

The Duwamish Struggle
*An account of the political environment surrounding the Federal
Recognition of Indian Tribes*

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On January 19, 2001, Cecile Hansen, Chairwoman of the Duwamish Tribal Organization of Western Washington, sat anxiously by her phone. For decades her tribe had petitioned the US Government for the federal recognition of her tribe, and the day had arrived when the Bureau of Indian Affairs would give its final determination. At 5:59 pm, Lee Flemming, the Director of the Branch of Acknowledgement and Research, picked up his phone and dialed Cecile's number. "I just wanted to tell you that we have determined that you're recognized."¹ Hansen was lost for words. As one of the final acts of the Clinton Administration, the rights guaranteed to the Duwamish Tribe through treaties signed nearly 150 years ago were finally realized. This recognition allows them to make legal claims to ancestral lands and artifacts, gain access to Federal social services, and petition for fishing and gaming rights.²

However their justice was short lived. Less than 48 hours later, the Bush Administration put a hold on all legislation passed during the final 60 days of the Clinton Administration.³ The recognition of the Duwamish tribe was further investigated, and the new Secretary of Indian Affairs found that the proper papers were not submitted. The previous Assistant Secretary of Indian Affairs failed to sign all of the necessary documents, and after further review the Duwamish Tribe was denied federal recognition.⁴ The Duwamish Tribal Council was stunned. The Federal Government found that the Duwamish had failed to meet criteria (a), (b), and (c) of the seven criteria necessary to

¹ Castro, Hector and Mike Barber. "Finally Federal Recognition – The Duwamish have been at it for decades, now they have it, but it doesn't mean fishing rights." Seattle Post Intelligencer, January 20, 2001

² "Duwamish to fight for Tribal Status." Seattle Times, July 2, 1996

³ Green, Sara Jean. "Chief Seattle's Tribe Clings to its Identity." The Seattle Times, Seattle, WA. June 18, 2001.

⁴ "Final Determination Against Federal Acknowledgement of the Duwamish Tribal Organization." Federal Register Vol. 66, No. 190 (October 1, 2001). 49966 – 49967. Print.

become a recognized tribe; the very criteria that they had met two days before.⁵ In response to the finding, Hansen concluded, “The recognition process is ugly, shaky, and shameful.”⁶

The story of the Duwamish Tribal Organization is not unique. The Chinook tribe of Western Washington went through the same reversal of recognition, forcing them to maintain legal battles similar to those of the Duwamish. Interestingly enough, most acknowledged tribes located in Western Washington are opposed to the idea of unrecognized tribes like the Duwamish gaining recognition. There is also resistance in the local Seattle and King County Governments, as well as the Washington State legislature. As shown by the denial of Duwamish tribal recognition by the Bush Administration, the Federal Government isn't interested in granting tribes recognition either. Why are so many political entities opposed to the recognition of the Duwamish tribe, and for that matter all tribes seeking federal recognition today? The US Government maintains that should Native American tribes meet the seven criteria proposed by the Federal Government to determine tribal presence and therefore tribal identity, they will be recognized.⁷ However, as demonstrated by the case of the Duwamish tribe, unrecognized Native American tribes seeking federal acknowledgement are not simply faced with meeting these standards. Rather, the recognition process has become highly politicized with opposition from local, state, federal, and tribal governments based on fears grounded in tribal gaming, fishing rights, and federal funding.

⁵ For a listing of the seven criteria see Appendix A. These criteria will be discussed further at a later point in the paper.

⁶ Phone Interview with Cecile Hansen, February 19, 2009.

⁷ Bureau of Indian Affairs, Department of the Interior. “Mandatory Criteria for Federal Acknowledgement.” Code of Federal Regulation, Title 25, Section 83.7.

generation member of the Duwamish Tribal Council, is James Rasmussen. Spearheading such projects as the construction of the Duwamish Longhouse and Cultural Center, James has been integral to the Duwamish Tribe's quest for recognition. My attempts to conduct interviews with representatives of the Muckleshoot and Tulalip tribes, as well as Government officials were repeatedly turned down. Therefore, this paper relies heavily on government documents as well as articles from various news media outlets to give voice to the positions of tribal and US government officials.

Brief History of the Duwamish Tribe

Much has been written concerning the early history of relations between whites and Indians in the northwest. The American Friends Service Committee published 'Uncommon Controversy', which gives a good history of the treaties signed during the 1850's, including the Point Elliott treaty concerning the Duwamish Tribe. On January 22, 1855, Washington Territorial Governor Isaac Stevens met with Puget Sound Indian Tribes in an attempt to buy the lands that they held throughout the Puget Sound region. In return, the signing tribes were promised monetary compensation, reservation lands, and, "the right of taking fish at usual and accustomed grounds and stations."¹³ Questions have arisen as to the clarity of the Point Elliott treaty based on the lack of a clear common language between the United States and the signing tribes; however the courts have found it to be a legal document.¹⁴ The first Indian name affixed to the document was that of Si'ahl, Chief of the Duwamish Tribe and namesake of the city of Seattle. In accordance

¹³ United States. "Treaty between the United States, D'wamish, Suquamish, and other Allied and Subordinate Tribes of Indians in Washington Territory, Signed January 22, 1855." Washington.

¹⁴ "Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians." University of Washington Press, Seattle 1970

with the treaty, some of the Duwamish left their homelands and relocated to area reservations including the Muckleshoot, Port Madison, Tulalip, and Suquamish reservations. Other Duwamish Indians refused to leave.

We also know from period newspapers that those who stayed were faced with growing threats from local settlers. In 1893, a complex of Duwamish longhouses was burned to the ground.¹⁵ In 1913, the Duwamish River was straightened, destroying multiple Duwamish villages along its banks. In 1916, Lake Washington was lowered through the construction of a ship canal, effectively eliminating the Black River and an important source of fish for the Duwamish.¹⁶ During this period, a flu pandemic hit the Duwamish, killing many.¹⁷ Even through such tumultuous times, the Duwamish Tribe managed to pull together to create a tribal constitution in 1925, which they have lived under ever since.

During the late 1960's, the rise of the civil rights movement inspired Indian activism throughout the Pacific Northwest. "Indians in the Making: Ethnic relations and Indian identity around Puget Sound" by Alexandra Harmon does a fine job of addressing Native American history in the Pacific Northwest from the treaties through this Indian activist movement.¹⁸ In her broader history she addresses, among other things, the history of unrecognized tribes. However, she doesn't directly address the political opposition which tribes must deal with in proving their tribal identity. From her text we can see that during this activist movement the Native American focus quickly turned to their treaty fishing rights, drawing criticism and violence from sport fisherman and commercial

¹⁵ Gwinn, Mary. "Native Landscape." The Seattle Times, August 30, 2007

¹⁶ Williams, Hill. "Dog Days – Duwamish wasn't always a dirty word." The Seattle Times, Aug. 23, 1987

¹⁷ Interview with James Rasmussen,

¹⁸ Harmon, Alexandra. Indians in the Making: Ethnic Relations and Indian Identities Around Puget Sound. American crossroads, 3. Berkeley: University of California Press, 1998.

fisherman on rivers throughout the state. The battle eventually made its way into Federal court in *U.S. v. Washington*, where Judge George Boldt was given the arduous task of defining terms such as 'Indian' and 'Tribe'. Government records mark 1974 as a decisive year for all Northwest Indian tribes when the 'Boldt Decision' granted treaty tribes the right to 50% of all fish. The decision also had a significant impact on the legal definition of exactly what a 'tribe' constitutes, and in 1978 a set of criteria were instituted to determine whether tribes were legitimate successors to the treaty signing tribes.¹⁹ Author Mark Miller examined the federal recognition process in "Forgotten Tribes: Unrecognized Indians and the Federal Acknowledgement process", which stands as the secondary source closest linked to my area of interest.²⁰ However, Miller's focus on the injustices of the federal acknowledgement process addresses the question of Indian identity and tribal status rather than the political area within which such 'injustices' occur.

In the case of the Duwamish, an appeal of the Boldt Decision resulted in the denial of their recognition. Chairwoman Cecile Hansen sought the inclusion of the Duwamish in the original decision along with four other tribes, but in 1979 all five were denied. In the case of the Duwamish, the Branch of Acknowledgement and Research questioned a period between 1916 and 1925 where the Duwamish failed to adequately prove that they were a constant political entity; this being the period when the Duwamish were faced with a rapidly changing landscape. Hansen and the Duwamish Tribal Council have been fighting for recognition ever since.

¹⁹ "Federal Recognition". National Congress of American Indians. <http://www.ncai.org/Federal-Recognition.70.0.html>, accessed February 19, 2009.

²⁰ Miller, Mark Edwin. *Forgotten Tribes: Unrecognized Indians and the Federal Acknowledgment Process*. Lincoln: University of Nebraska Press, 2004.

In 1996 the Assistant Secretary of the Bureau of Indian Affairs submitted a preliminary finding against the recognition of the Duwamish Tribe. In 2001 the Duwamish were recognized by the Clinton Administration, only to be re-denied months later under the Bush Administration. The Duwamish Tribal Organization of nearly 600 members is yet again fighting for their recognition, filing a lawsuit against the United States in October of 2008.

The Federal Recognition Process

To begin the process of federal recognition, tribes such as the Duwamish must file a letter of intent to apply for recognition with the Department of the Interior, as well as a petition outlining how the tribe meets the seven criteria proposed by the Federal Government.²¹ These criteria, found in Appendix A, ask that the tribe prove it descends from a historic Indian tribe, and has existed as a distinct political entity since the year 1900. The criteria are met when a tribe “establishes a reasonable likelihood of the validity of the facts relating to that criterion.”²² After the Governor of the state where the tribe resides is notified of their intent, the tribe’s petition is reviewed by the Office of Federal Acknowledgement (OFA). Based on the petition, the OFA sends their proposal to the Assistant Secretary of Indian Affairs who then writes and submits a preliminary finding to the Federal Register. The tribe then has 180 days to submit further evidence to support their case, before their petition is again reviewed by the OFA and a final determination is produced.

²¹ Iraola, R. “The Administrative Tribal Recognition Process and the Courts.” *Akron Law Review*. 38. 4 (2005): 867-894.

²² United States. Department of the Interior. Bureau of Indian Affairs. “Mandatory Criteria for Federal Acknowledgement.” Code of Federal Regulation, Title 25, Section 83.7.

In the case of the Duwamish, the preliminary finding submitted by the Bureau of Indian Affairs to the federal register on June 28, 1996 states that “the Assistant Secretary—Indian Affairs proposes to decline to acknowledge that the Duwamish Tribal Organization exists as an Indian Tribe within the meaning of Federal Law.”²³ The finding noted that the Duwamish had failed to meet criteria (a), (b), and (c) of the criteria for acknowledgement, meaning that the tribe had not sufficiently proven that it existed as a distinct political and Indian entity and/or community continuously from 1900 to the present. In particular, a period between 1916 (when Lake Washington was lowered and many Duwamish villages were displaced) and 1925 (when a Duwamish Tribal Constitution was signed) was called into question.²⁴ The Duwamish were then given 510 days through deadline extensions to submit further evidence in support of their case.²⁵

In 2001, the acting Assistant Secretary of Indian Affairs wrote the final determination, which was to acknowledge the Duwamish Tribal Organization.²⁶ He based his decision on new evidence submitted by the Duwamish to counter claims that as a tribe they did not meet the necessary criteria for recognition. According to the Federal Register, he didn’t sign the determination or submit the required three copies to the Federal Register.²⁷ Therefore, when the new Assistant Secretary of Indian Affairs took office under the Bush Administration he reconsidered the Duwamish case. He found that the Duwamish had not submitted any new material to counter the previous finding that

²³ United States. Department of the Interior. Bureau of Indian Affairs. “Proposed Finding against Federal Acknowledgement of the Duwamish Tribal Organization.” Federal Register 28, June 1996: 33762 – 33764.

²⁴ United States 1996

²⁵ United States. Department of the Interior. Bureau of Indian Affairs. “Final Determination Against Federal Acknowledgement of the Duwamish Tribal Organization.” Federal Register 1, October 2001: 49966-49967.

²⁶ Anderson, Michael. “Summary Under the Criteria and Evidence for Final Determination to Acknowledge the Duwamish Tribal Organization”. DRAFT, January 19, 2001.

²⁷ United States 2001

they didn't meet criteria (a), (b), or (c), and signed a final determination to deny their recognition. It is with this history that the Duwamish Tribal Organization have recently filed a lawsuit against the United States to take what could be their final chance at gaining federal recognition.

Government Opposition

*"Without their welcoming, and the guiding hands of her people, the Duwamish, we wouldn't be here today."*²⁸

- Washington State House Representative Jim McDermott

With the signing of the Treaty of Point Elliott in 1855, the Duwamish tribe gave up more than 54,000 acres of land with the promise that they would receive monetary compensation. Feeling that they had never received such compensation, the Duwamish Tribe filed suit against the US Government in 1926.²⁹ It took a lengthy legal battle, but the Duwamish tribe finally won the right to receive the money that purchased what is now the city of Seattle. In 1971, nearly 120 years after the treaty was signed, \$64 checks were distributed by the Federal Government to each member of the Duwamish tribe. When asked what was done with the money, Cecile Hansen said, "I bought groceries. What else can you do with \$64?"³⁰ The differing views of the US Government and the Duwamish tribe as to the proper recognition of treaty rights is symptomatic of a much larger issue facing unrecognized treaty tribes.

²⁸ Kamp, Lewis. "In Service to the Community - Duwamish Chairwoman honored for championing her tribe's cause." The Seattle Post Intelligencer, Seattle, WA. October 25, 2004

²⁹ Lyke, ML. "Urban Warrior - Feisty Duwamish Chairwoman Cecile Hansen takes no prisoners in her battle for Federal Recognition." The Seattle Post Intelligencer, April 17, 2000

³⁰ Lyke, ML. "Urban Warrior - Feisty Duwamish Chairwoman Cecile Hansen takes no prisoners in her battle for Federal Recognition." The Seattle Post Intelligencer, April 17, 2000

The economic fears of city, state, and tribal governments have weighed heavily upon the current position of the US Government not to recognize the Duwamish and other Pacific Northwest tribes. Every acknowledged tribe is given the right to a portion of the federal aid set aside for Indian social benefits, and every new tribe shrinks the amount of aid apportioned per tribe. In addition, potential new tribal casinos built as a result of tribal recognition provide unwanted competition for established tribes who rely on gaming, and promote gambling which is opposed by some federal legislators. Therefore, the local, state, and federal governments of the United States of America are inherently biased against the recognition of unrecognized tribes due to the intense opposition from powerful tribal groups, the increased costs associated with new tribal governments, and fears of increased tribal gaming.

City of Seattle Government

The local Seattle Government adamantly supports the idea of the Duwamish tribe as the ancestors of Seattle. In a celebration for a new sculpture park in downtown Seattle, Mayor Greg Nickels proclaimed to the crowd, "It's an honor to join with the first people who lived on this land."³¹ However, Mayor Nickels and the Seattle City Government have done little to support the tribe in their quest for acknowledgement. In 2004 the Mayor met with local tribes to sign a pact guiding both city and tribal governments on proper management of issues concerning both parties. The only tribe located in the city limits of Seattle was not present at the meetings. Scott Sufficool, tribal liaison for the

³¹ Gilmore, Susan. "Visitors thrilled with Sculpture Park – Thousands drawn to Celebrations marking the opening." The Seattle Times, January 21, 2007

City of Seattle, claimed that the city is only mandated to work with recognized tribes under the 1855 Point Elliott Treaty.³²

Still, the Duwamish went to the media with concerns that “the city is essentially endorsing the Bush Administration’s justice.”³³ The tribe felt that the city could have done a great deal to support their struggle to gain recognition by including them in the talks. In response to the lack of an invitation, Cecile Hansen said, “Maybe Seattle should start calling itself ‘Swinomish’, or ‘Snoqualmie’, or something.”³⁴ However, the pride that the Seattle community takes in its’ Native American roots is undeniable, as can be seen from the numerous pieces of Native American art prominently displayed throughout the city. In 2001, the Duwamish were invited to come together with descendents from the original settlers of Seattle to mark the 150 year anniversary of the city’s founding. During the celebration, Ruth Moore, descendent of original Seattle settlers, commented, “We need to let the Federal Government know that those Indians made Seattle possible – and I love them for it.”³⁵ Sufficool, Seattle’s Tribal Liason, has commented that, “The City supports the Duwamish’s efforts to obtain recognition.”³⁶ So the question remains, why has the city not done more to help with the process?

Possible explanations can be found in the fears of a large casino in Seattle and the increased costs associated with having a sovereign political entity within city limits.

“When you get higher up in the Seattle Government and some places in the King County Government that [tribal gaming] is one of the main concerns. That’s one of the reasons

³² Kamb, Lewis. “Duwamish left out of City’s Tribal Pacts: Member aren’t happy that lack of Recognition is to blame”. The Seattle Post Intelligencer, July 24, 2004

³³ Kamb, 2004

³⁴ Kamb, 2004

³⁵ Eskanazi, Stuart. “Settling Seattle Again – Fouding Families pay tribute to Duwamish Tribe’s support”. The Seattle Times, November 14, 2001

³⁶ Kamb, 2004

that they stand on the fence” claims James Rasmussen.³⁷ The city of Seattle currently restricts gambling.³⁸ Small card rooms are located in the outlying Seattle suburbs, but the only real casinos in the area are tribal casinos located more than 30 minutes away. Some have pointed to increased crime and traffic congestion as possible downsides to a large tribal casino in the city of Seattle.³⁹ Others are opposed to all gambling, no matter its location. However casinos are big business and big attractions. One could argue that adding another landmark to the city tourism brochures would only help the Seattle economy.⁴⁰

Perhaps more importantly, recognizing the Duwamish would force the city to deal with a sovereign entity within its city limits. In “Sovereign Nations or Reservations?”, written by author Terry Anderson, Anderson briefly describes the history of Indian sovereignty within a sovereign American nation.⁴¹ He points to two decisive Supreme Court decisions, *Cherokee Nation v. Georgia* and *Worcester v. Georgia*⁴², in concluding that Indian Tribes are sovereign from local governments and state governments. However, tribes are still considered to be ‘wards’ of the Federal Government, and therefore must abide by federal law.⁴³

³⁷ Interview with James Rasmussen

³⁸ “Cities Prohibiting Gambling Activities”. http://www.wsgc.wa.gov/docs/tax_prohibited.pdf, last revised May 28, 2008

³⁹ Soloman, Chris. “Two Tribal Casino’s get commission ok”. The Seattle Times, January 11, 2002

⁴⁰ It is important to note that the Duwamish, according to Hansen and Rasmussen, do not have plans to build a casino at any point in their future, should they gain recognition.

⁴¹ Anderson, Terry. Sovereign Nations or Reservations? An Economic History of American Indians. Pacific Research Institute for Public Policy. San Francisco, 1995 Pg’s. 168-171.

⁴² These decisions deal with a conflict between the State of Georgia and the Cherokee Nation over the imposition of state laws within Cherokee Tribal Lands. The Supreme Court found that the Cherokee Tribe was a distinct political community and was therefore outside the authority of state laws, which established the Federal Government as the only governing body with power over Indian affairs.

⁴³ Wilkins, David E. American Indian Sovereignty and the U.S. Supreme Court. Austin: University of Texas Press, 1997 Pg. 89.

Therefore, if the Duwamish gain recognition, they would be treated by the Seattle City Government as a sovereign government with rights to influence decisions concerning their sovereign lands.⁴⁴ Anything that happens in the city of Seattle concerning the environment, or the Port of Seattle which hugs the mouth of the Duwamish River, would have to travel through the offices of the Duwamish Tribal Government as well. The Duwamish are looking forward to getting their seat at the table, if they manage to gain recognition.⁴⁵ The addition of the Duwamish Tribal Organization to the Seattle political scene would add another layer of Government, possibly slowing down an already tediously slow process. However, with one of the most polluted rivers in the country flowing through this metropolitan area, some Duwamish feel their addition to the local political scene would only help.⁴⁶

Washington State Government

The actions of the Washington State legislature have done little to support the Duwamish either. I have identified two possible concerns that would keep the state from open support of Duwamish Tribal Recognition. First, as a sovereign political entity the Duwamish would be tax exempt, allowing them to set prices lower than those of the rest of the city. Also, local tribes such as the Muckleshoot and Tulalip are large donors to the State Democratic Party. Considering the opposition of these tribes to the recognition of the Duwamish it would be unwise for the state legislature to go against their wishes by supporting the Duwamish.⁴⁷

⁴⁴ Harmon, Alexandra. Indians in the Making: Ethnic Relations and Indian Identities Around Puget Sound. American crossroads, 3. Berkeley: University of California Press, 1998 Pg. 241.

⁴⁵ Interview with James Rasmussen

⁴⁶ Interview with James Rasmussen

⁴⁷ Brunner, Jim. "Attack Ads distort deal Gregoire rejected on Casinos". The Seattle Times, October 19, 2008

For example, in 2005, a bill was proposed that would encourage Washington State public schools to update their history curriculums to include a history of Puget Sound Native American Tribes. Although assured that their history would be included, the Duwamish tribe was left out of the proceedings. “How can you exclude the history of the tribe who gave its name to Seattle?” asked Hansen. Fearful that her tribe’s history would be written out of the history books, she equated the act to genocide. However, the inclusion of the Duwamish in the talks, which would have helped to legitimize the Duwamish claims to being the legitimate successors of the Treaty Duwamish tribe, would certainly anger the Tulalip and Muckleshoot tribes. “They give us (the Duwamish) lip service, but in the meantime they deal with the Tulalip and Muckleshoot because they have money.”⁴⁸ Candidates need support to get re-elected, and ostracizing large donors isn’t always a good strategy.

The Duwamish tribe, if recognized, would also be able to operate businesses without paying federal and state taxes.⁴⁹ For example, as of right now, Tribes are allowed to operate gas stations without charging federal or state taxes.⁵⁰ The Duwamish would be able to, in theory, sell gas for more than \$.50 cheaper than the rest of the state. Northwest tribes such as the Nez Perce and Coeur D’alene have opted to include the tax, but use it for tribal infrastructure purposes. However, the threat stands that the Duwamish would be able to establish a tax free zone in a large metropolitan city. The State of Washington has used taxes such as the gas tax to help rebuild the crumbling Seattle infrastructure, and any transfer of tax money to the Duwamish tribe could cause unwanted budget deficits.

⁴⁸ Phone Interview with Cecile Hansen, February 19, 2009

⁴⁹ Dank, David. “Point of View – Indian Tribes – Time to restore fairness in Dealings”. The Oklahoman, Oklahoma City, OK. February 16, 2009.

⁵⁰ Howell, Park. “Bill sets Dec. 1 gas tax deadline – Coeur D’alene, Nez Perce would lose exemption”. The Spokesman Review, Spokane, WA. March 3, 2007

Therefore, the State has not included the Duwamish Tribe in their legislative processes. The threat of the Duwamish as a federally recognized political body is simply too risky. Furthermore, a lack of support from the legislators of the State of Washington has surely played a role in the lack of support from Washington Congressman and Senators at the Federal level.

Federal Government

At the Federal level, US Representative of Washington State, Jim McDermott, introduced a bill in 2003 to have the Duwamish Tribal Organization recognized.⁵¹ An act of Congress is the only way for a tribe to gain recognition without going through the Department of the Interior. McDermott stated, "Our relationship to Native Americans has been at best a tangled web of deceit, misstatements, and going back on our word... We really need to recognize this tribe."⁵² However, at midnight on December 31, 2004 the bill had not passed and became moribund. McDermott spoke, "If you think an idea is right, you keep pushing it, and you never know how circumstances may change and suddenly people will say, 'We've got to do something about this.'"⁵³ However McDermott never reintroduced the bill to recognize the Duwamish. He reintroduced a bill concerning state controlled health care 7 times with consistently negative responses, but the Duwamish tribe's pleas fell to the wayside after only one attempt.⁵⁴ McDermott, and more broadly the Federal Government, simply aren't interested in the recognition of tribes like the Duwamish. Politicians keep their jobs by supporting their largest groups of

⁵¹ Shukovsky, Paul. "McDermott prepares bill to recognize tribe". The Seattle Post Intelligencer, January 10, 2003

⁵² Noddell, Bobbi. "Duwamish take to canoes in celebration of their past – Final event noting Seattle's founding". The Seattle Times, September 1, 2002

⁵³ Fryer, Alex. "State Delegation's auld bills await kiss of death at Midnight". The Seattle Times, December 31, 2004

⁵⁴ Fryer 2004

supporters, and small unrecognized tribes don't make that list. In turn, the recognition of tribes like the Duwamish could result in the loss of other tribal support for politicians, the birth of potentially powerful tribes, and the dilution of federal services for existing tribes.

In 1996 Washington Congressman Jack Metcalf introduced a bill on behalf of the Tulalip Tribes to permanently end the recognition of unrecognized tribes, including the Duwamish.⁵⁵ Metcalf exclaimed, "There will be some injustice there, but you can't unscramble the egg", the egg being the history of Native American – Anglo relations. His bill protected his own interests by protecting the interests of the wealthy Tulalip Tribe, when his office as a congressman dictated that he should stand up for justice. A minority of Congressmen and women have attempted to pass legislation to reform the recognition process, which would help de-politicize the process.⁵⁶ However their attempts have been met with resistance, such as the self-interest of politicians such as Jack Metcalf.

Such resistance may also be due to the growing number of recognized tribes vying for a shrinking pool of federal funding for social services. Every new recognized tribe is guaranteed monetary aid for social services along with all of the other tribes. These services include health care, education, housing, and funding for tribal governments. Existing tribes have consistently feared the loss of federal dollars in recent history, and the addition of more tribes only exacerbates the problem.⁵⁷ In 1998, the Assistant Secretary of Indian Affairs stated that, "We have tribes that are getting 30 percent of what they need. Others are getting 20 percent or less."⁵⁸ The problem has only

⁵⁵ Shukovsky, Paul. "Metcalf would block Tribal Recognition". Seattle Post Intelligencer, March 22, 1996

⁵⁶ Green, Rick. "SCHAGHTICOKE BID DENIED - TRIBE DEALT A SETBACK IN RECOGNITION EFFORT, BUT ISN'T GIVING UP". The Hartford Courant, Hartford, CT. December 6, 2002

⁵⁷ Simon, Jim. "BIA Official: GOP a peril to power of Tribes". The Seattle Times, Seattle, WA. June 7, 1995.

⁵⁸ "Wealthy Tribes Encouraged to give up Federal Money". St. Paul Pioneer Press, St. Paul, MN. September 10, 1998.

gotten worse since then, and the further recognition of tribes doesn't seem to be the solution.

Furthermore, the acknowledgement of any tribe located in a large metropolis is surely going to create a powerful political entity. As addressed by the concerns of the Seattle Government, the fears of powerful political entities are felt by state governments as well. For example, the Shakopee Mdewakanton Sioux in Minneapolis hands out an estimated \$600,000 to each of its tribal members annually, sponsored by the success of their casino.⁵⁹ The Seminole Tribe in Florida gives each of its 3300 members over \$120,000 per year.⁶⁰ These tribes have a great deal of wealth to spare when sponsoring their interests through lobbyists on Capitol Hill, and can provide problems for state legislators. For perspective, Seattle's population is larger than that of Minneapolis by over 200,000 people.⁶¹ If the Duwamish were to become recognized, and become a business entity through a casino or the like, they could potentially be the most powerful tribal entity in the State of Washington.

Because of these three potential causes for the lack of support for unrecognized tribes across the country, the Federal Government has done little to overhaul the vague nature of the Federal Recognition process. Voices have come forward in Congress to do just that, but have been for the most part silenced. Still, Cecile Hansen has remained steadfast in her loyalty to her tribe. "If they rule against us we will still be Duwamish. We will still be Indian. They can't take that away from us."⁶²

⁵⁹ "Wealthy Tribes Encouraged to give up Federal Money". St. Paul Pioneer Press, St. Paul, MN. September 10, 1998.

⁶⁰ Clary, Mike. "Struggling Wealth". The Orlando Sentinel, Orland, FL. December 3, 2007.

⁶¹ "Top 100 Biggest Cities". <http://www.city-data.com/top1.html>, accessed February 18, 2009.

⁶² Foster, David. "Obscure Tribes seeking Recognition". St. Louis Post Dispatch, St. Louis, MO. December 19, 1993

Tribal Opposition

The Federal Government has allowed the recognition process to fall prey to the interests of wealthy Native American tribes across the country. Tribes such as the Muckleshoot and the Tulalip are opposed to the Duwamish receiving recognition based on fears of gaming competition, a loss of fishing rights, and the depletion of federal aid accompanying a loss of tribal enrollment. First I will introduce the Muckleshoot and Tulalip tribes as far as they are concerned with the Duwamish, before addressing the reasoning behind their opposition to Duwamish federal recognition.

The Muckleshoot tribe recently filed an injunction to stop progress of the Duwamish Tribal Organization's lawsuit against the Federal Government based on a significant legal interest in the matter. The Muckleshoot claim that if the Duwamish Tribe gains recognition, they will sue for a share of the fishing rights currently held by the Muckleshoot tribe. The injunction was denied because the case does not concern fishing rights, however the mere fact that the Muckleshoot filed such an injunction betrays their animosity towards the Duwamish Tribal Organization. Currently, the Muckleshoot tribes are one of the largest tribal business entities in the state of Washington⁶³ with their own casino and horse track, spa and resort, part ownership of a prominent downtown hotel, majority ownership of a California developing company, and plans to jointly open a tribal casino on the Las Vegas strip.⁶⁴ A Washington State Official actually referred to the Muckleshoot tribe as 'Muckleshoot Inc.', a joke certainly based upon their business

⁶³ Archibold, Mike. "Muckleshoots buy Emerald Downs". Eastside Journal, Bellevue WA. Nov. 26, 2002.

⁶⁴ Mapes, Lynda. "Tribes are State's New High Rollers- in business". Seattle Times, Seattle. Feb. 17, 2008.

successes.⁶⁵ They have hundreds of millions of dollars tied up in their business ventures, and yet are concerned with a partial loss of fishing rights to a dwindling salmon stock that has lost value due to fish farming? Duwamish lawyer Scott Wheat stated in reference to tribal gaming, “Now there’s not many salmon left. It’s about economics.”⁶⁶ The Muckleshoot claim simply doesn’t make financial sense, unless they are attempting to stop the Duwamish from gaining more than fishing rights.

The Tulalip tribe, located 45 minutes north of Seattle, has been consistent in their opposition to all unrecognized tribes in Western Washington gaining federal recognition. In 1996, they persuaded United States Representative Jack Metcalf to present a bill to congress that would prevent dozens of tribes across the country from gaining recognition. In 1992, Tulalip Tribal Chairman Stan Jones claimed, “The Snoqualmie, the Snohomish, went to our reservation. We are the Snohomish, we are the Snoqualmie. We met the requirements of the United States to come to the reservation. Now we are the Tulalips.” His comment shows the Tulalip belief that they fully represent tribes like the Snohomish and Snoqualmie, and therefore such tribes don’t need to be recognized to gain federal aid. On the condition of anonymity, a congressional staffer commented that, “they [The Tulalip Tribe] don’t want other tribes to get a piece of the pie.”⁶⁷ A majority of the time when a tribe in Western Washington is recognized, the enrollment of the Tulalip reservation falls. The recognition of the Duwamish tribal organization would surely do the same since a number of Duwamish Indians are currently enrolled with the Tulalip

⁶⁵ Brodeur, Nicole. “Rules widen Gulf between Local Tribes.” The Seattle Times, December 1, 2002.

⁶⁶ Shukovsky, Paul. “Duwamish Tribe fights for Recognition – But Muckleshoots seek to join U.S. Government in opposing fellow natives.” Seattle Post Intelligencer, Seattle. September 5, 2008.

⁶⁷ Shukovsky, Paul. “Metcalf would block Tribal Recognition”. Seattle Post Intelligencer, March 22, 1996

A great deal has been written concerning tribal gaming and its positive or negative effects on economies and communities. W. Mason, author of "Indian Gaming: Tribal Sovereignty and American Politics", briefly wrote about the, "fraud, mismanagement, and waste" of the BIA processes.⁷² Although Mason does a fine job examining the effects of gaming on recognized tribes, he wrote little about unrecognized tribes. Steven Light and Kathryn Rand wrote about the impacts of gaming on the definitions of tribal sovereignty in "Indian Gaming and Tribal Sovereignty: The Casino Compromise".⁷³ They note how deeply intertwined tribal gaming and tribal sovereignty have become, which points to the assumed need by some modern tribes, such as the Muckleshoot or Tulalip, of gaming institutions.

Fishing Rights

Fearful of having to share their fishing rights with two local tribes, the Tulalips used their political muscle to oppose the recognition of the Snohomish and Steilacoom tribes.⁷⁴ In 1992, the Duwamish, Snohomish, and Steilacoom tribes filed a lawsuit to overturn the Boldt decision, which would in turn grant them federal recognition. At the same time, historic talks were occurring between local recognized tribes and the US Government concerning shellfish rights. The Point Elliott treaty of 1855 guaranteed Native American fishing rights, "Provided, however, that they shall not take shell-fish from any beds staked or cultivated by citizens."⁷⁵ The local tribes were looking to have that portion of the treaty clarified, which would grant them rights to collect shellfish on

⁷² Mason, W. "Indian Gaming: Tribal Sovereignty and American Politics". University of Oklahoma Press, 2000.

⁷³ Light, Steven and Kathryn Rand. "Indian Gaming and Tribal Sovereignty: The Casino Compromise". Lawrence: University Press of Kansas, 2005 Pg's. 17 – 37.

⁷⁴ Shukovsky, Paul. "Tulalips resist lawsuit designed to overturn Judge Boldt Ruling." The Seattle Post Intelligencer, August 20, 1992

⁷⁵ United States. "Treaty between the United States, D'wamish, Suquamish, and other Allied and Subordinate Tribes of Indians in Washington Territory, Signed January 22, 1855." Washington.

private lands up to the high tide line. The Tulalip tribe threatened to withdraw from the talks, guaranteeing that the shellfish issue would not be resolved, if a local law firm did not stop representing the Snohomish and Steilacoom tribes in their recognition case.⁷⁶ The law firm withdrew from the Duwamish case and in 1994 the recognized tribes were granted shellfish rights. The Snohomish, Steilacoom, and Duwamish tribes have yet to be federally acknowledged. The Tulalip Tribe has consistently shown that they are in opposition to the recognition of unrecognized tribes based on fears of losing tribal enrollment, fishing rights, and federal aid.

However, the recognition of the Duwamish tribe would not necessarily affect Tulalip fishing rights. The Duwamish would have no claims to territory fished by the Tulalip. The Muckleshoot Tribe, on the other hand, would be forced to share a majority of their fishing grounds with the Duwamish. The Green River flows north from Auburn, where the Muckleshoot reservation sits, into Elliott bay. At the point where the Green River meets what used to be the Black river, it becomes the Duwamish River. The Duwamish River flows into Puget Sound. The recognition of the Duwamish Tribe would allow them to sue for fishing rights on the Duwamish River and in Elliott bay. The Duwamish would control the mouth of the Duwamish river and potentially 50% of the fish swimming upstream. The Muckleshoot tribe is in control of a salmon hatchery upstream, and during Coho salmon runs they catch and freeze Duwamish salmon for sale to local grocery stores. The recognition of the Duwamish and their subsequent ability to sue for fishing rights could decimate the ability of the Muckleshoot to maintain salmon as a profitable venture. However the decimation of the fish populations and the rise of

⁷⁶ Shukovsky, Paul. "Tulalips resist lawsuit designed to overturn Judge Boldt Ruling." The Seattle Post Intelligencer, August 20, 1992

gaming as the number one economic provider for most tribes have made fishing rights less of an issue today.

Tribal Membership and Federal Aid

The appropriation of some federal aid to tribes is based upon the total number of tribal members.⁷⁷ This aid provides funding for health care, social services, education, housing, and tribal governments.⁷⁸ After the Treaty of Point Elliott was signed, some Duwamish tribal members scattered throughout the Northwest to various reservations. Since the time of the treaties, a majority of those who left went to the Muckleshoot reservation. The Muckleshoot, and to a lesser extent the Tulalip tribes, are fearful that if the Duwamish are recognized, it will shrink their federal aid and possibly de-legitimize their tribal establishments.

A portion of the Duwamish Indians currently enrolled with the Muckleshoot and Tulalip reservations will certainly change their affiliations if the Duwamish are recognized. Hansen recounted that, "My sister and I were born on the Tulalip Reservation. I can't relate to that. I am Duwamish."⁷⁹ However, being the capable businessmen and women that they are, the Muckleshoot face a much more pressing crisis if the Duwamish gain recognition. James Rasmussen was shocked to hear that the Muckleshoot think, in his own words, "If they [the Duwamish] become recognized they are just going to take everything away.' And in some ways, since they are a reservation established for the gathering of certain tribes, their only real treaty rights are as successor and interest to other tribes. That's a real scary thought to a fairly large government

⁷⁷ Phone Interview with BIA Official, February 19, 2009

⁷⁸ "Duwamish to fight for tribal status". The Seattle Times, July 2, 1996

⁷⁹ Phone Interview with Cecile Hansen, February 19, 2009

operation.”⁸⁰ The Muckleshoot reservation was established to support a number of tribes who signed the treaties of the 1850’s, but will they still exist if they have no tribes to support? The recognition of the Duwamish seems to be the Achilles heel of the Muckleshoot business empire. Theoretically, without tribes to represent, the Muckleshoot tribes may cease to exist as a political entity.⁸¹

The Duwamish Perspective

“We still exist. Our council still beats.”

- James Rasmussen, Duwamish Council Member

On an icy December day in 2002, Cecile Hansen received a call regarding a barge in the Duwamish River. Hansen was asked to have her tribe remove their fishing nets so that the barge could pass through. “We’re not allowed to fish the Duwamish River” Hansen replied. “It may be named for us, but our fishing rights were taken away.”⁸² The root of the Duwamish Tribal Organization’s constant struggle throughout a quarter century of failed attempts at recognition is firmly rooted in their sense of an ongoing injustice. James Rasmussen, third generation member of the Duwamish Tribal council, claimed, “Fighting for justice has been an important aspect..., and not just justice for some but justice for anyone who should have that.” The Duwamish are seeking recognition to gain a voice in local conservation efforts regarding the Duwamish river, to

⁸⁰ Interview with James Rasmussen

⁸¹ This is not to say that if the Duwamish are recognized, the Muckleshoot will cease to exist. Not all Indians on the Muckleshoot reservation are Duwamish, and those who are Duwamish may not choose to switch their affiliations. The Muckleshoot Reservation is an established political entity, recognized in the Boldt Decision, and even if the Duwamish are recognized will not cease to be such in the foreseeable future.

⁸² Brodeur, Nicole. “Rules widen Gulf between local tribes.” The Seattle Times, December 1, 2002.

gain federal support to start education and health programs, to correct an injustice, and to protect their culture.

The Duwamish River is one of the most polluted rivers in the country, making its way towards the top of the EPA's list concerning sites for cleanup.⁸³ The fish and crab found in the lower Duwamish have been deemed unsafe to eat, with recommended intake at less than one serving per month.⁸⁴ The salmon pulled from its waters are polluted as well, but are safe to eat as long as it's less than four times a month.⁸⁵ "We have salmon that are pretty much poison and shouldn't be sold" exclaimed Rasmussen. If recognized, the Duwamish will be in a strong position to negotiate for the proper cleanup of the river. They will also be able to use Federal aid programs for recognized tribes to start tribal healthcare and educational services. "We would be able to do a lot more for our people than we are able to do right now. That is really what our council has been charged with" says Rasmussen. Therefore, it seems that in order to fulfill their duty as a tribal council, it becomes imperative that they gain federal acknowledgement of their tribe. Yet the Duwamish have been left frustrated with the acknowledgment process that has hindered their ability to achieve this goal.

A consistent thread throughout Duwamish versions of their struggle for acknowledgement is the idea that the Duwamish have faced injustice at the hands of the Department of the Interior. "They [the US Government] thought they were honoring the chief by naming this city after him, and this is how they treat his descendents? By not

⁸³ Lange, Larry. "Duwamish now on Cleanup list badly polluted waterway designated a superfund site". The Seattle Post Intelligencer, September 14, 2001

⁸⁴ Stiffler, Lisa and McClure, Robert. "Duwamish Crab, Fish are unsafe to Eat, state warns – Concentration of PCB's Dangerously High". The Seattle Post Intelligencer, August 4, 2005.

⁸⁵ McClure, Robert and Colin McDonald. "Cleanup Clash – Eating from Duwamish? At issue is just how much pollution needs to be removed from the water". The Seattle Post Intelligencer, November 27, 2007

The Duwamish have a rich history in the Seattle area dating back long before European explorers ever arrived on their shores. Some feel that to become recognized through another entity such as the Muckleshoot or Tulalip reservation is to abandon some of that history. Rasmussen became concerned with this loss of heritage when confronted with children who self identify with a reservation rather than their tribe. "These young children on these reservations would self identify themselves as Muckleshoot. They're losing their heritage by doing that."⁸⁹ The recent construction of the Duwamish Cultural Center across the street from what was once a Duwamish village hopes to remedy such problems. According to Rasmussen, "It's for Duwamish people throughout Puget Sound who are in Lummi, Muckleshoot, Tulalip, that are in different places; So that they can have a place to come home to and understand what this is really all about." A big step towards the culmination of that idea would be the acknowledgment of the legitimacy of their history and heritage by the Federal Government. Their new tribal center is the first modern Duwamish site in the city, with a meeting hall, museum, and tribal offices. With its construction, the Duwamish tribe has moved one step closer to the guarantee that they will never be forgotten.

Conclusion

The environment surrounding the recognition of Native American tribes such as the Duwamish has become highly politicized since federal criteria for acknowledgment were established in 1978. In the words of James Rasmussen, the Federal Government says, "All you have to do is get your people together, and fill out some forms, and talk

⁸⁹ Interview with James Rasmussen

about your history and your almost there! In reality that is nowhere close to where it is.”

This paper has shown that the process for tribal recognition is actually much larger in scope than the Board of Acknowledgement in the Bureau of Indian affairs. It is affected by local, state, federal, and tribal governments vying to protect their own interests.

Western Washington tribal governments have shown open opposition to the recognition of other tribal organizations based on fears of gaming competition, a potential loss of fishing rights, and decreased federal aid due to decreases in tribal enrollment. With these factors in mind, tribes such as the Muckleshoot and Tulalip have used their political muscle to influence the position of local, state, and federal governments in opposition to unrecognized tribes. The US Government entities, with such strong financial support from these wealthy recognized tribes, are fearful of the impacts a sovereign political entity (with the potential right to open a casino) can have on their represented districts. Therefore, loopholes in the recognition process have been exploited, leaving tribes like the Duwamish without the recognition granted to them through treaties signed over 150 years ago. The recognition process has become highly politicized and until the nature of this process is addressed, it will remain a highly unjust institution of the federal government.

Appendix A

§ 83.7 Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.

(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

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

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity; that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.

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

As found in the United States Code of Federal Regulations.

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