Nisenan Tribal Issue Brief

Prepared by:
County Executive Office & Board of Supervisors' Office

Executive Summary

Request

On December 15, 2018 County of Nevada received a request from Nicholas Hedluna regarding passage of a resolution in support of the Nisenan goals to achieve federal recognition. In this request Mr. Hedluna seeks similar support as the 2018 Sonoma County Board of Supervisors provided towards Lytton Tribe.

Recommendation

Any actions taken by the Board of Supervisors should be first affirmed and recommended by the Nevada County Historical Society to be consistent with past practice. Moreover, it is recommended that the Nisenan work with Federal authorities and congressional representatives regarding the restoration of Federal recognition.

Discussion Topics from Letter Received

1) Sonoma County's 2018 support of the Lytton Tribe is not similar to that of the request the Nisenan Tribe seeks from Nevada County.
    - Lytton Tribe is federally recognized whereas Nisenan Tribe is not.
    - Sonoma County was a party in the 1991 lawsuit providing protections to the Lytton Tribe.
    - 2015 - Sonoma County and Lytton Tribe entered into a MOA for reservation land use.
    - 2018 - Sonoma County affirmed support of Lytton lands to be used for a reservation.
2) Assertion all California Rancherias were illegally terminated; including Nevada County Rancheria.
    - 1958 - Congress passed the California Rancheria Termination Act; where 41 Rancherias were to be removed from trust and distributed to the individuals of those Rancherias.
    - 1959 - Bureau of Indian Affairs prepared a distribution plan indicating the Johnson's as the only individuals entitled to share in distribution of the Nevada County Rancheria.
    - 1964 - The Johnson's of the Nisenan Tribe received their distribution of the Nevada County Rancheria with the condition that they were no longer federally protected.
    - 1979 - Nisenan Tribe joined the Hardwick case to restore status as Recognized Indians.
    - 1983 - Hardwick Court entered a Stipulation for Entry of Judgment of which failed to mention the Nevada City Rancheria.
    - 2014 - United States Federal Court granted a correction of a clerical mistake and dismissed Nisenan claims as they are time-barred by the Administrative Procedure Act.
3) Assumptions in the Federal Recognition Process
    - The *Federally Recognized Indian Tribe List Act* establishes recognition of Indian Tribes through 1) Act of Congress 2) Administrative Procedures - 25 C.F.R. Part 83, 3) US Court.
        - There has been one successful congressional recognition since 2000.
            - The Lytton Rancheria Homelands Act of 2017 places lands in public trust for use as a reservation and is dissimilar to Nisenan request.
        - It appears that the Nisenan have not filed for Administrative Procedures 25 C.F.R. Part 83 for federal recognition; possibly due to their legal status.
        - There is no mention of the Federal District Case, Nisenan v. Jewell which denied the Nisenan Tribe of federal recognition. Future court action seems unlikely.

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Preface

On December 15, 2018 County of Nevada received a request from Nicholas Hedluna regarding passage of a resolution in support of the Nisenan goals to achieve federal recognition. In this request Mr. Hedluna seeks similar support as the 2018 Sonoma County Board of Supervisors provided towards Lytton Tribe.

As a result a study was conducted in order to analyze 1)History & Status of the Nevada City Rancheria, 2) County of Nevada Actions with the Tsi-Akim Maidu Tribe 3) Actions Taken By Similar Tribes & Local Government Agencies 4) Federal Recognition Process. At the end of this study a decision matrix was utilized in order assist in the analysis of facts collected.

History & Status of the Nevada City Rancheria

Scholastic Debate

The scholarly consensus is that the ''Nisenan" were the indigenous people-to occupy the Sierra foothills of the American, Bear, and Yuba River watersheds in present-day Nevada County. A primary argument is made by Tsi- Akim that Nevada County is part of their ''traditional" or "indigenous" territory as "Maidu" people.

Much public confusion stems from a misunderstanding of the distinction between the Northern Maidu language originally spoken by Plumas County's indigenous people and the Nisenan language spoken by the indigenous peoples of Nevada County. Confusion also arises in confusing these pre-contact linguistic groups as political entities or ''tribes," which they were not.

To illustrate this crucial difference, the Tsi- Akim is correct at one level of analysis when - they say Nevada County is part of traditional "Maidu" territory, much like an Italian saying his ancestors are indigenous to Europe for thousands of years and Europe is their "traditional" land. However, at another level of analysis, the Tsi-Akim's statement is incorrect; it is as wrong for Plumas County Northern Maidu to claim Nevada County as their "traditional" territory as it would be for a modem-day German to say Italy are lands where their ancestors are buried. The general nature of the statement therefore is impossible to prove or disprove because it is very general and subject to interpretation.

Without such evidence of direct descent, public policy decisions may favor the Tsi-Akim (as in an appointment to an Indian Cemetery Committee or donations of land or artifacts), overlooking "direct descendants." [1]

NCHS Rescinded Resolution

At a meeting on November 2, 2000, the Board of Directors of the Nevada County Historical Society (NCHS) approved a resolution written by Don Ryberg of the Tsi-Akim. Shortly thereafter on January 9, 2001, the Nevada County Board of Supervisors passed a resolution (01-016) that, among other items, endorses the efforts of the Tsi-Akim Tribe to pursue Federal recognition. During the Board of Supervisors meeting the NCHS recommended approval of the resolution to support the Tsi-Akim Tribe. The Tsi-Akim subsequently used the NCHS's endorsement gathering 22 similar resolutions.[2]

2,3 Nevada County Historical Society "Committee to Investigate The Society's 200 Endorsement of the Tsi-Akim Maidu" November 2010

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In June 2010, NCHS Board member Wallace Hagaman offered a motion to recognize the Nisenan Tribe of the Nevada City Rancheria as the only indigenous tribe of Nevada County. The catalyst for the NCHS to examine its original endorsement was the assertion by another group, the Nevada City Rancheria (Nisenan tribe), which challenges the Tsi-Akim's claim to being the indigenous people of historic Nevada County. [3]The NCHS Board therefore appointed a committee to investigate the issue of conflicting claims.

Research revealed factual inaccuracies regarding the Tsi-Akim's claim to Nevada County as its traditional territory. The Tsi-Akim produced no verifiable evidence or documentation that any of its members can trace their genealogical' roots to historic Nevada County. Without such evidence, the NCHS cannot support the contention that Nevada County is the Tsi-Akim's (or the Taylorsville Rancheria's) traditional territory. The claim that the Tsi-Akim's ancestors are buried in Nevada County remains unsupported.

According to the authoritative Handbook of North American Indians, the Nisenan territory alone had more than a hundred identifiable and politically autonomous villages or rancherias. There were many different cultures, mutually-incomprehensible languages, and dozens and dozens of separate political units in the broad Maiduan territory.

The NCHS Committee also found that the NCHS did not critically examine the resolution, but rather adopted it as a gesture of goodwill. As a result of these findings the Nevada County Historical Society Board of Directors unanimously rescinded their 2000 endorsement of the Plumas County Tsi Akim Maidu.

Summary of Nevada City Rancheria

In 1887, Tribal Chief Charley Cully obtained a 75-acre allotment under the General Allotment Act for the property his tribal band had relocated to in the 1850s.

In 1913, the federal government took the Cully homestead into federal trust status, acknowledging the Nevada City Rancheria as a "reservation" and its inhabitants as "Indians" under federal protection.

In 1958, Congress passed the California Rancheria Termination Act which provided that the lands of 41 enumerated California rancherias were to be removed from trust status and distributed to individual Native Americans of those rancherias. The act directed either the Native Americans of each enumerated Rancheria or the Secretary of the Interior after consulting them to prepare a plan for distributing the Rancheria's lands or for selling the lands and distributing the proceeds.

On June 8, 1959, the Bureau of Indian Affairs prepared a distribution plan indicating that: Peter Johnson and his wife Margaret Johnson were the only Native Americans living on the Rancheria; and thus were the only individuals entitled to share in distribution of the Rancheria lands and assets. The Johnsons had requested that the BIA sell the Rancheria lands and assets on their behalf. No minor children would receive funds from the sale of the Rancheria and the Johnsons were capable of handling their affairs.

[3] Nevada County Historical Society "Committee to Investigate The Society's 200 Endorsement of the Tsi-Akim Maidu" November 2010

On July 17, 1959, the acting BIA Area Director sent the BIA Commissioner a letter stating that general notice of the distribution plan had been given, and no objections had been received. On July 29, 1959, the BIA Commissioner responded by letter, advising that the distribution plan was approved and should be presented to the Johnsons for their acceptance.

On August 4, 1959, the BIA Area Director sent the Johnsons a letter informing them that the distribution plan had been approved by the United States and that a general meeting of distributes would be held for the purpose of voting on the plan. Ten days later both Peter and Margaret Johnson voted to approve the distribution plan.

Distribution was delayed by other individuals claiming mining rights in Rancheria lands. The Johnsons were permitted to remain on the property during this period of delay and the grant deed was delivered to the purchasers on June 10, 1963.

On September 22, 1964, the Secretary of the Interior published a notice stating: *Notice is hereby given that the Indians named under the Rancherias listed below are no longer entitled to any of the services performed by the United States for Indians because of their status as Indians, and all statutes of the United States which affect Indians because of their status as Indians, shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Title to the lands on the Rancherias has passed from the United States Government under the distribution plan of each Rancheria.*

The notice listed the Nevada City Rancheria and identified Peter Johnson as the sole distribute.

Hardwick Action

In 1979, Hardwick plaintiffs sought restoration of their Indian Status, entitlement to Federal Indian Benefits, and the right to reestablish their tribes as formal government entities. The Nevada City Rancheria was included as a plaintiff in this case.

In 1980, Judge Williams certified a class consisting of all persons who received assets of thirty-four enumerated Rancherias pursuant to distribution plans prepared under the Rancheria Act; any heirs or legatees of such persons; and any Indian Successors in interest to real property so distributed.

In 1983, the Hardwick court entered a "Stipulation for Entry of Judgment" ("1983 Stipulation"). The 1983 Stipulation divided the class members into three subclasses. The first subclass consisted of individuals who received assets of 17 enumerated Rancherias; the United States agreed to restore those individuals to Indian Status, restore recognition of their tribes as Indian Entities, and provide a mechanism by which individuals holding former Rancheria lands could reconvey those lands to the United States to be held in trust.

The second subclass consisted of individuals who received assets of 12 different enumerated Rancherias as to those individuals; the action was dismissed without prejudice.

The third subclass consisted of individuals whose claims were barred under the doctrine of res judicata; as to those individuals, the action was dismissed with prejudice.

For unknown reasons, the 1983 Stipulation failed to mention the Nevada City Rancheria.

On May 20, 1992, Judge Williams dismissed the Hardwick action and closed the case.

Nisenan Tribe, et al v. Jewell, Sec. of Interior, et al.

Case was previously was listed as Nisenan Maidu Tribe of the Nevada City Rancheria v. Salazar et al. Defendants were substituted in action in place of their predecessors, Ken Salazar and Larry Echo Hawk.

On January 20, 2010, the Nisenan Maidu Tribe of the Nevada City Rancheria filed an action challenging the sale of the Rancheria's lands and the termination of the Tribe. The Nisenan action was related to the Hardwick action under this Court's Civil Local Rules.

On August 5, 2011, the Nisenan Maidu Tribe filed a motion for leave to proceed with its claims in the Hardwick action. The Tribe argued that those claims were still viable because they had not been disposed of by the Hardwick judgment.

On September 22, 2011 Court issued an order deferring consideration of the Tribe's motion, noting that despite the Tribe's references to Hardwick as "pending," the case had been closed since 1992. The Court opined that the proper procedural vehicle for seeking to reopen Hardwick was a motion pursuant to Federal Rule of Civil Procedure 60(b). However, the Court indicated that it would not be inclined to grant relief under Rule 60(b) unless the Nisenan Maidu Tribe could demonstrate that its members would have been in the subclass entitled to relief under the Hardwick settlement and not in one of the subclasses whose claims were dismissed.

On October 30, 2012, the United States filed the administrative record in the Nisenan action. The Nisenan Maidu Tribe thereafter abandoned its attempt to reopen Hardwick, conceding that its members would have been in the second Hardwick subclass of individuals whose claims were dismissed without prejudice.

The Nisenan Maidu Tribe asserts that the Nevada City Rancheria was one of the Rancherias that was the subject of the Hardwick litigation; claims arising from distribution of the Nevada City Rancheria's lands were subject to dismissal without prejudice pursuant to the terms of the 1983 Stipulation; and the Nevada City Rancheria was omitted from the 1983 Stipulation as result of a clerical mistake. The Tribe requests that the Court correct that mistake.

March 7, 2014 United States District Judge Jeremy Fogel issued an order which granted a correction of a clerical mistake in Hardwick, and dismissed Nisenan claims with prejudice on the grounds that such claims were time-barred under the Administrative Procedure Act's ("APA's") six-year statute of

limitations. The Court also found that the claims arising from distribution of the Nevada City Rancheria's lands were subject to dismissal without prejudice pursuant to the terms of the 1983 Stipulation

On May 25, 2016 United States Court of Appeals affirmed the district court's order.

The tribe subsequently asked the U.S. Supreme Court to hear the matter. The petition in Nevada City Rancheria v. Jewell was denied without explanation in a January 2017 order.

County of Nevada Actions Tsi-Akim Maidu Tribe

Resolution 01-016

In January of 2001, the Nevada County Board of Supervisors passed a resolution (01-016) recognizing the Tsi-Akim Maidu Tribe and the importance and contribution of their history and present culture heritage in Nevada County. Within the resolution language mentions that the Tsi-Skim Maidu Tribe claims Nevada County as part of their traditional tribal homeland, their current home, and is where their dead lie buried. The resolution also supports and endorses the efforts to the Tsi-Akim Maidu Tribe to pursue federal recognition and to preserve their culture language and religion.

Letter to Senator Boxer

In November of 2001 the Nevada County Board of Supervisors wrote a letter of support for Federal Recognition of the Tsi-Akim Maidu Tribe to Senator Boxer. The letter requests Senator Boxer to sponsor and support federal legislation to grant federal recognition to the Tsi Akim Maidu. Additionally the letter reaffirmed Resolution (01-016) and encouraged federal approval for tribal recognition. Among those Cc'd on the letter included Congressman George Miller, BLM Director Deane K. Swickard, Assemblymember Sam Aanestad, and State Senator Rico Oller.

Discussion of Actions

Though in 2010 Nevada County Historical Society rescinded their 2000 resolution regarding the Tsi-Akim Maidu Tribe, the County of Nevada did no such action. The Nevada County Historical Society was largely responsible for providing a historical and contextual recommendation to the County of Nevada Board of Supervisors to both adopt Resolution 01-016 and subsequently provide the 2001 Letter to Senator Boxer.

Actions Taken By Similar Tribes & Local Government

Case Study #1 - Lytton Tribe - Lytton Rancheria

The Lytton Tribe was originally recognized by the United States with land north of Healdsburg. It was dissolved in 1958 with the passage by Congress of the Rancheria Act, which resulted in the loss of its lands. In 1987, Lytton joined with three other tribes in a lawsuit against the United States challenging its termination and, in 1991, entered into a judicially approved settlement agreement which restored its federal recognition. This settlement was unique to Lytton; the County of Sonoma intervened as a peripheral party but helped secure protections related to land use.

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In 2000, Congress directed Secretary of Interior to take a small parcel of land into trust for the Tribe for gaming purposes in San Pablo, California (Contra Costa County). Action was taken after due consideration and with strong local support. Pursuant to the action by the Congress, Lytton had established a successful Class II gaming operation limited to electronic bingo games and poker. While the 9.5 acre San Pablo trust parcel is sufficient for gaming, it can't meet the needs for a tribal homeland.

In 2002, the Sonoma County Board of Supervisors adopted a Resolution stating that if the Tribe were to submit a trust application that was inconsistent with the General Plan, and where mitigation efforts could not be made to bring the proposed project within substantial compliance with the General Plan, the County would use the most effective legal or regulatory means to oppose the application.

In 2007, in an effort to reestablish a tribal homeland and develop member housing, Lytton applied to the federal government to have 124 acres taken into trust southwest of the Town of Windsor. Development on this land if it went into a trust, would not have been subject to the California Environmental Quality Act (CEQA) nor require a County use permit. The project was subject to NEPA review (federal environmental review) and, after hearings and opportunity for public testimony, the County submitted comments critical of the environmental review in 2009, 2011, and 2012. The County's focus, working with residents who would be neighbors to the proposed 124 acre housing project, was to ensure that the environmental review fully and fairly analyzed the environmental effects of the project and provided for adequate mitigation for such issues as loss of oak woodlands, traffic, waste discharge, and water use.

The County embarked on a parallel process both preparing for litigation and trying to resolve its concerns with the Tribe's proposal. Negotiations took on more urgency due to the Tribe's efforts to find a legislative solution to move its proposal forward and efforts in Congress to overturn a Supreme Court decision (*Carcieri*) which was a barrier for the Tribe to successfully take land into trust administratively.

In May 2009, Lytton took the first steps in reestablishing a tribal homeland by filing a fee-to-trust application with the Bureau of Indian Affairs. Through the federal process and environmental assessments, Lytton agreed to mitigate various impacts of the residential project. At the same time, the Tribe reached out directly to Town of Windsor governing bodies to plan for an increased population living in 147 new homes. The application is still pending with the Department of the Interior.

March 10 2015, the Board of Supervisors approved entering into the Memorandum of Agreement (MOA) with the Tribe to assure that, should the land be taken into trust, either by legislative or administrative action, the County strategic mitigation goals would be achieved. This Agreement was created to ensure that "should the land go into trust either through a congressional or administrative process," there would be: 1) A prohibition on gaming on the property; 2) Payment of in-lieu taxes and development impact fees to support public services; 3) Compliance with California fire and building codes; 4) Full mitigation of off-site impacts of the Tribe's projects, including traffic, and oak tree loss;

and 5) Enforceability of the Agreement through a waiver of sovereign immunity and binding arbitration to determine any disputed mitigation measures.

On May 21, 2015, Congressman Jared Huffman introduced H.R. 2538 – The Lytton Rancheria Homelands Act of 2015, to take approximately 500 acres of land into trust on behalf of the Lytton Tribe near the Town of Windsor. On May 27, 2015, Governor Brown wrote to Congress supporting the legislation, affirming that the Act provides "the framework for mutually beneficial cooperative efforts that protect the Tribe's sovereignty as well as the vital interests of Sonoma County residents" if land was taken into trust. On February 2, 2016, the House Subcommittee discharged the bill and the full Committee on Natural Resources considered H.R. 2538 during a mark-up session, at which the bill was ordered to be reported, as amended, by unanimous consent. On June 21, 2016, H.R. 2538 was placed on the Union Calendar where no further action was taken on the bill.

On January of 2017, Congressman Jeff Denham introduced HR 597 the Lytton Rancheria Homelands Act of 2017. H.R. 597 would place approximately 511 acres of non-contiguous parcels of land owned by the Rancheria in trust, subject to valid and existing rights, contracts, and management agreements. Under the bill, gaming under the Indian Gaming Regulatory Act would be prohibited on these lands. On April of 2017 H.R.597 was passed by the US House of Representatives; however was placed on Senate Legislative Calendar under General Orders Calendar No. 625.

In April of 2018 Sonoma County Supervisor David Rabbitt and Chairperson James Gore attended a hearing before the Committee on Indian Affairs. During the meeting Chairperson Gore presented a Prepared Statement briefly discussing the Memorandum of Agreement reached showing a working relationship with the Lytton Tribe. The statement also reaffirms the County's commitment to assist the Tribe in finding suitable housing and economic development opportunities as part of the 1991 judicial settlement agreement.

On August of 2018 the Sonoma County Board of Supervisors approved a MOA amendment that furthered limiting casino expansion in Sonoma County by providing additional gaming restrictions. Pursuant to the Amendment and upon the enactment of H.R. 597, the Tribe would be permanently prohibited from conducting gaming anywhere in Sonoma County. While the MOA term is until 2037, this gaming restriction would survive so long as the Tribe had trust lands in the County. Nothing in the amendment would limit County's ability to object to, or comment on, future land being taken into trust.

Case Study #2 - The United Auburn Indian Community - Auburn Rancheria

The Auburn Rancheria was one of the forty-one California Indian Rancherias targeted for termination under the Rancheria Act. On August 13, 1959, the Distribution Plan for the Auburn Rancheria was approved by the commissioner of Indian Affairs; however, termination of the Auburn Rancheria under the Rancheria Act was not completed until August 11, 1967.

Less than three years later, on April 7, 1970, a class action lawsuit, Taylor v. Morton was brought by members of the Auburn Indian Community to compel the government to comply with provisions of the Act requiring installation of an adequate water system. The legal effect of this case is that only those persons named as distributes in the Auburn Rancheria Distribution Plan have been legally adjudicated as Terminated Indians.[4] The dependent members, who constitute the large majority of tribal members, were not terminated and today retain their status as Indians and have asserted their right to recognition as descendants of the historic band of Auburn Indians for whom the Auburn Rancheria was acquired.

On April 14, 1994, Representative George Miller introduced H.R. 4228, the Auburn Indian Restoration Act. On July 20, 1994, the Committee on Natural Resources considered H.R. 4228 and ordered it reported to the House with an amendment. The House of Representatives passed H.R. 4228 on July 25, 1994. The act extends federal recognition and restores rights and privileges to the United Auburn Indian Community of the Auburn Rancheria of California. The tribe was also authorized to acquire land and to have it placed in federal trust status.

The United Auburn Indian Community entered into a tribal-state gaming compact with the State of California in September 1999 in order to conduct Class III gaming on trust land. This compact was later successfully renegotiated with Governor Arnold Schwarzenegger in 2004.

Thunder Valley was designed by JMA Architecture Studios and built by the PENTA Building Group. The casino in its current state was completed after expansion in 2010.

Placer County Actions

The United Auburn Indian Community obtained local government support for restoration of its federally recognized status. Both the City of Auburn and the County of Placer have approved resolutions supporting restoration of the United Auburn Indian Community and the return of Rancheria lands.

In 1992 Placer County passed resolution 92-8 supports the efforts of the United Auburn Indian Community to restore the status of the Community as a federally recognized Indian Tribe, to reverse the federal government's termination of the Auburn Rancheria in 1967, and to return to federal trust status those lands of the Auburn Rancheria that remain in Native American ownership.

The United Auburn Indian Community has been acknowledged for their efforts to abide by state and local land-use laws, even though they are not obligated to do so under sovereignty law. The United Auburn Indian Community chose to include the California Environmental Quality Act in its local agreement, something only a handful of tribes submit to. As a result Placer County has entered into a

[4] Terminated Indians refers to a legal term regarding Native Americans whom have lost federal recognition status and benefits

number of reviews, master service agreements and resolutions with the UAIC regarding development, policing, and environmental concerns among others.

Federal Recognition Process

Historically, tribes were originally recognized as legal parties through treaties, executive orders, or presidential proclamations. The 1934 Indian Reorganization Act played a major role in the development of the concept of federal recognition. The act provided recognition to tribes with which the government already had a relationship. Under its provisions, some non-federally recognized tribes were enabled to become federally recognized.

In 1978, the Interior Department issued regulations governing the Federal Acknowledgment Process (FAP) to handle requests for federal recognition from Indian Groups whose character and history varied widely in a uniform manner. These regulations became known as 25 C.F.R. Part 83.

In 1994, Congress enacted the Federally Recognized Indian Tribe List Act which formally established three ways in which an Indian Group may become federally recognized by 1) Act of Congress, 2) Administrative Procedures under 25 C.F.R. Part 83, 3) by decision of a United States Court. A tribe whose relationship with the United States has been expressly terminated by Congress may not use the Federal Acknowledgment Process. Only Congress can restore federal recognition to a "terminated" tribe.

Option #1 Act of Congress

Within the last forty years Congress has recognized more Indian Tribes than the administrative procedures under 25 C.F.R. Part 83. From 1979 to 2013 Congress recognized 32 tribes while procedures under 25 C.F.R. Part 83 has recognized 17 Indian Nations. Tribes have a success rate of 31% (17 of 55) in the administrative process; while Congress has success rate 44.5 % (32 of 72) Indian Nations.[5]

Most recently in January 2018, the US Congress passed the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act. That bill granted Federal recognition, through legislative action, to the Chickahominy, the Eastern Chickahominy, the Upper Mattaponi, the Rappahannock, the Monacan, and the Nansemond tribes in Virginia. This has been the only successfully bill since 2000 pertaining to federal recognition.

Each Congress varied in its willingness to recognize Indian Nations through legislation; but recognition remained on the agenda in every congressional session. While this demonstrates congressional involvement in federal recognition, it also suggests that Congress has recently been more reluctant to recognize Indian Nations than before. Congress has not extended recognition to an Indian Nation since 2000. The ability of a tribe to secure congressional recognition will depend on the composition of Congress and the timing of the bill, and engagement of congressional members, among other factors.

Option #2 Administrative Process 25 C.F.R. Part 83

To be acknowledged as a federally recognized Indian Tribe under this part, a petitioner must meet the requirements set in: Indian Entity Identification 83.11(a), Governing Document 83.11(d), Descent 83.11(e), Unique Membership 83.11(f), and Congressional Termination 83.11(g). Criteria and must also

[5] Kirsten M Carlson "Congress, Tribal Recognition, and Legislative-Administrative Multiplicity " Indiana Law Journal *V 91 I3* Spring 2016

demonstrate previous Federal acknowledgment under 83.12(a) and meet the criteria in 83.12(b); or Meet the Community 83.11(b) and Political Authority 83.11(c) Criteria.[6]

Required Items

Indian Entity Identification Criteria 83.11 (a): The petitioner has been identified as an American Indian Entity on a substantially continuous basis since 1900. 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: (1) Identification as an Indian Entity by Federal authorities, (2) Relationships with State governments based on identification of the Indian Group (3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian Identity (4) Identification as an Indian Entity by anthropologists, historians, and/or other scholars (5) Identification as an Indian Entity in newspapers and books (6) Identification as an Indian Entity in relationships with Indian Tribes or with national, regional, or state Indian Organizations (7) Identification as an Indian Entity by the petitioner.

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

Descent Criteria 83.11 (e): The petitioner's membership consists of individuals who descend from a historical Indian Tribe (or from historical Indian Tribes that combined/functioned as a single entity).

Option (1) :The petitioner satisfies this criterion by demonstrating that the petitioner's members descend from a tribal roll directed by Congress or prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, providing a tribal census, or other purposes, unless significant countervailing evidence establishes that the tribal roll is inaccurate; or

Option (2) : If no tribal roll was directed by Congress or prepared by the Secretary, the petitioner satisfies this criterion by demonstrating descent from a historical Indian Tribe, with evidence including one or a combination of the following identifying present members or ancestors of present members as being descendants of a historical Indian Tribe: (i) Federal, State, or other official records or evidence; (ii) Church, school, or other similar enrollment records; (iii) Records by historians and anthropologists; (iv) Affidavits of recognition by tribal leaders, or the tribal governing body; and (v) Other records or evidence.

Unique Membership 83.11 (f): The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian Tribe. However, a petitioner 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, a federally recognized Indian Tribe, if the petitioner demonstrates that: (1) It has functioned as a separate politically autonomous community by satisfying criteria; and (2) Its members provided written confirmation of membership in the petitioner.

Congressional termination 83.11 (g): Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department must determine whether the petitioner meets this criterion, and the petitioner is not required to submit evidence to meet it.

[6] Section 83.11 language is largely sourced and reformatted from Bureau of Indian Affairs for purposes of this Issue Brief

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Optional Avenue for Acknowledgment # 1

Federal Acknowledgment §83.12(a): The petitioner may prove it was previously acknowledged as a federally recognized Indian Tribe, or is a portion that evolved out of a previously federally recognized tribe, by providing substantial evidence of unambiguous Federal acknowledgment, meaning that the United States Government recognized the petitioner as an Indian Tribe eligible for the special programs and services through: (1) Treaty relations with the United States; (2) Been denominated a tribe by act of Congress or Executive Order; (3) Been treated by the Federal Government as having collective rights in tribal lands or funds; or (4) Land held for its collective ancestors by the United States.

Federal Acknowledgment §83.12(b): Once the petitioner establishes that it was previously acknowledged, it must demonstrate that it meets: (1) At present, the Community Criterion; and (2) Since the time of previous Federal acknowledgment or 1900, whichever is later, the Indian Entity Identification Criterion and Political Authority Criterion.

Optional Avenue for Acknowledgment #2

Community §83.11 (b): Petitioner comprises a distinct community and demonstrates that it existed as a community from 1900 until present. Distinct community means entity with consistent interactions and social relationships within its membership and whose members are different from nonmembers.

Political Influence or Authority §83.11 (c) The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This process is to be understood flexibly in the context of the history, culture, and social organization of the entity.

Option #3 Federal Court

Federal Courts have adjudicated questions of tribal status under federal statutes; however since the 1970s the administrative process and Congress have emerged as the two institutions most likely to extend recognition to Indian Tribes. Federal Courts have largely deferred to the administrative process found in 83.11. The Courts have also never overturned a congressional or executive determination of tribal status and regularly defer to Congress and the executive branch to make decisions on these matters. Thus the Federal Court has very limited powers of authority in recognizing an Indian Tribe.

Most notably, after the California Rancheria Termination Act, was initiated a number of legal challenges arose causing the Federal Court to intervene. The first successful challenge was for the Robinson Rancheria in March 1977 and it was followed by 5 others. The success of these suits caused Tillie Hardwick in 1979 to consult with California Indian Legal Services, who decided to make a class action case. On July 1983 the U.S. District Court in *Tillie Hardwick* ordered federal recognition of 17 of California's Rancherias. The Hardwick decision restored more terminated tribes than any single case in California and prompted the majority of the terminated Rancherias to pursue federal restoration.

Unfortunately a clerical mistake in the Hardwick case ensued and the Nisenan were subsequently left out of a hearing. After an appeal nearly forty years later Federal Judge Jeremy Fogel issued an order which granted a correction of a clerical mistake in Hardwick, and dismissed Nisenan claims with prejudice on the grounds that such claims were time-barred under the Administrative Procedure Act's ("APA's") six-year statute of limitations. The Court also found in this decision that absent of the clerical error the Nevada City Rancheria would have been among the parties whose claims were dismissed without prejudice by the 1983 Stipulation.

Decision Matrix

Request

On December 15, 2018 County of Nevada received a request from Nicholas Hedluna regarding passage of a resolution in support of the Nisenan goals to achieve federal recognition. In this request Mr. Hedluna seeks similar support as the 2018 Sonoma County Board of Supervisors provided towards Lytton Tribe.

Recommendation

Any actions taken by the Board of Supervisors should be first affirmed and recommended by the Nevada County Historical Society to be consistent with past practice. It is recommended that the Nisenan work with Federal authorities and congressional representatives regarding the restoration of Federal recognition.

Analysis

Both the Nevada County Historical Society and subsequently the Nevada County Board of Supervisors were largely misled by facts presented by the Tsi-Akim Tribe. As such the Nevada County Historical Society rescinded their original resolution pertaining to the Tsi-Akim Tribe. In the Historical Society's 2010 research consensus largely pointed to the Nisenan Tribe inhabiting much of Nevada County. However the Historical Society has yet to provide a similar resolution affirming the Nisenan Tribe, nor has made a recommendation to the County to provide a similar resolution to that of the Tsi-Akim Tribe. It should also be noted that the Tsi-Akim Tribe was very well organized and received 22 similar resolutions from other governmental associated agencies.

Moreover, during the case study regarding the Lytton Tribe and United Auburn Indian Community it was found that both Sonoma and Placer County did not provide a letter of support, resolution or recognition until federal recognition was granted by the federal court based on successful outcomes of their cases. Support from these governmental entities occurred with a federally recognized tribe petitioning for land to go into a federal trust for the purpose of establishing a reservation.

The Nisenan Tribe is not federally recognized and in 2014 failed in a Federal Court Case that could of had a similar effect as the Lytton Tribe and United Auburn Indian Community cases. Unfortunately, Nisenan claims were dismissed under a six-year statute of limitations regarding corrections to administrative procedure; as it took nearly 40 years for the tribe to raise an issue of clerical error in the ruling of the Hardwick Case. Additionally the Court found that claims requested by Nevada City Rancheria case would

have been dismissed if the clerical error had not existed. Future court action seems to be unlikely with the Appellate Court affirming the District Court's decision and the Supreme Court denying their petition to review. Additionally future claims do not pose a strong argument as in 1959 the Johnson family is listed on federal record as the only family which lived on the Nevada City Rancheria and is subsequently no longer entitled to any services performed by the federal government for Indian Affairs due to conditions agreed upon in the distribution plan.

While searching through the US Department of the Interior Indian Affairs in February of 2019, the Nisenan do not appear in petitions being processed, denied cases, approved cases nor recent acknowledgements as it relates to Administrative Process 25 C.F.R. Part 83. Therefore it is unlikely that the Nisenan have filed for this administrative process. The process is considered to be very rigorous and time consuming with most applications taking multiple years to reach federal recognition; while many of which are denied due to lack of supporting documentation. The Nisenan may also not view this as a valid option as their tribe was essentially terminated by congress in the California Rancheria Termination Act with the Johnson Family receiving the distribution of the Rancheria lands. As such this may violate section 83.11(g) where the US Department of the Interior will need to determine if congressional legislation has terminated or forbidden federal relationship. However this analysis would need to be determined by the US Department of the Interior.

As such the Nisenan are now seeking federal recognition via Congressional Approval as it is likely their only viable option. Each Congress is varied in its willingness to recognize Indian Nations through legislation; but federal recognition of Indian Nations remained on the agenda in every congressional session. Congress has not extended recognition to an Indian Nation since 2000. The ability of a tribe to secure congressional recognition will depend on the composition of Congress and the timing of the bill, and engagement of congressional members, among other factors.

Discussion Topics from Letter Received

1) Sonoma County's 2018 support of the Lytton Tribe is not similar to that of the request the Nisenan Tribe seeks from Nevada County.
    - Lytton Tribe is federally recognized whereas Nisenan Tribe is not.
    - Sonoma County was a party in the 1991 lawsuit providing protections to the Lytton Tribe.
    - 2015 - Sonoma County and Lytton Tribe entered into a MOA for reservation land use.
    - 2018 - Sonoma County affirmed support of Lytton lands to be used for a reservation.
2) Assertion all California Rancherias were illegally terminated; including Nevada County Rancheria.
    - 1958 - Congress passed the California Rancheria Termination Act; where 41 Rancherias were to be removed from trust and distributed to the individuals of those Rancherias.
    - 1959 - Bureau of Indian Affairs prepared a distribution plan indicating the Johnson's as the only individuals entitled to share in distribution of the Nevada County Rancheria.
    - 1964 - The Johnson's of the Nisenan Tribe received their distribution of the Nevada County Rancheria with the condition that they were no longer federally protected.

- 1979 - Nisenan Tribe joined the Hardwick case to restore status as Recognized Indians.
- 1983 - Hardwick Court entered a Stipulation for Entry of Judgment of which failed to mention the Nevada City Rancheria.
- 2014 - United States Federal Court granted a correction of a clerical mistake and dismissed Nisenan claims as they are time-barred by the Administrative Procedure Act.

3) Assumptions in the Federal Recognition Process

- The *Federally Recognized Indian Tribe List Act* establishes recognition of Indian Tribes through 1) Act of Congress 2) Administrative Procedures - 25 C.F.R. Part 83, 3) US Court.
    - There has been one successful congressional recognition since 2000.
        - The Lytton Rancheria Homelands Act of 2017 places lands in public trust for use as a reservation and is dissimilar to Nisenan request.
    - It appears that the Nisenan have not filed for Administrative Procedures 25 C.F.R. Part 83 for federal recognition; possibly due to their legal status.
    - There is no mention of the Federal District Case, Nisenan v. Jewell which denied the Nisenan Tribe of federal recognition. Future court action seems unlikely.

RESOLUTION NO. 2020-72

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEVADA CITY PLEDGING SUPPORT TO THE NISENAN TRIBAL COMMUNITY OF THE NEVADA CITY RANCHERIA TO PRESERVE AND PROTECT THEIR NATIVE CULTURE AND ACKNOWLEDGING THE ANCESTRAL NISENAN LANDS

WHEREAS, the City of Nevada City lay within Nisenan territory on top of the Nisenan town of 'ustomah; and

WHEREAS, before the creation of Nevada County and before the creation of the State of California itself, the Nisenan Indians made these foothills their home for millennia; and

WHEREAS, California Indian Tribes had flourished for thousands of years before their near annihilation under the mission system, the Gold Rush, the early anti-Indian rule of the state, environmental devastation, and the forced assimilation practices of the Indian Boarding School system; and

WHEREAS, the Nisenan people from this place were autonomous and self-governing people with their own territory, language and cultural customs, who lived in an ancient, symbiotic relationship with the land and animals, and honored their dead, who are buried throughout the Yuba River and Bear River watershed; and

WHEREAS, in 1848, gold was discovered here, in Nisenan territory, and tens of thousands of emigrant and immigrant gold seekers descended into the homelands of the Nisenan people, devastating the environment and enslaving their people; and

WHEREAS, in 1850, the United States sent Indian Agents to make treaties with California Indian Tribes. At conclusion, eighteen treaties were made to protect the Indians, to outline the cession of lands, and to relocate the Indians onto lands specifically identified as Indian Reserves; and

WHEREAS, accordingly, on July 18, 1851, the Camp Union Treaty F was signed and concluded in Nisenan Territory near the Yuba River; and

WHEREAS, the Camp Union Treaty promised payment and resources for the ceding of Nisenan controlled Tribal lands, in exchange for safety and reservation land (Royce 287) located between Penn Valley and Rough and Ready, California, as-well-as farming equipment, money, a school house, teacher, cattle, and cloth; and

WHEREAS, because of strong anti-Indian lobbying in both the U.S. legislature and California, the eighteen treaties, including the Camp Union Treaty, were not ratified by the U.S. Senate leaving California Indians without land and without protection; and

WHEREAS, completely landless, the surviving California Indians, including the Nisenan, found ways to exist on the fringes of society, sometimes resisting capture and starvation by surviving in remote lands as far from civilization as possible. Some surviving families intermarried with immigrant whites which provided protection and some semblance stability; and

WHEREAS, next came the Indian Boarding Schools and the mantra of forced assimilation. "Kill the Indian save the man". Thousands of California Indian children were forcibly taken from their families and sent to church run, Federally funded schools far from the children's Tribal lands and communities; and

WHEREAS, in the late 1800's, several non-native Nevada County settlers stood up as champions for the Nisenan people, including the Native Sons and Daughters of the Golden West and Nevada County pioneer suffragette Bell Rolfe Douglas; and

WHEREAS, as a direct result of this relentless advocacy on behalf of the Nisenan people, President Woodrow Wilson signed an Executive Order on May **6, 1913**, establishing a 76 acre reservation in Nevada County for the Nisenan people near Nevada City, California; and

WHEREAS, the Federal reservation land became known as the Nevada City Rancheria and was the only Indian reservation to exist in Nevada County; and

WHEREAS, following a unanimous vote among the remaining Nisenan people on the Reservation, the eligible voting Tribal members of Nevada City Rancheria reorganized themselves under the 1934 Indian Reorganization Act, creating a Tribal Council, Constitution and Election Board; and

WHEREAS, on August 18, 1958 Congress established a process for terminating the Federal trust relationship with forty-one California Indian Rancherias, severing the Federal trust relationship with individual tribal members and distributing the communal lands of forty-one California Indian Tribes, including the Nevada City Rancheria under the 1958 Rancheria Act (Public Law 85-671; 72 Stat. 619); and

WHEREAS, in 1964, the Nevada City Rancheria was "terminated" and the reservation land was sold at auction to the highest bidder; and

WHEREAS, in 1970, President Richard M. Nixon called for an end to termination policies allowing Indian governments to have the right of self-determination in a special message to the U.S. Congress; and

WHEREAS, the Nevada City Rancheria Nisenan burning ground and cemetery was donated by Erikson Lumber Company and taken under stewardship by the Nevada County Cemetery District and where the Tribe continues to bury its dead even today; and

WHEREAS, in 1988, the U.S. Congress repudiated "any policy of unilateral termination of Federal relations with any Indian nation" (Public Law 100-297; 25 U.S.C. 5301(f)); and

WHEREAS, while most of the forty-one California Indian Rancherias terminated under the Act of August 18, 1958 have been restored to Federal status, three Congressionally terminated Rancherias, including the Nevada City Rancheria, continue to wait for restoration as federally recognized Indian tribes; and

WHEREAS, today the direct descendants of the same Nisenan families remain here in their ancestral homelands and seek restoration of their Federal Recognition from the government of

the United States and regain their place on the list of Federally Recognized Tribes; and

WHEREAS, the City of Nevada City recognizes the importance of Nisenan contribution to this land, both future and past, and stands with the remaining Nisenan people as they fight to save their endangered culture; and

NOW, THEREFORE, BE IT RESOLVED by the Council City of Nevada City that:

1. We acknowledge the continued existence of our oldest Nevada County residents and citizens, the Nisenan Indian people; and
2. We support the Nevada City Rancheria Nisenan Tribe in their effort to restore their Federal Recognition; and
3. We support the restoration of the Tribe's Federal status and all rights that come with it; and
4. We support the Tribe's request to have lands within Nevada County taken into trust; and
5. We support the Tribe's inherent rights to self-governance; and
6. We recommend that the U.S. Congress enact legislation to restore Federal Recognition to the Nevada City Rancheria; and
7. We recommend that the State of California adopt a Joint State Resolution in support of the restoration of Federal Recognition to the Nevada City Rancheria; and
8. We recommend our local Nevada County Board of Supervisors adopt a resolution in support of the restoration of the Federal Recognition of the Nevada City Rancheria.

PASSED AND ADOPTED at a regularly scheduled meeting of the Nevada City City Council held on this 23rd day of September, 2020 by the following vote:

AYES: **MINETT, STRAWSER, FLEMING, FERNÁNDEZ**

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Erin Minett, Mayor

Niel Locke, City Clerk

Nevada County Historical Society
Resolution 2020-01

WHEREAS, the Nevada County Historical Society pledges its continued commitment to assisting the Nisenan Tribal Community of the Nevada City Rancheria in their quest to preserve and protect their native culture; and

WHEREAS, throughout the years since their native lands were infringed upon and their very existence threatened, the Nisenan have formed bonds with others to help them survive. In the late 1800's Belle Douglas, a prominent Nevada City resident, lobbied for Nisenan Tribal rights and protection. In the 1940's the Nevada County Historical Society stepped in to form a relationship with tribal members and that relationship has remained active to this day. Firehouse No. 1 museum, along with the Society's Searls Library for Historical Research, commemorates the contributions to our town of all of our ancestors, including the Nisenan; and

WHEREAS, we are committed to providing the tribe with our resources as they continue to develop programs to preserve their culture while educating others. We offer them access to our considerable database for purposes of researching baskets and regalia and records. By offering our resources and staff, we will continue to serve as mentors as they pursue their current goals.

NOW, THEREFORE BE IT RESOLVED, we acknowledge the Nevada City Rancheria Nisenan Tribe as the oldest Nevada County residents and citizens, we support the restoration of the Tribe's Federal Status and all rights that come with it, we support the Tribe's inherent rights to self-govern.

BE IT FURTHER RESOLVED, that we recommend that the U.S. Congress enact legislation to restore Federal Recognition to the Nevada City Rancheria and that the State of California adopt a Joint State Resolution in support of the restoration of Federal Recognition to the Nevada City Rancheria and that the Nevada County Board of Supervisors and other local governmental bodies adopt Resolutions of support of the restoration of Federal Recognition to the Nevada City Rancheria.

Passed and Adopted this 6th **day of** May **, 2019.**

Daniel Ketcham, President

Linda Jack, Secretary

12/15/18

DEAR SUPERVISOR HALL,

As a resident of Nevada County, I am honored to express my support for the Nisenan people of the Nevada City Rancheria in their quest to restore their status as a federally-recognized Native American "Indian" Tribe. As your constituent, I ask that you prioritize public expression of our community's support for their efforts.

As you may know, Native American reservations in California are known as Rancherias. The Nisenan were the only Natives with a federally-recognized Rancheria reservation within Nevada County. Please note that sometimes people mistakenly say the Nisenan were the only Tribe with territory in Nevada County, but the Washoe had some territory on the Eastern edge of the county near the state border.

In the 1950's and 1960's, more than 40 California Rancherias were illegally terminated. Since the 1980's, there has been a continual effort to rectify these terminations. As Jack Potter Jr., Chairperson of the Redding Rancheria, said, "The tragic and disgraceful era of federal termination of Indian Tribes has ended, and the majority of California Rancherias have now been restored." But the Nisenan are amongst those still working to regain their federal recognition.

I understand a resolution in Nevada County in support of Nisenan goals is instrumental in the process of introducing a bill in congress. I ask for your support just as in August 2018 the Board of Supervisors of Sonoma County unanimously supported the Lytton Rancheria, which is currently seeking to regain a home on their original territory through the Lytton Rancheria Homelands Act of 2017 (H.R. 597). Our local tribe needs local governmental support. If the tribe is able to flourish, it will benefit the community at large.

As your constituent, I urge you to quickly pass a resolution codifying community support of the federal recognition restoration efforts of the Nisenan people of the Nevada City Rancheria. Thank you for your time and consideration.

SINCERELY,

Nicholas Heoluna

NICHOLAS HEOLUNA, CONSTITUENT