²¹ OFA, letters to Ann D. Tucker, Dec. 6, 2012; Jan. 16, 2013; Mar. 1, 2013; Jun. 13, 2013; Nov. 14, 2013; Jan. 9, 2014; Mar. 12, 2014; Jun. 16, 2014; Oct. 17, 2014; Mar. 12, 2015; and Mar. 27, 2015.

²² 80 FR 37862–95.

²³ 80 FR 74123.

²⁴ A list of comments submitted by third parties to OFA regarding MNF's documented petition appears here: <https://www.bia.gov/as-ia/ofa/032-muscnf-fl-narr-web-cmts>. See 25 CFR § 83.22(c)(2).

²⁵ OFA, letter to Ann D. Tucker, Oct. 5, 2016.

²⁶ *ibid.*

²⁷ OFA, letter to Ann D. Tucker, Oct. 25, 2016 (hereinafter cited as “2016 TA Review Letter”), 5. This letter included two attachments, independently paginated. For ease of reference, this PF will cite the page number of the digital copy available in PDF format online at https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/032_muscnf_FL/032_tap1_2016_10_25.pdf.

²⁸ MNF, “Response to Technical Review letter dated October 25, 2016,” 3 vols. and digital files, certified by Tribal Resolution 23–0306, letter of transmittal to OFA, Mar. 6, 2023; received Mar. 21, 2023 (hereinafter cited as “2023 TA Review Response”). The three volumes each contain numerous documents independently paginated; for ease of reference, citations will reference the volume number and page number of the digital copy in PDF format provided by MNF.

petitioner that OFA was suspending review of the documented petition due to “technical or administrative problems that temporarily preclude[d] continuing review,” pursuant to § 83.31(a).²⁹ Upon submitting the updated membership list and genealogical database on August 10, 2023, the petitioner requested that OFA proceed with the Phase I review.³⁰ The OFA lifted the suspension and resumed review of the petition on October 26, 2023.³¹ On December 18, 2023, OFA requested additional clarifying information concerning the petitioner’s governing documents and membership structure.³² OFA received an emailed response to its request for information on January 24, 2024.³³

Membership Lists

Under § 83.21(a)(4), the documented petition must include a copy of the petitioner’s official current membership list, as well as any other previous membership lists, if available. The petitioner must also provide explanations regarding the preparation of all the membership lists, current and former, insofar as possible. The current membership list must be separately certified by the petitioner’s governing body and include each member’s full name (including maiden name, if any), date of birth, and current residential address.

The analysis of criterion 83.11(e) in the Phase I TA review letter relied on a certified membership list, dated February 18, 2012, that gave the “names, dates of birth, and residential addresses of 594 living, current members.”³⁴ In its response to the TA review letter, the petitioner provided OFA with a new membership list, entitled “MNoF Citizens – Names & Addresses” and dated July 30, 2023. This current list provides the name, dates of birth, roll number, membership type (Youth or Adult), sex, and address for each of 608 members.³⁵

There are several references in the petitioner’s response to the Phase I TA review letter to a two-tiered membership system; however the updated membership list that MNF submitted in 2023 does not specify individual tiers for the listed members. In response to a request for clarification on the accuracy and completeness of the membership list, the petitioner explained that “all records in the Council House at Bruce were audited to finalize the 608 members on the certified roll submitted on August 14, 2023” and that “[t]his is the only roll of Muscogee Nation of

²⁹ OFA, letter to Ann D. Tucker, May 11, 2023.

³⁰ Ann D. Tucker (Chairwoman, Tribal Council), letter to OFA, dated Aug. 10, 2023, received Aug. 14, 2023.

³¹ OFA, letter to Ann D. Tucker, Oct. 26, 2023.

³² OFA, letter to Ann D. Tucker, Dec. 18, 2023.

³³ Ann D. Tucker (“Chairwoman – MNOF Tribal Council”), letter to OFA, Jan. 18, 2024; transmitted by email, Jan. 24, 2024.

³⁴ 2016 TA Review Letter, 4.

³⁵ “MNoF Citizens – Names & Addresses (7/30/23),” PDF file, dated 7/28/2023; USB drive, attached to Ann D. Tucker (Chairwoman, MNF), letter to R. Lee Fleming, “BIA/OFA,” Aug. 10, 2023; received by OFA, Aug. 14, 2023.

*Florida.*³⁶ This Phase I evaluation pertains only to the group consisting of these 608 members. Based on MNF’s response to OFA’s request for clarification, any individuals “affiliated” with MNF but who were not included in this roll (that is, possible “Tier II” members) are not considered members of this petitioner by the Department.

³⁶ Tucker, letter to OFA, Jan. 18, 2024 (emphasis in original).

CONCLUSIONS UNDER THE CRITERIA (25 CFR § 83.11)

This Phase I positive PF reaches the following conclusions for each of the mandatory criteria evaluated during the Phase I review under § 83.11:

Criterion 83.11(d) requires that the petitioner provide a copy of the entity's present governing document, including its membership criteria or, in the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures. The MNF submitted a governing document that describes its governing procedures and its membership criteria. Therefore, the petitioner meets the requirements of criterion 83.11(d).

Criterion 83.11(e) requires that the petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity. MNF claims descent from 16 "individuals identified as Creeks in the nineteenth century,"³⁷ including a woman named Elizabeth (English) Ward, from whom nearly 80% of MNF's members descend.³⁸ Pursuant to § 83.11(e)(1), evidence of MNF's members' descent from the Indian Claims Commission (ICC) Docket 21 judgment fund distribution roll (discussed below), through their ancestor Elizabeth (English) Ward, reflects descent from the "historical Creek Nation" and is sufficient to meet criterion 83.11(e). Therefore, the petitioner meets the requirements of criterion 83.11(e).

Criterion 83.11(f) requires that the petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. Based on its review of the evidence, OFA has determined that the petitioner's membership is composed principally of persons who are not members of federally recognized Indian tribes. Therefore, the petitioner meets the requirements of criterion 83.11(f).

Criterion 83.11(g) requires that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. Based on its verification and evaluation research, OFA did not find that the petitioner or its members are the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. Therefore, the petitioner meets the requirements of criterion 83.11(g).

Therefore, pursuant to § 83.26(a)(4), the Office of Federal Acknowledgement hereby publishes this Phase I positive PF.

³⁷ See James M. McClurken and Heather Howard, "Addendum to Muscogee Nation of Florida (Petitioner #32) Response to Office of Indian Affairs Technical Assistance Letter dated 11 April 1996," dated Oct. 22, 2004, p. 12.

³⁸ MNF, "Bruce Tribal Roll_2023-07-28," genealogical database, GEDCOM format, date modified Jul. 28, 2023; on USB drive, attached to Ann D. Tucker (Chairwoman, MNF), letter to R. Lee Fleming, "BIA/OFA," Aug. 10, 2023; received by OFA, Aug. 14, 2023. The database includes 474 individual children and adults identified as current members and as descendants of Elizabeth (English) Ward.

Criterion 83.11(d)

- 83.11(d) *Governing Document.* The petitioner must provide: (1) A copy of the entity’s present governing document, including its membership criteria; or (2) In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures.

Summary

The MNF submitted governing documents that described its governing procedures and membership criteria. Thus, it meets the requirements of criterion 83.7(d).

Current Governing Document

The most recent governing document provided to the Department was a “Constitution of the Muscogee Nation of Florida,” adopted January 21, 2001. This constitution contains 12 articles addressing name and seal; territory; citizenship; “declaration of rights”; general provisions; legislative branch (National Council); executive branch (Office of the Chief); judicial branch; amendments; nominations and elections; removal from office; and ratification and first election. Article I, Section 1 officially changed the petitioner’s name from the Florida Tribe of Eastern Creek Indians to the Muscogee Nation of Florida.

Article III, Section 3 details the criteria for “full citizenship in the Nation”:

- A. Demonstrated direct blood tie to a Muscogee (Creek) Indian who resided in the Creek Nation prior to implementation of the removal policies of the United States Government in regard to Creek Indians, or who were removed by the United States Government to that part of the State of Oklahoma which is now known as the Creek Nation; and
- B. Demonstrated direct blood tie to a known Muscogee (Creek) Indian who established residency within the State of Florida prior to the year 1895, as a result of the Indian removal policies or related activities of the United States Government; and
- C. Demonstrated Eligibility to share in United States of America Creek Land Claim Settlements, which are commonly known as Department of the Interior Dockets 21, 272, or 275 and/or demonstrated direct lineal descent from a member of a Creek community listed on the Abbot Parsons Census of 1832 or the Apalachicola Treaty.³⁹

³⁹ MNF Constitution, art. 3, § 3.

The MNF submitted a “Tribal Enrollment Ordinance” #04-01-00, passed and certified by the governing body on February 7, 2004. The ordinance contains 10 sections, detailing its authority under the MNF constitution, eligibility for membership, enrollment procedure, the appointment of an Enrollment Commission, maintenance of the membership roll, disenrollment, relinquishment of membership, appeals, confidentiality, and a “savings provision.” This enrollment ordinance radically changed the criteria for membership. Eligibility under Ordinance #04-01-00 is defined as follows:

An individual is eligible for membership in the Tribe, if he/she is a lineal descendant or collateral blood relationship of a member of the Muscogee Creek Nation, as established by the Indians listed on the Methodist Church rolls in Bruce, Florida between 1912–1922 and is not currently enrolled in any other federally recognized Indian Tribe, band, or group.⁴⁰

On December 18, 2023, OFA sent a letter to MNF, requesting clarification of its membership criteria and the relationship between the 2001 constitution and 2004 ordinance.⁴¹ In response, in a letter to OFA dated January 18, 2024, the petitioner wrote,

The document titled “Tribal Enrollment Ordinance #04-01-100” certified February 7, 2004 was voted on by the National Council to meet the requirements of Article IX of the 2001 Constitution, entitled “Amendments.” Because of the serious nature of the subject of Citizenship, the meeting had a full Council, Anthropologist James McClurken, and a representative of Kitto Law Office in attendance. After discussions, the resolution for the Enrollment Ordinance passed and was signed by Representatives to the Council. *The Ordinance superseded and replaced the requirements of membership that were listed in Article III.* The Constitution that was signed and accepted by the National Council in 2001 predated the Tribal Ordinance.⁴²

While this Phase I positive PF concludes that the evidence is sufficient to satisfy criterion 83.11(d), OFA would like to notify MNF of a problem relating to its membership criteria that may arise in Phase II. To the extent that MNF’s membership criteria equates to appearance on church rolls from the twentieth century with claimed descent from the historical Creek Nation, the basis for that equivalence is unclear and potentially problematic. The church rolls used to determine eligibility were created after 1900; therefore, eligibility for membership in the petitioner does not necessarily indicate an eligible individual’s descent from a historical Indian tribe under criterion 83.11(e).⁴³ More generally, the rolls also do not document Indian ancestry. That is, they do not identify individuals, individual families, or groups of individuals or families collectively as being “Indian,” “Creek,” or otherwise of Creek descent, and it is unclear which

⁴⁰ MNF Constitution § 2.01.

⁴¹ OFA, letter to Ann D. Tucker, Dec. 18, 2023.

⁴² Tucker, letter to OFA, Jan. 18, 2024 (emphasis added).

⁴³ See 25 CFR § 83.1 (defining “historical” to mean “before 1900”).

individuals “listed on the Methodist Church rolls in Bruce, Florida, between 1912–1922” MNF considers to be “Indians.” Following issuance of this PF, the petitioner should clarify the membership criteria, given that the petitioner’s description of its membership will inform OFA’s analysis of community among those claimed members in Phase II.

Previous Governing Documents

The petitioner also submitted a nine-page constitution, adopted by the “Florida Tribe of Eastern Creek Indian Council” on May 28, 1978, which the Department received on June 19, 1978.⁴⁴ It contained 11 articles addressing name; seal, purposes; geographical jurisdiction; membership criteria; elections; chief and vice-chief; administrative council; tribal council; powers; and amendments. Membership criteria were listed under “geographical jurisdiction” and specified that members:

- (a) are Creek Indian by descent and presently reside in the State of Florida, or (b) are Creek Indian or Creek Indian descent who were born in the State of Florida but do not presently maintain residence in the State of Florida, or (c) any other Native American Indian who has attained membership in the Florida Tribe of Eastern Creek Indians.

Finally, the petitioner submitted a second constitution that the Department received on September 18, 1995.⁴⁵ This 14-page document bore the same adoption date as the first constitution, May 28, 1978. However, it contained some revisions. A fourth item under Article IV (geographical jurisdiction) stated that descendants of members had the opportunity to relinquish membership at age 18. Article V changed the membership requirements to connect membership to one of the three ICC judgments relating to the historical Creek Nation (Dockets 21, 272, and 275), or alternatively, to descent from “other Creek Indians listed on Federal rolls” or “certifi[cation] by at least two (2) Competent Tribal Elders.”⁴⁶ A page appended to the governing document provided details of 21 amendments adopted “in open tribal meetings” between September 14, 1980, and November 17, 1991.⁴⁷

⁴⁴ FTECI, “Constitution of the Florida Tribe of Eastern Creeks,” Appendix B, in “Petition for Recognition of the Florida Tribe of Eastern Creeks Indians,” received Jun. 19, 1978.

⁴⁵ FTECI, “Constitution of the Florida Tribe of Eastern Creeks, Adopted May 28, 1978, Amended and Restated,” dated Nov. 17, 1991; Appendix 1, in “Petition for Acknowledgment of the Florida Tribe of Eastern Creek Indians,” received Sep. 28, 1995

⁴⁶ *ibid.*, art. 5 § 1.

⁴⁷ *ibid.*, “Amendments.”

Criterion 83.11(e)

83.11(e) *Descent.* The petitioner’s membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).

Summary of Relevant Administrative History and Conclusion

As noted above, in the “Summary of Administrative Action,” on September 15, 2015, MNF chose to proceed under the 2015 regulations. Following MNF’s decision to do so, OFA conducted a Phase I technical assistance review of the petition, analyzing MNF’s claims and evidence relating to criteria 83.11(d)–(g).⁴⁸ By letter dated October 25, 2016, OFA notified MNF of deficiencies that would prevent the petitioner from meeting criterion 83.11(e).⁴⁹ In response, MNF submitted “additional information and/or clarification” pursuant to § 83.26(a)(1)(i)(B), which the Department received on March 21, 2023.

Upon further consideration of MNF’s claims and the evidence in the record, OFA concludes that MNF has satisfied criterion 83.11(e). As discussed below, MNF has demonstrated that its members descend from the ICC Docket 21 judgment fund distribution roll through their ancestor Elizabeth (English) Ward. That descent, in turn, reflects descent from a historical Indian tribe.

Descent from Elizabeth (English) Ward

Criterion 83.11(e) requires that the petitioner’s membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity. MNF claims descent from 16 “individuals identified as Creeks in the nineteenth century.”⁵⁰

In the Phase I TA review letter, OFA explained that, although “[t]he petitioner identified 16 historical individuals it claims as its Creek Indian ancestors,” “the evidence in the petition does not support that these [16 individuals] are Creek Indians or, in some cases, that these individuals are even ancestors of the petitioner.”⁵¹ In response, the petitioner provided three printed volumes of material containing numerous research reports from professional genealogist Regina H. Blackstock. The reports relate to James B. Ward (b. ca. 1796, South Carolina) and Elizabeth (English) Ward (b. ca. 1798, Georgia), a married couple representing two of the petitioner’s 16 claimed ancestors. MNF did not provide materials addressing the deficiencies relating to the

⁴⁸ See 25 CFR §§ 83.26(a)(1)(i) and 83.27 (describing a Phase I technical assistance review).

⁴⁹ 2016 TA Review Letter, 2.

⁵⁰ 2023 TA Review Response.

⁵¹ 2016 TA Review Letter, 4.

other 14 individuals claimed as ancestors, nor did MNF provide adequate information about another set of “more than 50” claimed ancestors, allegedly “of Creek Indian descent.”⁵² Therefore, the discussion below concerns solely the Wards, particularly Elizabeth (English) Ward.

As noted in the Phase I TA review letter, 515 of the 594 (86.7%) members appearing on MNF’s membership list certified on February 18, 2012, documented descent from this couple.⁵³ On the official current membership list dated July 30, 2023, at least 474 of the 608 (77.9%) members have documented descent from this couple.⁵⁴ That percentage is sufficient to establish the descent of MNF’s membership as a whole from Elizabeth (English) Ward.⁵⁵

Descent from the Historical Creek Nation

The evidence of MNF’s members’ descent from the Docket 21 distribution roll through Elizabeth (English) Ward is sufficient to demonstrate descent from a historical Indian tribe and is consistent with Department precedent recognizing the Creek ancestry of the descendants of Elizabeth (English) Ward.

Background

In its Phase I TA review letter, OFA explained that, in “a prior Federal acknowledgment decision,” relating to Petitioner #7, the Principal Creek Indian Nation East of the Mississippi (“PCN”), the Department had previously “accepted the Creek ancestry of the descendants of Elizabeth (English) Ward,”⁵⁶ based on a finding that Elizabeth (English) Ward was an “early

⁵² MNF, “Bullet Point Response to Evaluation prior to 2015,” in 2023 TA Review Response, 62–63 (noting the lack of evidence relating to the claimed individuals, including the lack of any documentation of Indian ancestry or membership in a historical Indian tribe). Some of these claimed ancestors’ names are unknown, impeding any analysis of descent.

⁵³ 2016 TA Review Letter, 21, 23, and 25.

⁵⁴ MNF, “Bruce Tribal Roll_2023-07-28,” genealogical database.

⁵⁵ The Department does not require 100 percent of the petitioner’s members to descend from the historical Indian tribe but has expected petitioners to satisfy an “80 percent threshold” in the past (80 FR 37866–67). The Department “aims to maintain consistency with that standard” here, *id.*, while allowing for a small margin of error to account for natural, minor fluctuations in a petitioner’s membership over time and the possibility that additional members may be able to document descent from the historical Indian tribe. *But see* BAR, “Report on Final Determination Against Federal Acknowledgment of the Samish Indian Tribe,” dated Jan. 30, 1987, p. 24 (noting that documentation of Samish ancestry for only 74 percent of the membership was insufficient to satisfy the *Descent* criterion because the remaining 26 percent were “of other Indian ancestry but not of documented Samish ancestry”).

⁵⁶ 2016 TA Review Letter, 25.

Creek ancestor[],”⁵⁷ as well as a descendant of “the historical Creek Nation.”⁵⁸ Echoing that finding, OFA’s predecessor, BAR, stated in a 1996 TA review letter to MNF’s predecessor organization, FTECI, that “the Creek ancestry . . . of the descendants of Elizabeth (English) Ward[] has been accepted.”⁵⁹

Nevertheless, OFA concluded in the 2016 Phase I TA review letter that “the evidence in the record does not establish Creek or Indian ancestry for the 515 MNF members claiming descent from Elizabeth (English) Ward.”⁶⁰ While recognizing that the Department, in the PCN decision, had found that Elizabeth (English) Ward was Creek for the purposes of satisfying Part 83’s *Descent* criterion,⁶¹ OFA decided to reevaluate that finding “based on [a] more complete record.”⁶²

In the Phase I TA review letter, OFA explained why it decided to reexamine Elizabeth (English) Ward’s alleged Creek ancestry. The longstanding presumption of her Creek ancestry had been based on the BIA’s “acceptance of Elizabeth (English) Ward as an Eastern Creek for ICC fund distribution purposes.”⁶³ Specifically, the BIA had identified Elizabeth (English) Ward as a Creek ancestor for purposes of determining eligibility for ICC judgment funds distributed to “Eastern Creek descendants” under a case known as “Docket 21.”⁶⁴ In the ICC Docket 21 judgment fund distribution roll, the BIA had included Elizabeth (English) Ward’s descendants as eligible distributees based on her identification as a “qualifying historical ancestor.”⁶⁵ Numerous present and past members of MNF participated in the Docket 21 distribution, as did other descendants of Elizabeth (English) Ward unaffiliated with the petitioner.⁶⁶

According to OFA, the BIA’s identification of Elizabeth (English) Ward as a Creek ancestor had been based primarily on the BIA’s understanding at the time that her name had appeared on a list

⁵⁷ BAR, “Recommendation and summary of evidence for proposed finding against Federal acknowledgment of the Principal Creek Indian Nation East of the Mississippi of Alabama pursuant to 25 CFR 83,” memorandum submitted to the AS-IA, Jun. 8, 1984, p. 8 (hereinafter cited as “Principal Creek PF.”) The memorandum and attached technical reports are continuously paginated.

⁵⁸ Principal Creek PF, 1; *cf.* 25 CFR § 83.11(e)(2) (stating that a petitioner may satisfy the *Descent* criterion by providing “sufficient evidence . . . identifying present members *or ancestors of present members* as being descendants of a historical Indian tribe” (emphasis added)).

⁵⁹ 1996 TA Review Letter, 9.

⁶⁰ 2016 TA Review Letter, 32.

⁶¹ The *Descent* criterion, currently at 25 CFR § 83.11(e), was located at § 83.7(e) prior to the 2015 revision to the Part 83 regulations.

⁶² 2016 TA Review Letter, 25.

⁶³ *ibid.*

⁶⁴ 2016 TA Review Letter, 12–13.

⁶⁵ 2016 TA Review Letter, 13–14.

⁶⁶ 2016 TA Review Letter, 14.

of “Friendly Creeks” dating back to 1817.⁶⁷ As discussed in the Phase I TA review letter, that understanding was mistaken, resulting from a “copying error or misreading of a code” associated with her name. As OFA noted in the TA review letter, even “the Petitioner does not claim that Elizabeth (English) Ward appeared among the Friendly Creek claimants, only that the BIA accepted her as a Creek Indian for ICC distribution purposes.”⁶⁸

During the Phase I TA review, OFA determined that a “new analysis” of Elizabeth (English) Ward’s “Indian parentage” was warranted, reasoning that the BIA’s mistaken understanding regarding Elizabeth (English) Ward’s appearance on the 1817 list of “Friendly Creeks” had informed the BIA’s inclusion of her on the roll, as well as the Department’s analysis of the *Descent* criterion in the 1985 proposed finding for PCN⁶⁹ and in the 1996 TA review letter to FTECI.⁷⁰ For this new analysis, OFA considered both (1) “evidence . . . created or recorded in the mid-20th century at the time of the ICC’s consideration of Docket 21”; and (2) “[e]vidence contemporary to the lifetime of Elizabeth English.”⁷¹ Although the former category of evidence included “direct evidence of her Creek ancestry,”⁷² OFA concluded that the evidentiary value of those documents, which had been “created for the purpose of participating in the Eastern Creek judgment, . . . d[id] not outweigh the evidence created in Elizabeth (English) Ward’s lifetime”⁷³ that “indicate[d] she was not Indian.”⁷⁴ OFA further concluded that the evidence “created in Elizabeth (English) Ward’s lifetime, indicat[ing] she was not Indian,” constituted “significant countervailing evidence” that rendered the Docket 21 distribution roll unreliable for the purpose of satisfying criterion 83.11(e).⁷⁵

In its response to the Phase I TA review letter, MNF stated that it “d[id] not understand the justification for a federal court case and DOI Claims Commission judgment to now be open to a ‘revisit’ by an Office within the BIA some 75 years later.”⁷⁶ MNF also highlighted BAR’s acceptance of Elizabeth (English) Ward’s alleged Creek ancestry in the finding for PCN.⁷⁷

⁶⁷ 2016 TA Review Letter, 15 n.8. The BIA also relied on other evidence; however, “the specific documents . . . that were used are not named.” *Id.*

⁶⁸ *ibid.*

⁶⁹ *See* Principal Creek PF, 8 (stating that the petitioner’s “early Eastern Creek ancestors”—including Elizabeth Ward—“appear . . . on one or more of the several early sources,” including the 1817 list of “Friendly Creek Indians”).

⁷⁰ 2016 TA Review Letter, 25.

⁷¹ 2016 TA Review Letter, 25. The 2016 TA review letter contains a detailed analysis of the evidence relating to Elizabeth Ward. *See* 2016 TA Review Letter, 25–32.

⁷² 2016 TA Review Letter, 25.

⁷³ 2016 TA Review Letter, 28.

⁷⁴ 2016 TA Review Letter, 31.

⁷⁵ *ibid.*

⁷⁶ 2023 TA Review Response 1:13.

⁷⁷ 2023 TA Review Response 2:11.

In response, OFA emphasizes here that it is not questioning the merits of the ICC’s decisions in Docket 21 or in the subsequent, related judgments (Dockets 272 and 275).⁷⁸ Additionally, although OFA stated in the Phase I TA review letter that it was “re-evaluat[ing]” “the BIA’s acceptance of Elizabeth Ward as an Eastern Creek for ICC fund distribution purposes,” this PF clarifies that the sole purpose of OFA’s analysis has been to determine whether MNF has satisfied the Phase I criteria for federal acknowledgment.

Analysis

The OFA has given further consideration to MNF’s claims and the evidence in the record, and notwithstanding the legitimate points made in the Phase I TA review letter about the uncertainty surrounding Elizabeth (English) Ward’s Creek or Indian ancestry, OFA concludes in this Phase I PF that MNF has satisfied criterion 83.11(e). The basis for that conclusion is § 83.11(e)(1), which states that a petitioner can satisfy criterion 83.11(e) by “demonstrating that the petitioner’s members descend from a tribal roll . . . prepared by the Secretary on a descendancy basis for purposes of distributing claims money, . . . unless significant countervailing evidence establishes that the tribal roll is substantively inaccurate.”

The roll at issue is comprised of individuals eligible for distribution of funds under ICC Docket 21 based on their descent from a qualifying historical ancestor, thereby constituting a tribal roll “prepared by the Secretary on a descendancy basis for purposes of distributing claims money” under § 83.11(e)(1). Because the roll identifies Elizabeth (English) Ward as a qualifying ancestor, MNF may rely on the roll to satisfy criterion 83.11(e), unless significant countervailing evidence establishes that the roll is substantively inaccurate. That conclusion is consistent with the proposed finding for PCN,⁷⁹ which equated descent from Elizabeth (English) Ward with “ancestry to the Creek Nation as it [had] existed on August 9, 1814.”⁸⁰ It is also consistent with the 1996 TA review letter that OFA’s predecessor BAR shared with FTECI, which stated that members of FTECI who descended from Elizabeth (English) Ward “would merely have to document their lineage” to establish Creek ancestry for federal acknowledgment purposes.⁸¹

The Phase I TA review letter concluded that the countervailing evidence was significant and established that the Docket 21 distribution roll was substantively inaccurate, specifically with

⁷⁸ See 2016 TA Review Letter, 12–15 (discussing the decisions).

⁷⁹ Principal Creek PF. The Department subsequently adopted PCN’s proposed finding as the basis for denying PCN federal acknowledgment. See “Final Determination That the Principal Creek Indian Nation East of the Mississippi Does Not Exist as an Indian Tribe,” 50 FR 14302–03 (stating that, following issuance of the proposed finding, “[n]o rebuttals or other comments were received . . . and no evidence was submitted which would warrant changing the conclusion that the Principal Creek Indian Nation East of the Mississippi does not exist as an Indian tribe within the meaning of Federal law”).

⁸⁰ Principal Creek PF, 8–9; see also *id.* at 10 (indicating the eligibility of Elizabeth (English) Ward’s descendants to “share in judgment awards made to eastern Creek Indians under the Indian Claims Commission Docket[] 21”).

⁸¹ 1996 TA Review Letter, 9.

regard to Elizabeth (English) Ward’s identification as a qualifying historical ancestor. In preparing this PF, OFA has again reviewed that evidence.

Although some evidence suggests that the Docket 21 distribution roll is inaccurate in some details relating to Elizabeth (English) Ward (as discussed at length in the Phase I TA review letter⁸²), OFA accepts the roll as evidence of descent from a historical Indian tribe because OFA does not deem that countervailing evidence significant, contrary to its earlier conclusion in the Phase I TA review letter.⁸³ Upon further consideration, OFA has determined that the countervailing evidence examined in the Phase I TA review letter falls short of establishing that Elizabeth (English) Ward does not descend from the historical Creek Nation. Although the evidence highlights ambiguity regarding her Creek ancestry, it does not establish that her identification as a qualifying ancestor on the Docket 21 distribution roll was in error and that, by extension, the roll is substantively inaccurate.

As evidence indicating that Elizabeth (English) Ward was “not Indian,” for example, the Phase I TA review letter discusses “land records showing Elizabeth (English) Ward was considered the deceased [non-Indian] James English’s orphan and legal heir.”⁸⁴ That evidence—specifically, the designation of Elizabeth (English) Ward as an “orphan”—creates uncertainty about whether Elizabeth (English) Ward was “a Creek Indian adopted by James English” or “a biological child of non-Indian James English and his non-Indian wife”⁸⁵ who was “‘orphaned’ by their pre-1820 deaths.”⁸⁶ However, those records do not refer to Elizabeth (English) Ward’s ancestry; rather, they refer to her status as a legal heir to James English (whether biological or adoptive), and they are insufficient to conclude that her identification as a qualifying ancestor on the Docket 21 distribution roll was inaccurate.

As was the case for many women living in the southern United States during the late eighteenth and early to mid-nineteenth centuries, the records referring to Elizabeth (English) Ward most frequently pertain to her father (prior to her marriage) or to her husband (after her marriage), and most of those records pertain to the ownership of private or real property. Even where those records refer to Elizabeth (English) Ward by name, they do not include information about her ancestry (Creek, Indian, or otherwise). There would have been little, if any, reason to record that information.

The other countervailing evidence that OFA discussed in the 2016 TA review letter is likewise insufficient to deem her identification as a qualifying historical ancestor on the Docket 21 distribution roll inaccurate. OFA considered, for example, the absence of any contemporary

⁸² See 2016 TA Review Letter, 15 n. 8.

⁸³ 2016 TA Review Letter, 31.

⁸⁴ 2016 TA Review Letter, 31; *see also id.*, 30, citing Decatur Co., GA, Deeds D:374-375.

⁸⁵ 2016 TA Review Letter, 39.

⁸⁶ 2016 TA Review Letter, 30.

legislative petition documenting Elizabeth (English) Ward’s adoption as a Creek Indian child into a non-Indian family.⁸⁷ However, like the land records discussed above, the absence of that documentation sheds little light on Elizabeth (English) Ward’s ancestry and falls short of establishing that her identification as a qualifying ancestor on the Docket 21 distribution roll was inaccurate. Rather, its absence reflects the “demonstrably limited” nature of the evidence available for the relevant time period (the turn of the nineteenth century), a limitation that OFA must take into account during the evaluation of a petition.⁸⁸

Finally, OFA noted that the federal census records of 1850, 1860, and 1870 did not identify Elizabeth (English) Ward by any term “indicating she had at least some Indian ancestry.”⁸⁹ However, in previous findings, OFA’s predecessor BAR questioned the accuracy of the “color or race” description in the 1850–1900 federal population census schedules of Georgia, Florida, and Alabama, observing, for example, that Georgia and Florida “had laws that discouraged Indians from identifying as Indian” and that families living in those states “identified themselves as white and were apparently identified on sight by others as white.”⁹⁰ OFA similarly noted that Creek Indians living among non-Indians in Alabama and west Florida in the mid-nineteenth century also “may have had sufficient reason to avoid identification as Indian.”⁹¹ Like the records discussed above, while census records raise valid questions about Elizabeth (English) Ward’s ancestry, they do not establish the substantive inaccuracy of the Docket 21 distribution roll, specifically in regard to her identification as a qualifying historical ancestor.

In sum, although the countervailing evidence discussed in the Phase I TA review letter calls into question decades-old understandings regarding Elizabeth (English) Ward’s ancestry, it does not constitute significant evidence establishing that the Docket 21 distribution roll is substantively inaccurate. Under the “reasonable likelihood of the validity of the facts” standard,⁹² MNF may rely on the roll to satisfy criterion 83.11(e), just as past petitioner PCN did.⁹³

While this Phase I positive PF concludes that the evidence is sufficient to satisfy criterion 83.11(e), in preparing for Phase II, MNF should take note that “documentation of Indian ancestry does not mean the continuation of Indian community under [the *Community*

⁸⁷ See 2016 TA Review Letter, 30–31.

⁸⁸ 25 CFR § 83.10(b)(2).

⁸⁹ 2016 TA Review Letter, 31.

⁹⁰ BAR, “Genealogical Report on the Lower Muskogee Creek Tribe—East of the Mississippi, Inc. (Cairo, Georgia),” p. 12, in “Technical Reports Regarding the Lower Muskogee Creek Tribe—East of the Mississippi, Inc., of Cairo, Georgia,” submitted to the AS–IA, Sep. 17, 1981.

⁹¹ Principal Creek PF, 22.

⁹² 25 CFR § 83.10(a).

⁹³ See 25 CFR § 83.10(a)(4) (stating that “[e]vidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous decision will be sufficient to satisfy the criterion for a present petitioner”).

criterion],”⁹⁴ as BAR previously cautioned. Furthermore, “an extended family group descended from one Indian ancestor, no matter how large or cohesive the group of kinsmen, does not form a tribe.”⁹⁵ A problem that BAR identified in its 1996 TA review letter to FTECI is that the petitioner has “show[n] no historical interaction, throughout the 19th and early 20th centuries, between the Ward subgroup and other Eastern Creeks or their descendants.”⁹⁶ Such interaction may be necessary to show that MNF is a continuously existing entity that evolved from the historical Creek Nation. That and other potential deficiencies will be subject to review in Phase II, in the evaluation under criteria 83.11(a)–(c).

Because OFA has concluded that MNF need not resolve the deficiencies identified in the Phase I TA review letter—relating to countervailing evidence that OFA no longer deems “significant” under § 83.11(e)(1) and that does not establish the substantive inaccuracy of the Docket 21 distribution roll—OFA finds that the petitioner meets the requirements of criterion 83.11(e).

⁹⁴ 1996 TA Review Letter, 9.

⁹⁵ 1996 TA Review Letter, 5; *see also* BAR, “Summary Under the Criteria for the Proposed Finding on the Ohlone/Costanoan Muwekma Tribe,” approved Jul. 30, 2001, p. 38 (stating that a “pattern of interaction only within one’s own extended family does not meet the requirements of [evidence demonstrating community]”); BAR, “Summary Under the Criteria and Evidence for Proposed Finding Against Federal Acknowledgment of the Chinook Indian Tribe, Inc.,” approved Aug. 11, 1997, p. 9 (stating that, for the purpose of satisfying the *Community* criterion, “social interaction should not only be within family lines, but across family lines”).

⁹⁶ 1996 TA Review Letter, 5; *see also* BAR, “Historical Report on the Lower Muskogee Creek Tribe—East of the Mississippi, Inc.,” p. 6, in “Technical Reports Regarding the Lower Muskogee Creek Tribe—East of the Mississippi, Inc., of Cairo, Georgia,” submitted to the AS–IA, Sep. 17, 1981 (stating that the records reviewed in the evaluation of the petition, including records relating to the Ward family, “do not substantiate the contention that an Indian community existed in the west Florida area between the time of Indian removal and the present era”); 2016 TA Review Letter, 10 (stating that “[t]here is no evidence in the current record of a historical Creek tribe or remnants of a Creek town or any other Creek entity, existing in the panhandle of Florida after the 1830s”).

Criterion 83.11(f)

83.11(f) *Unique Membership.* The petitioner’s membership is composed principally of persons who are not members of any federally recognized Indian tribe.

Summary

There is no evidence in the record that shows the MNF membership is composed principally of persons who are members of any federally recognized Indian tribe. Therefore, the MNF meets the requirements of criterion 83.11(f).

Evaluation

In its 1978 petition narrative, the petitioner stated, “The membership of The Florida Tribe of Eastern Creek Indians [now MNF] is composed principally of persons who are not members of any other North American Indian tribe.”⁹⁷ Similarly, the 1995 petition narrative stated, “The citizens of the Florida Tribe of Eastern Creek Indians [now MNF] do not hold membership in any federally recognized North American Indian tribe.”⁹⁸

The MNF submitted files containing genealogical information for each of the group’s members. The files do not clarify whether members are enrolled in any federally recognized Indian tribe. However, the MNF petition contains no evidence of members enrolled in federally recognized Indian tribes, nor did OFA find any evidence of this.

Of the seven federally recognized Indian tribes “considered to have a potential interest in the acknowledgment determination,”⁹⁹ only the Poarch Band in Atmore, Alabama, is geographically proximate to MNF.¹⁰⁰ The OFA compared the MNF’s 2012 membership list with the October 1982 membership list that the Poarch Band had submitted with its petition for Federal acknowledgment. That analysis showed that none of the members of MNF who were alive in October 1982 was then a member of that federally recognized Indian tribe. The current 2023 membership list does not present any significant changes from the 2012 membership list, which suggests that the petitioner continues not to be composed principally of members of any federally recognized tribe.

⁹⁷ FTECI, “Petition for Recognition of the Florida Tribe of Eastern Creek Indians,” received Jun. 19, 1978, p. 1.

⁹⁸ FTECI, “Petition for Acknowledgment of the Florida Tribe of Eastern Creek Indians,” received Sep. 28, 1995, p. 169–70.

⁹⁹ 25 CFR § 83.22(d)(4). The tribes are the Seminole Tribe of Florida, the Miccosukee Tribe of Indians, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians (Poarch Band), the Alabama-Quassarte Tribal Town, the Kialegee Tribal Town, and the Thlopthlocco Tribal Town.

¹⁰⁰ The other six federally recognized Indian tribes are in southeastern Florida and Oklahoma.

Finally, none of the federally recognized Indian tribes considered to have a potential interest in the acknowledgment determination have stated that MNF’s membership is composed principally of persons who are members of one of those tribes.¹⁰¹ Indeed, one of the tribes, the Muscogee (Creek) Nation, issued a tribal resolution, submitted during the comment period on MNF’s petition, that the petitioner “is not of any relation to the Muscogee (Creek) Nation or the tribal towns it encompasses.”¹⁰²

¹⁰¹ 25 CFR § 83.22(d)(4).

¹⁰² National Council of the Muscogee (Creek) Nation, “A Tribal Resolution of the Muscogee (Creek) Nation Opposing the Federal Recognition of the Entity Known as the Muscogee Nation of Florida Pursuant to Application Before the Bureau of Indian Affairs Branch of Acknowledgment and Research” (TR 16-019), certified Feb. 27, 2016, approved by Principal Chief James Floyd, Mar. 4, 2016; submitted by letter to OFA, dated Mar. 16, 2016, received Mar. 21, 2016. Posted online at https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/032_muscfnf_FL/web_docs/032_PFCO_2016_MCN.pdf

Criterion 83.11(g)

83.11(g) *Congressional Termination.* Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Summary

Criterion 83.11(g) requires that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. Based on its verification and evaluation research, OFA did not find that the petitioner or its members are the subject of congressional legislation terminating or prohibiting a Federal relationship. Therefore, the petitioner meets the requirements of criterion 83.11(g).

Evaluation

The OFA reviewed the ratified treaties with the pre-removal Creek Indians residing in the American Southeast, as well as the post-removal treaties.¹⁰³ None of these treaties contain language that expressly terminated or forbid a Federal relationship.

Additionally, there is no evidence in the record that Congress terminated the petitioner (or any predecessor to MNF, like FTECI) during the post-removal period. None of the evidence submitted by the petitioner or any third parties indicates that the petitioner or its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

¹⁰³ See numerous treaties with Creek Indians from 1790–1866, in Charles Joseph Kappler, ed., *Indian Affairs: Laws and Treaties*, vol. 2 (Washington: Government Printing Office, 1904).

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