

UNITED STATES DEPARTMENT OF THE INTERIOR

INTERIOR BOARD OF INDIAN APPEALS

In re : **Dkt. Nos. IBIA 02-165-A**
FEDERAL ACKNOWLEDGMENT OF THE : **IBIA 02-166-A**
HISTORICAL EASTERN PEQUOT TRIBE : **IBIA 02-169-A**
:
: **APRIL 10, 2003**

MOTION FOR LEAVE TO FILE A REPLY BRIEF

Pursuant to 25 C.F.R. § 83.11(e)(2), the State of Connecticut and the Towns of North Stonington, Preston and Ledyard respectfully move for leave to file a reply brief to the Answering Brief of the Eastern Pequot Tribal Nation (EPTN). Because the EPTN relies on decisions issued by the Assistant Secretary – Indian Affairs (AS-IA) on other acknowledgment petitions well after the State and the Towns filed their request for reconsideration, good cause exists for permitting the State and the Towns to file a reply brief addressing the issues pertaining to those recent decisions.

The State and Towns acknowledge that ordinarily an interested party does not have the right to file a reply brief, 25 C.F.R. § 83.11(e)(6), and that the Board has directed in its scheduling order of February 3, 2003 that interested parties would not be afforded the right to file a reply brief. Nevertheless, the Board retains the authority, under appropriate circumstances, to order additional procedures necessary to a full and fair review of a request for reconsideration. Specifically, 25 C.R.R. § 83.11(e)(2) provides that “[t]he

Board may establish such procedures as it deems appropriate to provide a full and fair opportunity for evaluation of a request for reconsideration under this section to the extent they are not inconsistent with these regulations.” The circumstances of this matter justify permitting the State and the Towns to file a reply brief to ensure a full and fair evaluation of its request for reconsideration.

In its Answering Brief, the EPTN relies heavily on two acknowledgment decisions issued by the AS-IA well after the State filed its request for reconsideration: the proposed finding on the petition for federal acknowledgment of the Schaghticoke Tribal Nation (Schaghticoke PF), and the proposed finding on the petition of the Golden Hill Paugussett Tribe (Golden Hill PF). *See* EPTN Answering Brief, at 8 n.2, 30, 52-53, 65, 69. In particular, the EPTN rely on the Schaghticoke PF and the Golden Hill PF to challenge the State’s principal claims relating to the misuse by the AS-IA of the State’s relationship with the Eastern Pequot. Central to the State’s and the Towns’ requests for reconsideration are the contentions that the AS-IA made erroneous findings, based on unreliable evidence and contrary to compelling, reliable evidence (as well as to new evidence not available to the AS-IA) about the nature of the State’s relationship with the petitioners, and that the AS-IA used this distorted view of the State’s relationship to grant recognition in contravention of the acknowledgment regulations. *See* State’s Request for Reconsideration, at 15-50.

In opposition to the State’s and Towns’ contentions on these issues, the EPTN cites and discusses the Schaghticoke PF in particular at several points in its Answering Brief. *See* EPTN Answering Brief, at 30, 52-53, 65, 69. Using the Schaghticoke PF as purported evidence, the EPTN apparently argues that the way that the AS-IA used state recognition

in those proposed findings denying recognition somehow legitimizes the AS-IA's use of it in this case. *Id.* Indeed, it argues that the Schaghticoke PF "puts to rest" the State's and Towns' claims regarding the misapplication of the State's relationship. *Id.* at 52.

The State and Towns maintain that a proper evaluation of the Schaghticoke PF will in fact support its claims that the AS-IA violated the regulations by relying on state recognition as a basis for federal recognition. However, through no fault of their own, the State and the Towns have had no opportunity to address the issues raised regarding the proposed findings. The Schaghticoke PF was issued on December 5, 2002, and the Golden Hill PF was issued on January 21, 2003, approximately two-and-a-half months and four months respectively after the State and the Towns filed their requests for reconsideration in this case. If the EPTN is permitted to rely on these two recent decisions, as a matter of fairness, the State should have the opportunity to respond to the EPTN's arguments based on them.

Accordingly, a full and fair evaluation of the State's and Towns' requests for reconsideration demands that the State and the Towns be permitted to file a brief addressing the significance of the Schaghticoke PF and the Golden Hill PF. The proposed reply brief is submitted herewith.

Respectfully submitted,
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