AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

THE SWAN CREEK BLACK RIVER CONFEDERATED OJIBWA TRIBES

HEARING

BEFORE THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

H.R. 2822, TO REAFFIRM AND CLARIFY THE FEDERAL RELATIONSHIP OF THE SWAN CREEK BLACK RIVER CONFEDERATED OJIBWA TRIBES AS A DISTINCT FEDERALLY RECOGNIZED INDIAN TRIBE, AND FOR OTHER PURPOSES

OCTOBER 7, 1998, WASHINGTON, DC

Serial No. 105–116

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://www.house.gov/resources

U.S. GOVERNMENT PRINTING OFFICE

51–984 ⇆ WASHINGTON : 1998

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN J. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
BARBARA CUBIN, Wyoming
HELEN CHENOWETH, Idaho
LINDA SMITH, Washington
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
JOHN SHADEGG, Arizona
JOHN E. ENSIGN, Nevada
ROBERT F. SMITH, Oregon
CHRIS CANNON, Utah
KEVIN BRADY, Texas
JOHN PETERSON, Pennsylvania
RICK HILL, Montana
BOB SCHAFFER, Colorado
JIM GIBBONS, Nevada
MICHAEL D. CRAPO, Idaho

GEORGE MILLER, California
EDWARD J. MARKEY, Massachusetts
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
NEIL ABERCROMBIE, Hawaii
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELO, Puerto Rico
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
SAM FARR, California
PATRICK J. KENNEDY, Rhode Island
ADAM SMITH, Washington
WILLIAM D. DELAHUNT, Massachusetts
CHRIS JOHN, Louisiana
DONNA CHRISTIAN-GREEN, Virgin Islands
RON KIND, Wisconsin
LLOYD DOGGETT, Texas

LLOYD A. JONES, *Chief of Staff*
ELIZABETH MEGGINSON, *Chief Counsel*
CHRISTINE KENNEDY, *Chief Clerk/Administrator*
JOHN LAWRENCE, *Democratic Staff Director*

CONTENTS

	Page
Hearing held October 7, 1998	1
Statement of Members:	
Calvert, Hon. Ken, a Representative in Congress from the State of California	1
Camp, Hon. David, a Representative in Congress from the State of Michigan	9
Prepared statement of	11
Faleomavaega, Hon. Eni F.H., a Delegate in Congress from American Samoa	5
Kennedy, Hon. Patrick J., a Representative in Congress from the State of Rhode Island, prepared statement of	53
Kildee, Hon. Dale E., a Representative in Congress from the State of Michigan	1
Prepared statement of	3
Knollenberg, Hon. Joe, a Representative in Congress from the State of Michigan	6
Prepared statement of	8
Miller, Hon. George, a Representative in Congress from the State of California, prepared statement of	4
Statement of Witnesses:	
Chamberlain, Kevin, Chief, Saginaw Chippewa Tribe, Mt. Pleasant, Michigan	17
Prepared statement of	38
Gould, Gerald, Chief, Swan Creek Black River Confederated Ojibwa Tribes of Michigan, Saginaw, Michigan	19
Prepared statement of	42
Gould, Harold, Administrative Subchief, Swan Creek Black River	35
Gover, Kevin, Assistant Secretary, Indian Affairs, United States Department of the Interior	14
Prepared statement of	15
Jackson, Deborah Davis, Ph.D., prepared statement of	48
McClurken, James Michael, Ethno-Historical Consultant, prepared statement of	45
Patterson, L. Brooks, County Executive, Oakland County, Michigan	21
Prepared statement of	45
Additional material supplied:	
Engler, Hon. John, Governor, State of Michigan, letter to Mr. Knollenberg	55
Further letter to Mr. Knollenberg	69
H.R. 2822, text of	56
Lawson, Michael L., Ph.D., Senior Associate, Morgan, Angel & Associates, Washington, DC, prepared statement of	76

HEARING ON H.R. 2822, TO REAFFIRM AND CLARIFY THE FEDERAL RELATIONSHIP OF THE SWAN CREEK BLACK RIVER CONFEDERATED OJIBWA TRIBES AS A DISTINCT FEDERALLY RECOGNIZED INDIAN TRIBE, AND FOR OTHER PURPOSES

WEDNESDAY, OCTOBER 7, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC.

The Committee met, pursuant to other business, at 1:06 p.m., in room 1324, Rayburn House Office Building, Hon. Ken Calvert [acting chairman of the Committee] presiding.

Mr. CALVERT. [presiding] The Committee will come to order.

STATEMENT OF HON. KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CALVERT. Today, we are meeting to adopt an oversight report regarding the designation of the Escalante Grand Staircase National Monument. Immediately following the consideration of this report, we will hear testimony on H.R. 2822, except that we're going to reverse that order—the Swan Creek Black River Confederated Ojibwa Tribes of Michigan Act authored by Congressman Knollenberg.

I appreciate the hearing witnesses accommodating our change in schedule, as Congressmen Miller and Kildee—who are very interested in this legislation—weren't able to come here this morning at 11 a.m. So, we're going to proceed with the hearing, since our witnesses are here, as a courtesy to them and I look forward to hearing from all the witnesses—and, without further comment, I will recognize my colleague on my left for his opening statement. Thank you.

STATEMENT OF HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KILDEE. Thank you, Mr. Chairman, members of the Committee. As a senior member of this Committee and as co-chairman of the Congressional Native American Caucus, there's no one who is more strong in his support of sovereignty but also unity and today I am stating for the record my strong opposition to H.R. 2822, a bill that would grant Federal recognition to the Swan Creek Black River Confederated Ojibwa group.

Mr. Chairman, I oppose the scheduling of a hearing on H.R. 2822 this year because of my strong belief that Congress should not interfere with the internal political affairs of sovereign tribes. We should urge the Swan Creek members to utilize the internal processes of the Saginaw Chippewa Tribe to resolve their disputes. Although this Committee approved legislation in previous years granting Federal recognition to various tribes, H.R. 2822 does not warrant the same treatment by this Committee.

Mr. Chairman, it is my understanding that the Swan Creek claimed to be the successors and interests to the Swan Creek and Black River Bands of the Chippewa Indians. These bands, however, have always been recognized and treated by the Federal Government as part of the Saginaw Chippewa Tribe. The Swan Creek have not existed as a political entity for more than 140 years. They ceased to exist as a political entity after the 1855 Treaty of Detroit. To recognize them now would severely undermine the sovereignty of the Saginaw Chippewa Tribe.

The United States has treated Saginaw Chippewa Tribe as one entity through the Treaty of 1864, the Indian Reorganization Act—a judgment upon legislation—and continues to treat it as one body politic today. Congress should not now, in direct contradiction to the historical evidence presented here today, split the Saginaw Chippewa Tribe into two entities.

In 1978, the Department of the Interior through the Bureau of Indian Affairs promulgated regulations establishing procedures for Federal acknowledgment of Indian tribes. Any group of Indians seeking Federal acknowledgment must first meet the scope of the regulations found at 25 SFR, part 83. These regulations preclude any—and this is a term used in that part—any splinter group from gaining Federal acknowledgement by separating from the main body of a federally recognized tribe.

In 1993, the Swan Creek made an ineffective attempt at administrative recognition. The Swan Creek submitted a letter of intent to petition the Bureau of Indian Affairs' Branch of Acknowledgment and Research for Federal acknowledgement. In 1997, the BIA placed the Swan Creek file on inactive status for failing to submit a fully documented petition. It is my understanding that a fully documented petition includes, among other things, documentation that a group has existed continuously as a political entity since the first contract with non-Indians.

I strongly believe that the Swan Creek constitute a splinter group. They cannot satisfy the mandatory criteria necessary for acknowledgment. Nevertheless, I believe that it is appropriate for the Swan Creek to pursue the administrative route for their recognition.

Mr. Chairman, many members of the Swan Creek received services and per capita payments by virtue of their membership in the Saginaw Chippewa Tribe and not by virtue of their Swan Creek identity. In reviewing the multitude of programs provided to this group—from education to health care to paying house payments—it is hard to believe that the Swan Creek received disparate treatment in the Saginaw Chippewa Tribe, as they claim they do.

The Saginaw Chippewa Tribe met with the Swan Creek representatives to see how the tribe could better meet their needs. The

Swan Creek, however, claimed that no amount of increased services or benefits would accommodate them. This only begs the question of what it is the Swan Creek really wants.

It is no secret that the motivation behind H.R. 2822 is gaming. H.R. 2822 is a gaming bill. This bill is nothing more than a product of investors trying to create an Indian tribe in order to open a casino outside of Detroit. I'm appalled at this notion of a gaming interest seeking to create a tribe, then seeking a Member of Congress to introduce a bill for that group, even though this group does not reside in the member's district, nor is the proposed gaming site in the member's district. If the Swan Creek was serious about becoming a tribe, they would have pursued the administrative process as vigorously as they have pursued the legislative process.

I close by saying, once again, the Saginaw Chippewa Tribe should be allowed to manage its affairs without intervention from Congress, that I will oppose further legislative action on this bill. And, I strongly urge my colleagues to do the same. But, however, Mr. Chairman, I intend to remain here today so I can benefit from the testimony of all the witnesses.

I yield back the balance of my time.

[The prepared statement of Mr. Kildee follows:]

STATEMENT OF HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

INTRODUCTION

Good Afternoon, Mr. Chairman and members of the Committee. As a senior member of this Committee and as Co-Chairman of the Congressional Native American Caucus, I am stating today for the record my strong opposition to H.R. 2822, a bill that would grant Federal recognition to the Swan Creek Black River Confederated Ojibwa group (Swan Creek).

Mr. Chairman, I opposed the scheduling of a hearing on H.R. 2822 this year because of my strong belief that Congress should not interfere with the internal political affairs of sovereign tribes. We should urge the Swan Creek members to use the internal processes of the Saginaw Chippewa Tribe to resolve their disputes. Although this Committee approved legislation in previous years granting Federal recognition to various tribes, H.R. 2822 does not warrant the same treatment by this Committee.

HISTORICAL TREATMENT

Mr. Chairman, the Swan Creek group claims to be the successors in interest to the Swan Creek and Black River Bands of the Chippewa Indians. The Federal Government has always recognized and treated these bands, however, as part of the Saginaw Chippewa Tribe. The Swan Creek has not existed as a political entity for more than 140 years. They ceased to exist as a political entity after the 1855 Treaty of Detroit. To recognize them now would severely undermine the sovereignty of the Saginaw Chippewa Tribe.

The United States has treated the Saginaw Chippewa Tribe as one entity—through the Treaty of 1864, the Indian Reorganization Act, the judgement fund legislation—and continues to treat it as one body politic today. Congress should not now, in direct contradiction to the historical evidence presented here today, split the Saginaw Chippewa Tribe into two entities.

BIA ADMINISTRATIVE PROCESS

In 1978, the Department of the Interior, through the Bureau of Indian Affairs, promulgated regulations establishing procedures for Federal acknowledgment of Indian tribes. Any group of Indians seeking Federal acknowledgment must first meet the scope of the regulations found at 25 C.F.R. part 83. These regulations preclude any "splinter group" from gaining Federal acknowledgment by separating from the main body of a federally recognized tribe.

In 1993, the Swan Creek made an ineffective attempt at administrative recognition. The Swan Creek submitted a letter of intent to petition the Bureau of Indian Affairs, Branch of Acknowledgment and Research, for Federal acknowledgment. In

1997, the BIA placed the Swan Creek file on inactive status for failing to submit a "fully-documented petition." It is my understanding that a fully-documented petition includes, among other things, documentation that a group has existed continuously as a political entity since first contact with non-Indians. I strongly believe that the Swan Creek is a ""splinter group" and that they cannot satisfy the mandatory criteria necessary for acknowledgment. Nevertheless, I believe that it is appropriate for the Swan Creek to pursue the administrative route for their recognition.

SWAN CREEK RECEIVES TRIBAL SERVICES AND PAYMENTS AS SAGINAW CHIPPEWA TRIBAL MEMBERS

Mr. Chairman, many members of the Swan Creek receive services and per capita payments by virtue of their membership in the Saginaw Chippewa Tribe, and not by virtue of their Swan Creek identity. In reviewing the multitude of programs provided to this group, from educational-to health care-to-paying house payments, it is hard to believe that the Swan Creek receives disparate treatment from the Saginaw Chippewa Tribe as they claim they do.

The Saginaw Chippewa Tribe met with the Swan Creek representatives to see how the Tribe could better meet their needs. The Swan Creek, however, claims that no amount of increased services or benefits would accommodate them. This only begs the question of what is it that the Swan Creek really want.

GAMING INTERESTS

It is no secret that the motivation behind H.R. 2822 is gaming. H.R. 2822 is a gaming bill. This bill is nothing more than a product of investors trying to create an Indian tribe to open a casino outside of Detroit, Michigan. I am appalled at this notion of gaming interests seeking to create a tribe. Then seeking a Member of Congress to introduce a bill for that group, even though this group does not reside in the Member's district, nor is the proposed gaming site in the Member's district. If the Swan Creek was serious about becoming a tribe, it would have pursued the administrative process as vigorously as they have pursued the legislative process.

CONCLUSION

I close by saying once again, the Saginaw Chippewa Tribe should be allowed to manage its affairs without intervention from Congress. And that I will oppose further legislative action on this bill. I strongly urge my colleagues to do the same. In the meantime, however, I will listen attentively to our witnesses who have traveled far to be with us today. Thank you.

Mr. CALVERT. I thank the gentleman.

Mr. KILDEE. I'd also like to ask consent to submit a testimony for Mr. Miller.

Mr. CALVERT. Without objection, so ordered.

[The prepared statement of Mr. Miller of California follows:]

STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

I'd like to thank the tribal members who came here to testify as well as thank Assistant Secretary Kevin Gover for being here to personally testify on this bill. I think that there has been a real positive and noticeable turnabout in Indian relations under Assistant Secretary Gover and we all appreciate the excellent work he has done with the Tribes this Congress. Unfortunately, this Congress has not been what you'd call a "hotbed" of legislative activity, especially when it pertains to Indian affairs. So, we don't have a lot to celebrate or even look back upon, but I still have hope that we may get a few Indian bills such as Self-Governance or Employment Training to the President's desk before we all go home.

As far as this bill goes, I would like to agree that there are some pretty substantial questions out there regarding the historical and legal issues that the Swan Creek Black River Tribe and Congress need to address. Right now, the record that we have is pretty thin. I understand that the basic issue is whether or not Swan Creek is a separate distinct Indian tribe or whether it is really part of the Saginaw Chippewa Tribe. I think we all agree that they once were a separate tribe and they have the treaties to back them up. It's what happened in subsequent years that needs to be addressed and I want to see that happen. But I think that the Administration is correct that this probably should go through the BAR process which is where a comprehensive and accurate historical and cultural record really ought to be developed first. If it turns out that the Tribe is not a splinter group, then the

BAR process should work. If it doesn't then that's where we should get involved again.

Mr. CALVERT. The gentleman from American Samoa has an opening statement?

STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, A DELEGATE TO CONGRESS FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Yes, Mr. Chairman, I would like——

Mr. CALVERT. The gentleman is recognized.

Mr. FALEOMAVAEGA. Mr. Chairman, this bill comes before us at an unusual time. Not only are we within a week of our expected adjournment date, but we are just 2 days from the House having considered and rejected a bill to establish a fair administrative procedure to consider the recognition of Native American Indian tribes.

As many in this room know, I have worked on that legislation for over 6 years and I was very discouraged to see it defeated out of fear of perceived future abuse, especially on this issue—gaming—is concerned. And, the hypocrisy of this whole thing, Mr. Chairman—as I recall in the debate on the floor of the House yesterday—was the fact that the procedures to provide recognition of Indian tribes had nothing to do with gaming whatsoever. The hypocrisy that members representing these very States who collect hundreds of millions of dollars—oh no, horse racing is not gaming, no, lottery is not gaming. Then, what is gaming?

Mr. Chairman, in the past 2 years, I have not supported bills for recognition in an effort to force action on the legislative remedy. Now, at the end of this Congress, I do not believe it is time to return to a course of legislative recognition. I recognize Congress's constitutional plenary authority over this country's relations with Native American Indians. But, I am convinced that an objective, public administrative process remains the best approach toward the resolution of this issue at this time.

To that extent, I agree with the administration's prior statements. I appreciate the willingness of Assistant Secretary Gover to go over with me in crafting legislation to address this very important area and hope our relationship will continue toward a final resolution in giving proper recognition to these tribes that have been waiting—some tribes have been waiting for 8 years, one tribe I know particularly in North Carolina has been waiting for over 100 years and, given the fact that even the Congress officially recognized this Indian tribe and the only reason why it was rejected was because supposedly limited resources to be given to other federally recognized tribes, which to me is absurd.

Concerning the bill today, Mr. Chairman, I am not familiar with the detailed history of the relationship between the Swan Creek Indians and the Saginaw Chippewa Indians but I do look forward to hearing from the witnesses this afternoon. I thank the chairman for the opportunity.

Mr. CALVERT. I thank the gentleman.

We have a vote on the floor on the rule—on something dear to our hearts for this Committee. So we will suspend this hearing and come back immediately for the vote and Mr. Knollenberg and Mr. Camp are both here to be in the first panel. So, hopefully they'll

be able to come right back. We'll be back here in 15 minutes and reconvene at 1:30.

[Recess.]

Mr. CALVERT. This hearing will come to order.

Our first panel, we have the Honorable Joe Knollenberg and the Honorable David Camp. So, without any further hesitation, we'll recognize our colleague, Joe Knollenberg.

STATEMENT OF HON. JOE KNOLLENBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KNOLLENBERG. Thank you, Mr. Chairman. I appreciate the opportunity to come before the Committee. I want to thank you for presiding today and I just want to take exception to some of Mr. Kildee's comments saying that this is nothing but a casino bill. If Mr. Kildee is so opposed to casino gambling, I'd recommend he criticize the Saginaw Chippewa Tribe who have been operating a casino for years. This bill is about doing justice and that, as Mr. Kildee pointed out—correctly, I think—has been put off for over 100 years.

I want to ask unanimous consent to revise and extend my remarks and provide an extended commentary.

Mr. CALVERT. Without objection, so ordered.

Mr. KNOLLENBERG. Thank you, Mr. Chairman.

The Swan Creek Black River's aboriginal land, ceded to the United States by treaty in 1807, are located in my district and in southern Michigan. Both county and local officials support my effort to help this tribe regain its Federal recognition.

Since I introduced this bill in November 1997, I have been urging action on it. Despite the lateness of this hearing in the session, we are determined to move H.R. 2822 expeditiously through the legislative process.

The Swan Creek Black River is recognized by the State of Michigan as a tribe and, for centuries, the Swan Creek Black River has been a tribe separate and distinct from any other tribe. As you will hear in greater detail this afternoon, Swan Creek Black River is the political successor in interest to the signatories of numerous 18th and 19th century treaties and its government-to-government relationship with the United States continued well beyond the treaty period.

Unfortunately, when the tribe submitted its request in 1936 to reorganize under the Indian Reorganization Act, the Department of Interior made a terrible mistake and, in effect, illegitimately terminated the Swan Creek Black River's Federal recognition.

It is well settled, however, that administrative action cannot terminate an Indian tribe's Federal recognition. This Congress has cured administrative mistakes and legislatively restored the Federal recognition of many other Michigan tribes, tribes such as the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Pokagon Band of Potawatomi Indians, the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians.

As the evidence demonstrates, the fact pattern of the Federal relationship with the Swan Creek Black River is almost identical to these other Michigan tribes.

[Chart.]

As indicated by the chart—and the chart is displayed, I believe—the Federal Government often entered into treaties with more than one tribe. This joiner, however, was simply for administrative ease and did not in any way lessen the integrity of any of the tribes' political structures. Yet, in the 1930's, when these tribes attempted to reorganize under the Indian Reorganization Act, their Federal recognition was unilaterally and wrongfully ended by the Department of the Interior.

Just as Congress legislatively reaffirmed these tribes, so too should we reverse the effective termination of this tribe by promptly enacting H.R. 2822. Swan Creek Black River's mission is to reaffirm its Federal recognition and restore to its tribal members some of their aboriginal lands and Federal services to which they are entitled because of their status as Indians.

It is neither the intent of Swan Creek Black River nor my bill to infringe on the rights of any other federally recognized tribe or seek to acquire property that is rightfully within another tribe's aboriginal lands or diminish or compete with their Federal funding or other revenue sources or compete for membership or health and other services. Quite frankly, a cause of great frustration to us these past months has been the inaccurate characterization of Swan Creek Black River as nothing more than a disgruntled splinter group with a mere intra-tribal conflict with the Saginaw Band of the Isabella Reservation.

It has been suggested that these two tribes should resolve their conflicts between themselves, first before the Swan Creek Black River presents its case to Congress. To this end, the Swan Creek Black River advised me they had initiated calls to the Saginaw Tribe and arranged an attentive one cordial but inconclusive meeting with the Saginaw Tribe's leadership. Then, the Saginaw Tribe postponed the planned follow-on meeting and never returned subsequent phone calls by Swan Creek Black River to reconvene.

I am told that last week the general counsel of Saginaw Tribe contacted a representative of the Swan Creek Black River, suggesting that a meeting could be held between the leadership of the two tribes if the Swan Creek Black River would agree to cancel this hearing. Neither the Swan Creek Black River nor I believe that tradeoff—that particular tradeoff—is constructive nor do I believe that a meeting of the minds between these two tribes should be a precondition to congressional action to restore Swan Creek Black River's Federal recognition.

I do, however, believe, that a meeting of these tribes' minds would smooth the path. And, therefore, I call on my colleagues who have taken the greatest interest in this matter—Congressman Kildee, Congressman Camp, Congressman Barcia, and Congressman Stupak—to join me in hosting a meeting between the two tribes to discuss and agree on amendments to H.R. 2822 that will resolve outstanding concerns.

With or without such a meeting, I am committed to fight for prompt enactment of H.R. 2822 to reaffirm the relationship between the government of the Swan Creek Black River and the government of the United States. It is time to begin to correct the injustices that the Swan Creek Black River has suffered for so long.

I urge the members of the Subcommittee to support this bill, H.R. 2822, and report it to the House of Representatives without further delay.

And, once again, Mr. Chairman and the members of the Committee, I thank you very much for my allowance to testify today. I would also like to suggest if I could—I noticed his name was omitted from the roster, the agenda today—the county executive of the county in which I live, L. Brooks Patterson, would also like to make some comments and I would urge if we possibly can see fit to allow him to speak his mind during the panel 2 session.

Mr. CALVERT. We could add him to the panel, without objection. No objection, we will add him to panel 2.

Mr. KNOLLENBERG. Thank you, Mr. Chairman. I'd be glad to answer any questions.

[The prepared statement of Mr. Knollenberg follows:]

STATEMENT OF HON. JOE KNOLLENBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I want to thank you for presiding today and to thank Chairman Young for scheduling this long-awaited hearing on H.R. 2822, the bill I sponsored along with Congressman Barcia to reaffirm the Federal relationship with the Swan Creek Black River Confederated Ojibwa Tribes of Michigan. The Swan Creek Black River's aboriginal lands, ceded to the United States by treaty in 1807, are located in my district and in southern Michigan. Both county and local officials support my effort to help this tribe regain its Federal recognition.

Since I introduced this bill in November of 1997, I have been urging action on it. Despite the lateness of this hearing in the session, we are determined to move H.R. 2822 expeditiously through the legislative process.

The Swan Creek Black River is recognized by the state of Michigan as a tribe, and for centuries the Swan Creek Black River has been a tribe separate and distinct from any other tribe. As you will hear in greater detail this morning, Swan Creek Black River is the political successor in interest to the signatories of numerous 18th and 19th century treaties, and its government-to-government relationship with the United States continued well beyond the treaty period. Unfortunately, when the tribe submitted its request in 1936 to reorganize under the Indian Reorganization Act, the Department of the Interior made a terrible mistake and, in effect, illegitimately terminated the Swan Creek Black River's Federal recognition.

It is well settled, however, that administrative action cannot terminate an Indian tribe's Federal recognition. This Congress has cured administrative mistakes and legislatively restored the Federal recognition of many other Michigan tribes, such as: (1) the Lac Vieux Desert Band of Lake Superior Chippewa Indians; (2) the Pokagon Band of Potawatomi Indians; (3) the Little Traverse Bay Bands of Odawa Indians; and (4) the Little River Band of Ottawa Indians.

As the evidence demonstrates, the fact pattern of the Federal relationship with the Swan Creek Black River is almost identical to these other Michigan tribes. Like the Swan Creek Black River, these tribes are the political successors in interest to the signatories of treaties with the Federal Government, treaties which were signed both independently and together with other tribes. As indicated by the chart, the Federal Government often entered into treaties with more than one tribe. This joinder, however, was simply for administrative ease and did not, in any way, lessen the integrity of any of the tribes' political structures. Yet, in the 1930s, when these tribes attempted to reorganize under the Indian Reorganization Act, their Federal recognition was unilaterally and wrongfully ended by the Department of the Interior.

Just as Congress legislatively reaffirmed these tribes, so too should we reverse the effective termination of this tribe by promptly enacting H.R. 2822. Swan Creek Black River's mission is to reaffirm its Federal recognition and restore to its tribal members some of the their aboriginal lands and Federal services to which they are entitled because of their status as Indians. It is neither the intent of Swan Creek Black River, nor my bill, to infringe on the rights of any other federally recognized tribe, or seek to acquire property that is rightfully within another tribe's aboriginal lands, or diminish or compete with their Federal funding or other revenue sources, or compete for membership, or health and other services. If we need to clarify or

otherwise amend provisions of my bill to accommodate legitimate, documented concerns, we are and have been open to and available for those kinds of constructive discussions.

As you will hear in more detail later in this hearing, the Swan Creek Black River seek to reaffirm Federal recognition of their government-to-government relationship with the United States, established in the early 1800s through numerous treaties. The Swan Creek Black River's sovereignty must be restored and the tribes granted their rightful Federal recognition because: (1) they had treaty relations with the U.S.; (2) they were denominated as tribes by Acts of Congress; (3) they were treated by the U.S. as having collective rights in tribal lands and funds; (4) they meet these primary, and all other criteria for Federal recognition; and (5) they have never relinquished their tribal sovereignty (although the U.S. unilaterally and improperly abandoned the Federal relationship). For these reasons, the Swan Creek's case for Federal recognition is equally or more compelling than the other six Michigan tribes which have reclaimed their status as distinct tribal governments.

Quite frankly, a cause of great frustration to us these past months has been the inaccurate characterization of Swan Creek Black River as nothing more than a disgruntled splinter group with a mere intra-tribal conflict with the Saginaw Band of the Isabella Reservation.

It has been suggested that these two tribes should resolve their conflicts between themselves first before the Swan Creek Black River presents its case to Congress. To this end, the Swan Creek Black River advised me that they initiated calls to the Saginaw tribe, and arranged and attended one cordial but inconclusive meeting with the Saginaw tribe's leadership. Then the Saginaw tribe postponed the planned follow on meeting, and never returned subsequent phone calls by Swan Creek Black River to reconvene.

I am told that last week the general counsel of the Saginaw tribe contacted a representative of the Swan Creek Black River suggesting that a meeting could be held between the leadership of the two tribes if the Swan Creek Black River would agree to cancel this hearing. Neither the Swan Creek Black River nor I believe that trade off is constructive. Nor do I believe that a meeting of the minds between these two tribes should be a pre-condition to congressional action to restore Swan Creek Black River's Federal recognition. I do, however, believe that a meeting of these tribes' minds would smooth the path. Therefore, I call on my colleagues who have taken the greatest interest in this matter—Congressmen Kildee, Camp, Barcia, and Stupak—to join me in hosting a meeting between the two tribes to discuss and agree on amendments to H.R. 2822 that will resolve outstanding concerns.

With or without such a meeting, I am committed to fight for prompt enactment of H.R. 2822 to reaffirm the relationship between the government of the Swan Creek Black River and the government of the United States. It is time to begin to correct the injustices that the Swan Creek Black River has suffered for so long. I urge the members of this Committee to support H.R. 2822 and report it to the House of Representatives without further delay.

Once again, thank you, Mr. Chairman, and the members of the Committee for allowing me to testify today.

Mr. CALVERT. Before we start with Mr. Camp, I would remind the audience that any phones or beepers, please put them on vibrate or turn them off. We would appreciate your courtesy.

And with that, Mr. Camp, you're recognized for 5 minutes.

STATEMENT OF HON. DAVID CAMP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. CAMP. Thank you, Mr. Chairman. Thank you for holding this hearing and for the opportunity to testify on H.R. 2822.

I, too, have a written statement that I would ask be made part of the record.

Mr. CALVERT. Without objection, so ordered.

Mr. CAMP. I also have a letter from the Governor of the State of Michigan, written to all members of the Michigan Congressional Delegation, expressing his explicit opposition to congressional acknowledgement of additional Indian tribes and would ask that that be made part of the record as well.

Mr. CALVERT. Without objection, so ordered.

[The information referred to may be found at end of hearing.]pages 14 to 20

Mr. CAMP. Mr. Chairman, the Saginaw Chippewa Indian Tribe has its home in the Fourth Congressional District of Michigan, located in the heart of the Fourth Congressional District which I represent. I'm here today to testify in opposition to H.R 2822, a bill that would accord Federal recognition to the Swan Creek Black River group.

Several of the individuals who are advocating Federal recognition of the Swan Creek Band of Chippewas are currently members of the Saginaw Chippewa Tribe. These individuals have several disagreements with the leadership of the Saginaw Chippewa Tribe and I fear that Congress is on the verge of interfering in the internal matters of a recognized tribe, which would clearly violate their sovereign right to determine their own membership.

This is, in my mind, a matter that should not be before the Congress. There is already a process in place for recognizing tribes. The Bureau of Indian Affairs has been given the authority to review the recognition petitions, not the U.S. Congress.

Federal recognition is a very serious matter. Federal recognition grants tribes protection, services, and monetary benefits of the Federal Government. Acknowledgement also entitles tribes to the immunities and privileges available to federally recognized tribes by virtue of a government-to-government relationship with the United States of America as well as the responsibilities, powers, limitations, and obligations of those tribes.

In 1978, Congress recognized that the issue of reestablishing Federal recognition of tribes was difficult and subject to too many political considerations. The Branch of Acknowledgement and Recognition, BAR, was established under the Bureau of Indian Affairs for the specific purpose of deciding these issues on the facts. The specialized staff of the BAR exists for the sole purpose of reviewing and analyzing petitions for Federal recognition.

In 1993, the Swan Creek Band of Chippewas filed a petition with the BAR and, while that petition remains open, little action has been taken to proceed with this congressionally established recognition process. I understand that the BAR is understaffed and underfunded and that many tribes with valid cases must wait years for actions on their petitions. However, I am very concerned that in the last 5 years not enough information has been provided to move the Swan Creek petition forward. Instead, Congress is being asked to play the role of the BAR, a task we are unsuited to undertake.

We have passed legislation recognizing tribes in the past, including several in Michigan, but those situations were significantly different. Congress should be the last stop in seeking Federal recognition. There are over 100 groups currently awaiting action by the BAR. To allow the Swan Creek to circumvent the entire BAR process would be a grave injustice to those groups who are awaiting BAR action. This Committee must consider these other groups also when acting on this bill.

We should encourage groups to follow the guidelines established by Congress 20 years ago. A precedent could be set which would have this Committee holding dozens of similar hearings in the future, as groups see that the BAR process need not be followed.

I want to close by stressing my disappointment with the slow pace of the BAR process. On May 20 of this year, this Committee marked up and passed H.R. 1154, the Indian Federal Recognition Administrative Procedures Act of 1997 and—although I had some concerns with certain aspects of that legislation which the House failed to pass—I applaud the Committee for moving to reform the process and provide a third party to review and approve petitions. In light of your work on this legislation, I urge you to continue to work to improve the process so that groups may have the confidence that their requests will be met in a timely and fair manner.

It is my hope that the Committee will recommend that the Swan Creek follow the BAR process and not pass a bill until BAR has a chance to conduct a thorough review. I hope the Committee will also consider the sovereign rights of the Saginaw Chippewa and their rights to determine their own membership. Thank you.

[The prepared statement of Mr. Camp follows:]

STATEMENT OF HON. DAVE CAMP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

I want to thank the Committee on Resources again for the opportunity to testify on H.R. 2822.

My reason for testifying on this bill is because of my deep concern for the rights of a federally recognized tribe, the Saginaw Chippewa Tribe, and for need to abide by the Congressionally established process of tribal recognition. The Committee today will hear testimony in support of and in opposition to a bill that would accord Federal recognition to the Swan Creek Black River band. I am in opposition to H.R. 2822 because it fails to recognize the rights of the Saginaw Chippewa Tribe and circumvents the recognition process put into place by Congress itself. I have met with both of the interested parties on numerous occasions to listen to their arguments. I have come to two conclusions based on these meetings.

First: I am not an expert in 17th and 18th century treaties and Native American ethnogenealogy and I would venture to say that neither is any other Member of Congress. There are however, a group of people who not only have expertise in this area but are directed by Congress to use their considerable skills in these areas to determine whether a group of Native Americans meet the Congressional defined criteria for recognition as a federally recognized tribe.

In 1978, Congress recognized that the issue of re-establishing Federal recognition of tribes was difficult and subject to too many political considerations. The Branch of Acknowledgment and Recognition (BAR) was established under the Bureau of Indian Affairs (BIA) for the specific purpose of deciding these issues on the facts. The specialized staff of the BAR exists for the sole purpose of reviewing and analyzing petitions for Federal recognition.

The Federal Acknowledgment Process (FAP) is set forth in 25 C.F.R. Part 83. Any group that petitions the BAR for recognition must, under the FAP, be able to demonstrate that it is a distinct social and political entity that existed continuously from the period of first sustained contact with Euro-Americans until the present day. For Congress to determine this, along with the other criteria, would be difficult to say the least. Other than the standards Congress set and instructed the BAR to enforce, Congress has no discernable criteria by which to judge tribal status. We established criteria and assigned the BAR to ensure that these criteria are met in order for a tribe to be recognized.

Federal recognition is a most serious matter. Bestowing Federal recognition grants recognized tribes with the protection, services and monetary benefits of the Federal Government. Acknowledgment also entitles tribes to the immunities and privileges available to federally recognized tribes by virtue of government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes.

The Swan Creek band has presented me with a case for their recognition as a separate tribe. I do not believe I possess the knowledge to determine whether their statements are factual. The BIA's own publication "What is the Background of the Federal Acknowledgment Regulations?" states the following:

> The BIA cannot take the petitioners' statements on face value, as much as the petitioner themselves may believe in them. This is why petitioners must docu-

ment their claims, and professional staff employed by the BIA must verify the claims.

In the case of H.R. 2822, Congress is being asked to play the role of the BIA, a task we are unsuited to undertake. Congress should not be the first stop in seeking Federal recognition, as it is with the Swan Creek. There are over 100 groups who have filed petitions with the BAR and are currently awaiting action on those petitions. One of these groups is the Swan Creek, who submitted their petition on May 4, 1993. What has happened since 1993 that would warrant Congress acting ahead of BAR on this matter? Nothing. The Swan Creek have not provided their information to the BAR that might prove their case. They have, however, provided me with a great deal of information that seems like it should belong at the BAR to be researched and verified. To allow the Swan Creek to circumvent the entire BAR process would be a grave injustice to those groups who have spent years and even decades in some cases working with the BAR to meet the criteria. This Committee must consider these groups when acting on this bill.

True, we have, years ago, passed legislation recognizing tribes, including several in Michigan, but those situations were significantly different. The Swan Creek will argue that their case is similar to those cases. One of the three Michigan tribes recognized legislatively was the Pokagon Band, who had nearly completed the BAR process at the time of legislative recognition. The Little Traverse Bay Band of Odawa Indians and the Little River Band of Ottawa Indians pursued the BAR process and were recognized because of their long histories of separate political organizations. They also had the support of the Tribes with which they were previously associated, who endorsed their efforts to gain legislative recognition. That situation does not exist with the Swan Creek, who face strong opposition from the Saginaw Chippewa Tribe.

My second conclusion: The Saginaw Chippewa Tribe has rights as a sovereign nation that must not be trampled by Congress. Many of the individuals who are advocating Federal recognition of the Swan Creek are presently members of the Saginaw Chippewa Tribe who have differences with the tribal leadership. Under the approach of H.R. 2822, the ties which have bound these Chippewa Indians would be broken. Congress cannot remove a member of a tribe from his tribe. This legislation might actually do just that by forcing currently enrolled members of the Saginaw Chippewa Tribe to essentially choose between competing factions of the Saginaw Chippewa Tribe. I fear that Congress is on the verge of interfering in the internal matters of a recognized tribe, which would clearly violate their sovereign right to determine their own membership. This, in my mind, is a matter that should not be under the jurisdiction of Congress.

I want to close by stating that I am disappointed with the effectiveness of the BAR process. On May 20 of this year, this Committee marked-up and passed H.R. 1154, the Indian Federal Recognition Administrative Procedures Act of 1997. The House recently considered this bill just two days ago but failed to approve it. I applaud the Committee for moving to speed the process and provide a third party to review and approve petitions. In light of your work on this legislation, I urge you to continue to work to improve the process so that groups may have the confidence that their requests will be met in a timely and fair manner, and not seek to avoid the process altogether.

It is my hope that the Committee will recommend that this group follow the BAR process and not pass a bill until BAR has a chance to conduct a thorough review. I hope that the Committee will also consider the sovereign rights of the Saginaw Chippewa and their rights to determine their own membership. Thank you.

Mr. CALVERT. I thank the gentleman for his testimony.

Mr. Kildee, do you have any questions?

Mr. KILDEE. Pardon me.

Mr. Chairman, I have no questions of the members, both for whom I have the greatest respect even though they have different points of view on this. But, we have a deep friendship and respect and this is what makes the Congress work. I appreciate it.

Mr. CALVERT. I thank the gentleman for his remarks.

Any other member have any questions?

The gentleman from American Samoa.

Mr. FALEOMAVAEGA. I just want to compliment both gentlemen for their fine statements and I appreciate their support for what was supposed to be a significant improvement in the procedures on

how to recognize Native American Tribes but, unfortunately, some of our colleagues thought that this was a gaming scheme behind the whole proposed legislation and I say, Mr. Chairman, that was a very unfortunate turn of events on the legislation on the floor yesterday.

And, I want to compliment Mr. Camp's statement that I've been following this issue of tribal recognition since I've been here, for almost 10 years now, and, given the fact that Assistant Secretary Gover and I have made every earnest effort to see that we were not asking for making the process easier for the tribes—we're only asking for making the process more fair. We've got situations that—I think Assistant Secretary Gover will testify to that situation—but it's really unfortunate to see that both groups are here before this Committee and expecting us to find a resolution to the problems that I think it's really inherent to the State of Michigan.

And, I want to acknowledge—certainly want to thank—Congressman Knollenberg for his suggestion that the congressional members in Michigan and the two tribes get together and see if this can be done outside of parameters of having a committee to decide whether or not this tribe is a tribe. I mean, it's—I just wish we wouldn't have to be forced into making these kinds of decisions, which I honestly believe ought to be done outside of this Committee.

But, I look forward to hearing from the witnesses and, Mr. Chairman, I thank you.

Mr. CALVERT. I thank the gentleman and, as a courtesy to our two colleagues, if you would like to remain and come up to the dais with unanimous consent, I'm sure that no one here would mind, if you would like to join us for the second panel.

Mr. CAMP. I appreciate that.

Mr. KNOLLENBERG. Thank you.

Mr. CALVERT. Thank you.

OK. Panel No. 2: Mr. Kevin Gover, the Assistant Secretary of Native American Affairs, the United States Department of Interior; Chief Kevin Chamberlain, Saginaw Chippewa Tribe, Mt. Pleasant, Michigan; and Chief Gerald Gould, Swan Creek Black River Confederated Ojibwa Tribes of Michigan, Saginaw, Michigan. And the gentleman, Mr. Brooks Patterson, would also please—a county executive of Oakland county, Michigan.

Mr. KILDEE. Mr. Chairman, if I may—while they're taking their seats—I always point out whenever I see L. Brooks Patterson that L. Brooks Patterson was a student at University of Detroit High School when I was teaching there and I will add a very, very good student. I won't add the second part—you might want to add that—but he was a very, very good student, person for whom I have enormous respect. We worked very closely together.

Mr. PATTERSON. Well, Mr. Chairman, he always adds that it's obvious that I didn't teach him political science.

Mr. KILDEE. That's right. That's usually a line I add to that——

Mr. CALVERT. Right. The gentleman must have graduated from college at a very young age.

[Laughter.]

Mr. CALVERT. OK. If everyone is present, we welcome this panel and would recognize Mr. Kevin Gover first. Before you start your

opening statement, just as a reminder, we have those little lights there. We ask that each of the witnesses keep their opening remarks to 5 minutes. If you have extended remarks, we'd be more than happy to accept them and make them part of the record. Again, a light will come on, we'll give you 1 minute warning and then the red light.

So, with that, Mr. Kevin Gover, you are recognized for 5 minutes.

STATEMENT OF KEVIN GOVER, ASSISTANT SECRETARY, INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR

Mr. GOVER. Thank you, Mr. Chairman. We've submitted written testimony which we request be made a part of the record.

Mr. CALVERT. Without objection, so ordered.

Mr. GOVER. Mr. Chairman, first, since this may be the last time I'll appear before the Committee in this Congress, I want to thank the Committee for all of its assistance and work during the past year and that we look forward very much to working with all of you in 106th Congress.

Mr. Chairman, our testimony is very simple this morning. We oppose this bill for the simple reason that we are unable to say with any degree of confidence whatsoever that this is or is not a tribe. The group has submitted to us a petition—or more accurately—a notice that it intends to petition for Federal recognition and did so in 1993. Since that time, there's been no further action on the petition and I want to make clear that we don't fault the tribe for that. There's been no call for any action because it's simply not at the point in the process where they're required to submit materials but certainly they could if they choose to do so.

We have no opinion as to exactly what the status of this group of Indian people is. What we would prefer very much is to be allowed to develop such an opinion, to review a complete petition, and to either recognize or not recognize this group as a federally recognized tribe.

We have a number of specific concerns about the bill that—were this Committee and the Congress to choose to move forward, we would certainly want to see those other matters addressed as well. But, our primary concern, Mr. Chairman, is that this group simply has not yet gone through the process that's been established and that we've been administering for some time.

Let me also say that I'm very sensitive to the criticisms of the Branch of Acknowledgement Research (BAR) and that there clearly has been a problem over the years that we're not proceeding quickly enough on these petitions. We recently had a change in leadership in BAR. We've been working with Mr. Faleomavaega this year to try to find some common ground and to improve upon this process. We are very hopeful that that would have moved forward so that we could join the debate further in the Senate and perhaps agree on an appropriate way to handle what is, perhaps, the most fundamental of questions when it comes to our Indian communities. That is, whether or not there is a group that is going to be recognized by the United States of America and if it will be afforded the many benefits and advantages and, frankly, some of the

disadvantages that accompany being recognized as a Indian tribe by the United States.

That's a summary of my testimony, Mr. Chairman. I'd be happy to answer any specific questions you might have.

[The prepared statement of Mr. Gover may be found at end of hearing.]

STATEMENT OF HON. KEVIN GOVER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the Committee. My name is Kevin Gover, Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to testify on H.R. 2822, a bill to "to reaffirm and clarify the Federal relationship of the Swan Creek Black River Confederated Ojibwa Tribes as a distinct federally recognized Indian tribe, and for other purposes."

H.R. 2822 would extend Federal recognition to an organization known as the Swan Creek Black River Confederated Ojibwa Tribes of Michigan, Inc. (Swan Creek). Swan Creek submitted a letter of intent in 1993 to petition under the acknowledgment regulations, 25 CFR Part 83. To date, they have not submitted any documentation to the Department to support their petition. They remain on inactive status on the "Register of Letters of Intent to petition."

The Department opposes H.R. 2822 for the following reasons:

There are many unanswered questions concerning the group's membership, history, community, and tribal government that should be resolved before legislation is considered. For instance, the group has not submitted a current membership list, which is the one document that is essential in identifying the group. Additionally, we do not know whether they represent the main body of current descendants of the historic Swan Creek Band.

A good possibility exists that a significant proportion of the Swan Creek membership is also part of the Saginaw Chippewa Indian Tribe of Michigan (Saginaw Chippewa), a federally recognized Indian tribe. If the Swan Creek people are closely related to and have participated in the political life of the Saginaw Chippewa, Swan Creek may be a splinter group from the Saginaw Chippewa Tribe. The Department opposes the splintering of recognized tribes. However, because so little information has been submitted to the Department about the group and its membership, it is not possible to adequately evaluate the current political relationship between the group and the Saginaw Chippewa Tribe. We note that the Saginaw Chippewa Tribe has expressed strong opposition to the Swan Creek petition on the grounds that it is a splinter group and that the Saginaw Chippewa Tribe is the exclusive successor in interest to the Saginaw, Swan Creek and Black River Bands of Chippewa Indians.

Historically, the Swan Creek Band has been associated with the Saginaw Chippewa Band since the early 19th century. The two bands co-signed a treaty in 1855. This treaty and a subsequent 1864 treaty established a reservation for these bands near modern-day Mount Pleasant, Michigan. The historical record is clear that while some members of the Swan Creek Band refused to relocate to the Isabella Reservation as contemplated by the treaties, others did so. Some Saginaw Chippewa Band members also did not relocate to the reservation. We do not have clear evidence that a separate Swan Creek Band remained after treaty times, or that those who did not choose to move to the reservation formed an independent tribe.

No information has been provided to the Department to substantiate the claim that the Swan Creek have maintained a separate political existence from the Saginaw Chippewa since the organization of a tribal government under the Indian Reorganization Act (IRA) in 1937, or that Swan Creek had previously maintained a separate political existence between 1855 and 1937.

Because of the complex history of enrollment of the Saginaw Chippewa Tribe, and the lack of a membership list for the Swan Creek organization, it is impossible to develop a clear picture of the group and it's relationship to the recognized Saginaw Chippewa Tribe. However, some conclusions can be drawn which illustrate that the circumstances of this case merit further study before any legislation is enacted.

The Saginaw Chippewa Tribe as organized in 1937 under the IRA included all of the residents of the reservation, including descendants of the Swan Creek Band. However, it excluded from membership a large number of the descendants from the Saginaw Chippewa and Swan Creek Bands who had not relocated, as well as others who had migrated from the reservation. This exclusion was the subject of protests

for some years. This circumstance changed in 1986, when the Saginaw Chippewa Tribe modified its constitution and opened its enrollment for 18 months to individuals who could demonstrate Swan Creek or Saginaw Chippewa ancestry and one-fourth or more degree Indian blood. This change was made to allow many descendants of these bands who had not been eligible for membership under the 1937 constitution the opportunity to enroll. The enrollment change resulted from a compromise between the tribe and unenrolled off-reservation descendants over whether the latter were entitled to share in funds awarded in Docket 59 and 13-E before the Indian Claims Commission, and 13-F before the United States Court of Claims. The compromise was incorporated in Public Law 99-346, the "Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act" of 1986.

Approximately 1,900 people enrolled within the 18-months, tripling the membership of the Saginaw Chippewa Tribe from about 900 to 2,800. Thus, much of the off-reservation Swan Creek Band descendants are likely to have become members of the Saginaw Chippewa Tribe in 1986. Because the expansion of the enrollment included so many non-residents, it is likely that there is a substantial overlap between the Swan Creek organization's membership and that of the Saginaw Chippewa Tribe.

We offer the following additional comments on H.R. 2822:

Section 4 (b)(2) describes the service area of the tribe. It concludes by providing that Federal services came provided to members outside the named service area unless prohibited by law or regulation. At the same time, the preceding paragraph, Section 4 (B)(1), authorizes the provision of services and benefits without regard to the existence of a reservation or the location of the residence of any member on or near a reservation. It is not clear what function, if any, it serves to define a service area and at the same time authorize the provision of services and benefits without regard to residence. The provision of services to Indian tribal members generally is limited to those residing on or near a reservation or within a defined area.

Section 4 (b) would establish a very large, twelve county service area which includes highly populated counties and the city of Detroit. Given the size of this area, without an analysis of the tribe's population in these counties and present access to services from other sources, it is difficult to reach definite conclusions. However, we have concerns about the manageability and appropriateness of such a large area from the perspective of providing social services. We are concerned about whether it would be feasible for the tribe to operate Federal and Bureau programs in twelve counties. The designation of service areas for programs is usually accomplished administratively, with an appropriate analysis of needs, funding and staffing.

The language in Section 6, Tribal Lands, could be read to limit the Secretary's discretion in accepting title to lands in trust for the tribe. We suggest that this section read that "The Secretary may accept land in the tribe's service area specified in this Act pursuant to his authority under the Act of June 18, 1934 (25 U.S.C. 461 et seq. Commonly referred to as the 'Indian Reorganization Act')."

For purposes of gaming, Section 6 places no limitations on the number of parcels that the tribe can acquire, and does not limit the amount of time that the tribe can acquire land, that would qualify under the exceptions in the Indian Gaming Regulatory Act, 25 U.S.C. 2719(b)(1)(B)(iii). From the Department's experience and from actions the Department has taken with other tribes, the bill should establish reasonable limits on the amount of land that would qualify under the exceptions and the period of time during which it could be acquired.

Sections 7 and 8 do not clearly designate either a membership list/roll or a constitution or bylaws that would articulate the criteria for membership. Section 8 refers only to "the governing documents in effect on the date of enactment of this Act." The Act should designate a specific governing document or documents, identified by their date of adoption by the group. Ideally, it should also designate an existing roll as the base or initial roll, and specify the criteria for adding members either by describing them in the legislation or by identifying a specific governing document. We have not seen the governing document and thus cannot comment on it. There is presently no way to clearly determine who would be recognized as the Swan Creek Tribe and no legislative guidance as to what the criteria for membership should be.

Section 7 stipulates that "[n]ot later than 18 months after the date of the enactment of this act, the Tribe shall submit to the Secretary membership rolls consisting of all individuals eligible for membership in the Tribe." The phrase "all individuals eligible for membership" should be omitted, since it may create unintended difficulties. Commonly, tribal rolls do not include all eligible persons, since individuals eligible to enroll in more than one tribe may choose to enroll elsewhere, e.g., the Saginaw Chippewa Tribe. The roll should be a complete list of all of the enrolled members of the tribe. We would also note that while we're aware of a couple of statutes

which require publication of the roll in the Federal Register we believe such publication is an unnecessary invasion of privacy of the members.

Section 8 stipulates that "the governing body of the Tribe shall be the governing body in place on the date of the enactment of this Act, or any new governing body selected under the election procedures specified in the interim governing documents of the Tribe." Without a clear designation by Congress of the governing documents, there could arise problems determining how such an election would proceed.

Section 8 of the bill requires the Secretary to call and conduct an election in accordance with the Indian Reorganization Act (IRA) to ratify the Tribe's constitution. Is this to imply that the Tribe has committed itself to organize under the IRA? Section 8 also calls for the Secretary to conduct the initial election of tribal of finials after adoption of this constitution. The election of officers should be the responsibility of the Tribe and not the Secretary.

The Department has strongly opposed dividing recognized tribes. There are presently a substantial number of instances around the country where parts of recognized tribes are seeking or have recently sought to separate themselves from the main body of the tribe, usually as the result of intra-tribal disputes. These conflicts are often the result of historical circumstances under which separate bands or tribes were placed on the same reservation and combined into a single tribe. While these groups, as here, may have some separate history, we do not believe it is an adequate or appropriate solution to tribal disputes to now divide the tribes. Resolution should be sought within the constitutional processes of the tribe. We believe that legislation here would encourage other groups to seek a similar solution, which we do not believe is appropriate except under very special circumstances such as that at Lac Vieux Desert.

If, however, the Swan Creek is not a splinter group and has historically remained a separate, politically autonomous Band since treaty times, then the most appropriate route is for them to be evaluated under the acknowledgment process.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

Mr. CALVERT. I thank the gentleman.

Chief Chamberlain, you're recognized for 5 minutes.

STATEMENT OF KEVIN CHAMBERLAIN, CHIEF, SAGINAW CHIPPEWA TRIBE, MT. PLEASANT, MICHIGAN

Mr. CHAMBERLAIN. Good morning, Mr. Chairman. My name is Kevin Chamberlain, Chief of the Saginaw Chippewa Indian Tribe of Michigan. I'd like to thank you for the opportunity to appear before this distinguished body to voice our tribe's opposition to H.R. 2822.

My testimony will consist of brief remarks on why the Committee should oppose H.R. 2822. I respectfully request that my full written testimony, including our historical analysis, be entered into the record.

Mr. CALVERT. Without objection, so ordered.

Mr. CHAMBERLAIN. Thank you.

The Saginaw Chippewa Tribe opposes H.R. 2822. Any action on this bill is of utmost concern to the tribe because its effect would be to separate the federally recognized Saginaw Chippewa Tribe into two separate tribes and it would allow a splinter group to claim treaty-preserved rights, political jurisdiction, and sovereignty currently held by the Saginaw Chippewa Tribe. Our position is staunchly set upon our desire to preserve our tribe's heritage and sovereign status and to protect tribal sovereignty of all Indian nations by preventing political factions and splinter groups from being able to secede from their tribes and create sovereign nations unto themselves.

This claim has no merit; it is an attempt by businessmen to buy a tribe and push a bill through Congress to further their goal of opening a casino.

The membership issues—the Saginaw Chippewa Tribe not only opposes this bill's content but also opposes the holding of this hearing today. This bill deals directly with an intra-tribal membership matter. The United States courts have consistently held that one of the Indian tribe's most basic powers is the authority to determine the questions of its own membership. There should be no congressional intervention on a matter so fundamental to a sovereign nation's existence. The sovereign nation of the Saginaw Chippewa Tribe should handle this membership issue.

The Swan Creek group, the party pushing this bill, claims that they are a successor in the interest of the Swan Creek and Black River Bands of Chippewa Indians. Since the 1855 Treaty of Detroit, the Swan Creek and Black River Bands have been considered part of the Saginaw Chippewa Tribe. Before then, they were considered a part of the Missisauga Chippewa, the name used for the large group of southeastern Michigan bands before and during the treaty era.

The Swan Creek group, however, claims that they are a separate entity deserving of sovereign nation status. This is absolutely untrue. Many of the Swan Creek group's participants are currently enrolled members of the Saginaw Chippewa Tribe, including Mr. Gerald Gould, the Swan Creek's organizer. They wish to split from the tribe, obviously.

Individuals who are members and beneficiaries of one Indian nation should not be able simply secede from the Nation and create their own nation complete with the rights and privileges of all tribes whether because of political differences, personal choices to live away from the reservation, or for any other reason. The existing sovereign nation to which the individuals belong should resolve membership issues internally. Tribal politics is not a matter for Congress; it is a matter for members of the Saginaw Chippewa Tribe and its elected leaders.

For the record, the Saginaw Chippewa's Tribal Council serves all of its members with health, education, vocational, housing and other programs without distinguishing bands they may descend. The tribe provides an at-large program which specifically serves those living off the reservation.

Annually, the tribe spends approximately $970,000 on at-large programs, which include but are not limited to health services, medical services—including transportation to medical appointments—living expense needs, food costs—house payments, rent, land tax payments, utilities—burial grants, educational seminars, and family services. Further, the tribe spends roughly $550,000 per year on cultural enrichment programs for the at-large residents and $468,000 on medical coverage.

The programs are freely accessible to all at-large persons. Over 1,290 at-large persons live within 2 hours of the reservation and take full advantage of these programs. If the Swan Creek group is stating that they get disparate treatment for not living on the reservation, this is absolutely not the case. They are free to take advantage of all programs. It is not the tribe's fault if persons live far away from the reservation. It can only provide the services and programs to the best of its ability. The at-large programs funded

and administered by the tribe generously provide for a myriad of needs for the tribe's at-large membership.

Also, there is a seat guaranteed on the Council for a representative of the tribe in the at-large district, so that such individuals that comprise this district are fully represented and have a voice in the governing body.

The Saginaw Chippewa Tribal Council has also met many times with representatives of the Swan Creek group to better understand and address its concerns. In most recent meetings held earlier this year, the Swan Creek group informed the tribal leaders and myself that no political accommodations or additional benefits would appease them; they simply want their own tribe.

H.R. 2822 obviously circumvents the administrative process. Since Congress has decided to become involved in the intra-tribal issue, the Saginaw Chippewa Tribe wants to voice its opinion that this bill is nothing more than an attempt to politically circumvent the appropriate process for becoming a fairly recognized tribe.

In closing, the Saginaw Chippewa Tribe would like to reiterate its opposition to holding this hearing. The tribe firmly believes that this is a tribal membership issue in which Congress should play no role. Further, the Saginaw Chippewa Tribe believes that since the Swan Creek group would not be able to meet the administrative criteria, it certainly should not gain recognition from Congress based upon 5 minutes of testimony. Federal recognition of sovereign nations should be granted only after careful research and deliberate review. If Congress takes any action on this bill, it should only be to the extent of directing the Swan Creek group back to the line at the BIA.

For these reasons, the Saginaw Chippewa Tribe respectfully requests that this Committee vote against H.R. 2822. I have attached our historical analysis and relevant documentation as part of my testimony. I'd like to thank you again for my opportunity to testify and I also welcome questions from the Committee as would our tribe's ethno-historian, Dr. James McClurken. Thank you.

[The prepared statement of Mr. Chamberlain may be found at end of hearing.]

Mr. CALVERT. I thank the gentleman.

Next, Chief Gould is recognized for 5 minutes.

STATEMENT OF GERALD GOULD, CHIEF, SWAN CREEK BLACK RIVER CONFEDERATED OJIBWA TRIBES OF MICHIGAN, SAGINAW, MICHIGAN

Mr. GERALD GOULD. Thank you. Good afternoon, Mr. Chairman, members, and guests. My name is Gerry Son-non-quet Gould and I am Chief of the Swan Creek Black River Ojibwa Tribe.

I would first like to thank Representatives Knollenberg and Barcia for sponsoring H.R. 2822 and recognizing issues facing my people today. This is an historic moment in our tribe's history. I am honored to address you on behalf of our tribe, many of whom have traveled all night by bus in order to witness this historic occasion. We come to ask that Congress enact promptly H.R. 2822 to reaffirm the trust relationship promised to our ancestors over 190 years ago.

When I was a young boy, my mother shared with me, as her mother shared with her, and as my great-grandmother shared with my grandmother, the rich traditions of our people. My great-grandmother was born in 1848 and lived in the areas beyond the white settlements. The story my mother told me was of a land of abundance, and a time of health and simple prosperity in southern Michigan. My people were trappers, fishermen, hunters, and farmers. They were communities of grandfathers and grandmothers, fathers and mothers, sons and daughters, elders and infants. It was a time before the reservations when our people lived in harmony with their environment, with nature, and with each other. This was our proud heritage before the settlers came.

As my mother explained to me, and her mother to her, the non-Indians promised that if we would sign the Treaty of Detroit of 1807, the United States would take only a small portion of our lands, leaving us the rest upon which to hunt, fish, and make our living. We signed with the belief and hope that our people and the non-Indians would dwell together in peace. As white settlements grew, we were forced to move numerous times during that period.

We have awaited this moment with great anticipation and also with some regret, for there is much to be said in the yet precious few moments that we have together. This afternoon I would like to describe how, as a result of Federal Government action—which violated the trust relationship—the BIA refuses to acknowledge our tribe. As a result, our people are disenfranchised by the very governmental agency which is obligated to act in our trust.

We have signed 15 treaties with the United States, including one where we are the sole tribal signatory. Despite our extensive treaty relationship with the United States, Federal actions and policies have resulted in the effective loss of our Federal recognition.

First, the United States artificially combined us with other tribes on the same reservation, solely for its administrative convenience pursuant to the Treaty of 1855.

Second, in 1936, the BIA compounded this error by rejecting: one, the Swan Creek Black River's request to organize as a separate IRA tribe; and two, the draft constitution whose preamble listed the Swan Creek Black River and the Saginaw Bands as separate tribes. Instead, the BIA organized an IRA tribe on the Isabella Reservation, decreeing that only members living on the reservation were eligible for membership. At that time, the individuals residing there were Odawa, Potawatomi and Ojibwa—mostly Ojibwa of the Saginaw Chippewa Tribe. In contrast, the overwhelming majority of the Swan Creek Black River lived off the reservation.

To complicate matters, in 1939 the Department of the Interior determined to withdraw funding gradually and prohibit any future tribal organization under the IRA. By ignoring the Swan Creek Black River's separate tribal existence, the United States breached its trust obligations to our tribal members. Notwithstanding the Federal Government's unilateral action—which was legally and morally wrong—the Swan Creek Black River people continued to function as a tribe. Indeed, we remain a tribe, since only the Congress can terminate a tribe and it has never taken this action.

[Chart.]

This chart that we have brought with us depicts how the United States, through treaties, combined tribes in Michigan together. In virtually every case, the United States has untangled these artificial groupings, reaffirming the individuality, sovereignty of each previously combined tribe.

We appeal to you today to remedy this historic injustice. The Swan Creek Black River has never surrendered or relinquished our sovereignty. We have undertaken extensive historical, anthropological, and genealogical research, all of which supports our position.

We are submitting this box of documents as part of this hearing's official record.

[The information referred to may be found at end of hearing.]

Mr. GERALD GOULD. This research proves that we have maintained ourselves as a distinct tribe with distinct kinship relationships, distinct annuity roles, distinct genealogy, distinct culture, and a distinct geographic area. In addition to the substantial documentation we have submitted for the record, we are accompanied by our experts to answer any questions you may pose.

We do not seek to harm any other tribe; we simply seek to be treated like the other sovereign Michigan tribes whose Federal recognition, in recent years, has been reaffirmed by Acts of Congress.

We sincerely hope that you will support our effort toward the restoration of our trust relationship with you. In the Civil War, Swan Creek Black River tribal members fought and died for the Union to emancipate other subjugated peoples. The outcome of that great conflict brought new meaning to the phrase "we, the people." Thus, the concept "we, the people" holds an even special meaning for us. At this time, "we, the Swan Creek Black River people" request the Congress to restore these same rights possessed by other sovereign Indian nations.

Thank you. We also have brought Dr. Michael Lawson, our expert on the BIA acknowledgement process, to address the Committee if you would like. Thank you.

[The prepared statement of Mr. Gerald Gould may be found at end of hearing.]

Mr. CALVERT. I thank the gentleman.

Next, Mr. Patterson, would you like to have an opening statement?

STATEMENT OF L. BROOKS PATTERSON, COUNTY EXECUTIVE, OAKLAND COUNTY, MICHIGAN

Mr. PATTERSON. Good afternoon, Mr. Chairman and ladies and gentlemen. My name is Brooks Patterson and I'm the elected county executive from Oakland county, Michigan.

Permit me to set the stage for my brief remarks by telling you a little bit about the 910 square miles that we call Oakland. It's a naturally beautiful county with rolling hills and 450 lakes. We are the headwaters for five separate rivers that wind their way through the county, some ending up in neighboring Lake St. Clair, others pouring eventually into the Detroit River. By our very name you can imagine the sturdy oak trees that crowd the landscape.

Back in the 17th and 18th centuries, Indian tribes—specifically the Swan Creek Black River tribe—roamed this beautiful territory, fishing its streams and hunting its thick forests.

Much has changed since those early days in Oakland county. Now nearly 1.2 million residents enjoy a unique and rich quality of life in Oakland county. We have 40,400 businesses thriving there. We are headquarters for many Fortune 500 companies, not least among them Chrysler Corporation, K-Mart and Meritor.

Oakland was beautiful and rugged in the 17th and 18th centuries and it combines an urban and rural beauty today. To preserve much of what the Swan Creek Black River tribe enjoyed, we have set aside in our county over 87,000 acres of public park land. For purposes of identifying my county still further for members of the Committee, we are also home to some of your colleagues—Spence Abraham lives in Auburn Hills, Carl Levin in Southfield, Sandy Levin in Royal Oak, Representative Joe Knollenberg, in the heart of the territory claimed by this tribe, in Bloomfield township. Those are the residents.

As Oakland county executive, among my many responsibilities, I am broadly charged as the steward of Oakland county's vast resources. To that extent, I feel a real connection with those stewards similarly charged 200 years ago. Out of deep sense of respect and duty to the ancestors of Chief Gerald Gould—who sits to my right—I am here to acknowledge the past and rectify a 2-century-old miscarriage.

My testimony today is small repayment for what the Swan Creek Black River Indians lost. What they seek today is recognition of a historical fact: Oakland county was their aboriginal land and, through the inevitable passage of time and events, they have been disenfranchised.

Their case for recognition is replete with compelling evidence of the tribe's existence and territorial claims contained in that box. Not least among the evidence are signed treaties with the very Federal Government before which I appear this afternoon. Some experts familiar with the Bureau of Indian Affairs and the whole recognition process have stated that the Swan Creek Black River has presented as compelling a documented case as they have ever examined.

I fear some oppose the rightful restoration of the tribe's identity and heritage this afternoon for one simple albeit selfish reason: what will the tribe do with its new found recognition? Will they eventually open a casino? Maybe. Will they build clinics and schools for their people? Probably. Will they bask in the pride that their heritage has been restored, their historical role has been recognized, and the long nightmare in search of their identity and self-esteem is finally over? Absolutely.

What we are engaged in here this afternoon rises far above attempting to influence or manipulate a congressional committee in hopes of protecting one city or one tribe's avaricious gaming monopoly. What we are engaged in here is a far more noble cause; it truly touches upon dignity, self-esteem, morality and justice.

In conclusion, let me respectfully suggest that the question before this Committee is not what the tribe may or may not do when

granted Federal recognition. The question is, have they proven their case by clear and convincing evidence.

And, as to a comment made by Chief Chamberlain, I can assure you, sir, that Oakland county is not interested in buying a tribe. As its elected representative, I am interested in them fighting against the maxim that justice delayed is justice denied. Thank you.

[The prepared statement of Mr. Patterson may be found at end of hearing.]

[Applause.]

Mr. CALVERT. I thank the gentleman.

Mr. Kildee, you're recognized for questions.

Mr. KILDEE. Thank you very much, Mr. Chairman.

I have a question first of all for Chief Chamberlain. From what I've heard today, there seems to be some confusion about the circumstances surrounding the reorganization of the Saginaw Chippewa Tribe under the Indian Reorganization Act. Could you explain to this Committee exactly what occurred and the impact it had?

Mr. CHAMBERLAIN. In 19—under our—when our constitution was formed?

Mr. KILDEE. The Indian Reorganization Act.

Mr. CHAMBERLAIN. For our tribe specifically?

Mr. KILDEE. Yes, right.

Mr. CHAMBERLAIN. Well, again, the group of the Swan Creek Black River and those living within the area of Isabella Reservation, which were comprised of both the Ojibwa, Odawa and the Potawatomi—our whole existence is based on the compilation of those people. The same treaty areas that we're talking about today and that have been discussed by them are the same exact treaties we're formed under. The same ceded land territories. How are you going to split that?

You'd have to split that. When we were organized in 1936—when IGRA came about and our tribe was formed and we formed our first constitution—it was based on everything that they're claiming now, that this particular group is claiming. And, I guess my question is—and kind of a question back to just anybody in the room—how can they split off from everything we're based on? Everything we're based on. I mean, that's what the Saginaw Chippewa Tribe—and I'm sorry but the majority of the treaties were also signed by our group, too, and only one or two were solely done by the Swan Creek Black River.

I sit before you as a Swan Creek Black River person, myself. I don't know if that answers your question or not, but——

Mr. KILDEE. It does. Could you also—there seems to be some confusion about article VI of the 1855 Treaty. Could you give some explanation of its impact?

Mr. CHAMBERLAIN. I would like to defer, if I could, those questions to our ethno-historian.

Mr. KILDEE. Sure.

Mr. GERALD GOULD. Mr. Chairman? Could I——

Mr. KILDEE. Chief Gould, I'm still talking to——

Mr. CALVERT. The gentleman, Mr. Kildee, controls the time at the present moment.

Mr. KILDEE. Could I have counsel come forward?

Mr. CALVERT. Will the gentleman recognize himself at the microphone, please?

Dr. MCCLURKEN. Thank you for calling me, Congressman.

Mr. CALVERT. Please recognize yourself for the record.

Dr. MCCLURKEN. My name is James Michael McClurken and I'm an ethno-historical consultant for the tribe.

Mr. FALEOMAVAEGA. Mr. Chairman, may I suggest that the gentleman can sit on the dais there in the bottom? It would probably be easier——

Mr. CALVERT. I would say the gentleman—he can pull up a chair or——

Mr. KILDEE. I will pull up a chair, Mr. Chairman.

Mr. CALVERT. If you could please spell your name for the Clerk?

Dr. MCCLURKEN. M-C-C-L-U-R-K-E-N. Sir, the dissolution language in the 1855 Treaty has no implemental meaning for the Saginaw Swan Creek or Black River Chippewas at all. That language was created in a treaty that was negotiated 2 days earlier with the Ottawas and Chippewas on the west side of the state.

In 1836, Henry Schoolcraft and Lewis Cass invented a tribe called the Ottawa and Chippewa Nation of Michigan. That tribe was created to compel the Ottawas—who had determined not to sell their land in Michigan to the United States—to sell. The Chippewas who were also parties to that treaty were determined to sell the land. And, the Chippewas who were part of the delegation were also the relatives of the Indian agent at the time. To force the Ottawas to sell, he told them that the Chippewas were willing to sell and if the Ottawas didn't sign the Chippewas would get all the benefits from the sale.

The Ottawas were angry about that for 20 years. They lost all of their land, they lost their annuities, they lost their reservation and, when they made a treaty with the United States in 1855, they insisted that the fictitious tribe called the Ottawas and Chippewas of Michigan be dissolved and that each of the independent tribes be allowed to negotiate in their own interest. That was done at the insistence of the tribe itself. I've submitted documentation in my report from the treaty journal itself to show the origin of that language.

The Treaty of 1855 negotiated with Saginaw Chippewas 2 days later incorporated a lot of the language of the treaty that was made previously. The treaty with the Saginaw Chippewas was almost an afterthought for the treaty negotiators at that time. The Chippewas had no reservations in Michigan, they had no remaining annuities, and, as an afterthought, they negotiated a treaty to try to solve a bad political problem.

The dissolution clause in the 1855 Treaty with the Saginaw Chippewas had no operative meaning; in fact, that language was never raised in any discussions about that treaty with the Saginaw Chippewas until the year 1870, after the Saginaw Swan Creek and Black River Chippewas had negotiated another treaty with the United States.

The Indian agent in 1870 questioned the Commissioner of Indian Affairs on whether or not a tribe that was dissolved could negotiate a valid treaty with the United States. And, the Commissioner of In-

dian Affairs examined the situation and said, yes, they are an Indian tribe and they can negotiate a valid treaty. The dissolution language of the 1855 treaty was never again used in documents that I've seen concerning the Saginaw Chippewa Tribe, though it was raised and was used consistently to harm and damage the interests of the Ottawas and Chippewas from 1870 up until 1970.

Mr. KILDEE. The time has expired——

Mr. CALVERT. Does that answer your question?

[Laughter.]

Mr. KILDEE. And that is—you will submit that for the record?

Dr. MCCLURKEN. That has been submitted for the record, sir.

Mr. KILDEE. It has been, for the record. Right.

[The information referred to may be found at end of hearing.]

Mr. KILDEE. Very good. I think my time has expired.

Mr. CALVERT. I'm sure we'll be coming right back to you——

Mr. KILDEE. Yes, the second round.

Mr. CALVERT. Mr. Knollenberg.

Mr. KNOLLENBERG. Thank you very much. I would like to extend as a matter of courtesy to all of the witnesses the opportunity to revise and extend their remarks and to submit in its entirety all of their summary, comments, charts, et cetera and, in particular, I believe it may already be a part of the information——

Mr. CALVERT. Indeed, all of these can be submitted to the record——

Mr. KNOLLENBERG. Including the chart, in particular?

Mr. CALVERT. Including the chart.

Mr. KNOLLENBERG. Thank you, Mr. Chairman. Thank you.

I had to pause a little bit when I have heard it from a couple of different people—in fact, I think three now—that have testified that Congress should not meddle in this affair, Congress should get out. Congress was involved in the problem in the first place. That's why we have the difficulty that we're trying to straighten out today. That's why the injustice was created.

And, frankly, Congress has the responsibility of taking care of its problems and this is one we're bringing to their attention today. So, I think it's perfectly within the rights of Congress obviously to deal with that.

Let me suggest also—I know there's been reference made by a couple of the folks who have testified here—that we should use the system that's in place which may take 10, 15, 20 years. And, when you think about it for a moment, when an injustice was created by Congress why should it take 10 or 15 or 20 years? There should be something far simpler, far more quickly done that would provide the proper recognition for the Act that took away their sovereignty some time back.

I would like to refer to Chief Gould for a moment to respond to the testimony which I have a very difficult time understanding provided by the historian just a moment ago. And, if he wishes and if it were in order, Mr. Chairman, he could refer to the historian of their tribe.

Chief?

Mr. GERALD GOULD. Thank you very much. What I'd like to do is take this opportunity to have our consultant, Dr. Michael

Lawson, to respond to the comments made previously, if the Chair will allow.

Mr. CALVERT. The Chair will allow it.

Mr. GERALD GOULD. Thank you.

Mr. CALVERT. Just find a microphone on the other side.

Mr. LAWSON. I have prepared a statement that runs approximately five——

Mr. CALVERT. Please identify enter your name into the record.

Mr. LAWSON. Yes. My name is Michael Lawson. I am a historian and I have a wide range of experience evaluating and comparing relative the merits of tribal entities seeking recognition through both the Bureau of Indian Affairs process and through legislation. I am also familiar with Ojibwa history, having grown up in Genesee county, one of the six counties in which the Swan Creek Black River people primarily reside.

For nearly 10 years, I was a historian with the BIA's Branch of Acknowledgement and Research, providing technical assistance to unrecognized tribes, evaluating the evidence contained in documented tribal petitions, and occasionally reviewing the evidence presented by tribes seeking recognition or restoration by Congress. I also helped draft the current revisions to the acknowledgment regulations. As a private consultant, I have conducted research and assisted unrecognized tribes seeking Federal recognition over the last 5 years.

On the basis of my experience and the extensive and high quality documentation I have reviewed, it is my conclusion that Swan Creek Black River presents a particularly compelling case for Federal reaffirmation.

Swan Creek Black River is a legitimate, treaty-based, tribal entity that represents a politically, socially and geographically distinct Indian community whose members have verifiable Ojibwa ancestry.

For years, Swan Creek Black River and its members and researchers have been gathering historical, anthropological and genealogical information and evidence that fits both the BIA and congressional evaluations of what is required based on the seven mandatory criteria set forth in the acknowledgment regulations. In my opinion, based on this evidence, if Swan Creek Black River were to submit a documented petition to the BIA, this tribe would have a very favorable chance of being acknowledged as a federally recognized tribe.

I am also of the fervent opinion that Swan Creek Black River could qualify for expedited consideration under the acknowledgment regulations based on its previous Federal recognition, perhaps as recently as 1982, when it was treated as having collective rights in a tribal judgment award of the U.S. Court of Claims—and I might add that Swan Creek Black River is still considered an active petitioner in the BIA process.

I have submitted to the Committee a more detailed statement summarizing the evidence collected by Swan Creek Black River that likely meet all seven of the acknowledgement criteria. However, I think it is important to note that Swan Creek Black River satisfies the tribal membership criterion, contrary to the claim that we've heard here that it is a splinter group where membership is

composed primarily of people enrolled in Saginaw Chippewa Tribe. About 80 percent of the Swan Creek Black River members are enrolled only with Swan Creek Black River, while the number of Swan Creek Black River members currently constitute approximately less than 1 percent of the Saginaw Chippewa membership. Most of these people are members of an unrecognized tribal group and do not receive Federal services.

[Applause.]

Mr. LAWSON. It is not unusual for members of unrecognized tribes also to be enrolled in other tribes prior to recognition. Such was the case, for example, of Lac Vieux Desert Band of Michigan, nearly all of whose members were previously enrolled in other tribes. Congress has recognized tribes for which it determines the administrative process is not appropriate because of compelling, extenuating, historical circumstances and because the administrative process has proven neither timely nor efficient.

In the 20-year period since the acknowledgement regulations were established in 1978, the BIA has resolved only 25 cases, a historical average of 1.25 cases per year. Still lacking adequate resources, the BIA now faces an overwhelming backlog of 27 fully acknowledged—fully documented but yet unresolved cases. At the present rate, the BIA might not take final action on Swan Creek Black River—for more than 20 years. This would mean that a generation of Swan Creek Black River elders would pass on without ever having the benefit of their right to continuous Federal recognition.

[Applause.]

Mr. LAWSON. It is neither appropriate nor fair that this tribe should have to wait 20 years or more to demonstrate that it meets the acknowledgement criteria since 1982 and, even if H.R. 1154 or a similar bill or reform legislation were enacted, it could take years before the new procedures were promulgated and even more years to clear the present backlog of cases.

Since 1982, Congress has legislatively recognized or restored eight worthy tribes that were also acknowledgement petitioners, including four in Michigan. Of the four Michigan tribes, however, only two proceeded very far in the BIA's process: the Little Traverse Band of Odawa and the Little River Band of Ottawa submitted letters of intent to proceed through the acknowledgement process. But, they never did. Instead, these tribes secured legislative recognition in 1994.

My review of the evidence in these cases convinces me that Swan Creek Black River is similarly situated—if not better situated—than these other legislatively recognized tribes. In summary, while the acknowledgement process might be the best method for evaluating probably 95 percent of the unrecognized tribes that are still out there, given the extenuating circumstances that I have described it is more appropriate and fair for Swan Creek Black River to be reaffirmed legislatively.

And, in closing, I'd like to say that based on my knowledge of the history and issues involved it appears that the Saginaw Chippewa have badly distorted the facts and mischaracterized the Swan Creek Black River people and their history. Such——

[Applause.]

Mr. CALVERT. The Chair would ask the audience to refrain from public adulation.

Mr. LAWSON. Such audacious prejudgment of the case also ignores the fact that, one, the granting of tribal recognition or restoration is solely the Federal Government's decision to make and not the Saginaw Chippewas; and two, that this is not an adversarial process. Furthermore, not even the Saginaw Chippewa can credibly deny that the Swan Creek Black River have a constitutional right to petition Congress to address an unresponsive governmental bureaucracy.

Thank you, Mr. Chairman. That concludes my remarks.

[The prepared statement of Mr. Lawson may be found at end of hearing.]

Mr. CALVERT. I thank the gentleman.

The gentleman from American Samoa. The gentleman is recognized for 5 minutes.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I do have a couple of questions and I wanted to thank my good friend, Congressman Knollenberg, to again reemphasize the fact that Congress has the plenary authority to do whatever it pleases as it relates to the nations of the Indian tribes under the Constitution of the United States.

There are some problems that I would like to share with the members of the panel.

I would like to ask Chief Chamberlain, how many members make up the Saginaw Tribe?

Mr. CHAMBERLAIN. Approximately 2,800.

Mr. FALEOMAVAEGA. Twenty-eight hundred. And, Chief Gould, how many do you claim to represent in the Swan Creek Tribe?

Mr. GERALD GOULD. Approximately 200.

Mr. FALEOMAVAEGA. Am I correct to say that every Swan Creek and Saginaw are interrelated?

Mr. CHAMBERLAIN. I am Swan Creek Black River.

Mr. FALEOMAVAEGA. Chief Gould, are you also Saginaw?

Mr. GOULD. No. No, I'm not; I'm just Swan Creek Black River.

Mr. FALEOMAVAEGA. I noticed that Secretary Gover had indicated that the Swan Creek did file a letter of intent with the division of the BAR, they call it—the fancy title of the BAR—in 1993. Was that true?

Mr. GERALD GOULD. Yes.

Mr. FALEOMAVAEGA. Did you then receive an OD from the Department of the Interior—it's called an letter of Obvious Deficiencies and Significant Omissions. Has your tribe followed through since 1993 in responding to those areas of concern by the division of BAR?

Mr. GERALD GOULD. We have done extensive research since 1992, 1993 and we looked at the difficulties of going through the current Federal application process and, based upon being a treaty-based tribe, have not continued that process after we researched it.

Mr. FALEOMAVAEGA. So, in other words, after receiving your OD from the—from this division that there——

Mr. GERALD GOULD. Well, because we did not receive an OD.

Mr. FALEOMAVAEGA. You didn't?

Mr. GERALD GOULD. No.

Mr. FALEOMAVAEGA. Secretary Gover, can you respond to that?

Mr. GOVER. No, that's correct. They've not received a letter of Obvious Deficiencies. They've only filed a notice. They haven't actually filed a petition, yet.

Mr. FALEOMAVAEGA. But, the BAR did not provide any response to the tribe?

Mr. GOVER. Only to acknowledge receipt of their letter of intent. But, we've received no further information from the tribe since that time.

Mr. FALEOMAVAEGA. I want to say to both Chiefs here, this is the very thing that I feared very much. Now we have two historians fighting among themselves as to who's telling the gospel truth about the case at hand and it's really sad to see that we're—I just can't conceive how we, as members of this panel, are going to be overnight experts and say who's telling the truth and who's not.

And, I find it very difficult to see how we're going to find a solution to the fact that everybody agrees that the current system of giving recognition to tribes is totally unacceptable. But, coming to that agreement and having tried for the past 6 years to provide legislation to provide a more fair system of recognition—and that has failed—so we're right back to "square one" and I'm sorry to say that we were not able to resolve that issue.

I'd like to ask the historian for Chief Gould, if I could, you were personally involved as a historian with the recognition process and worked for the Department of the Interior, am I correct?

Mr. LAWSON. Yes, that's correct; from approximately 1984 until 1993.

Mr. FALEOMAVAEGA. And during that 10-year period, did you think the BAR was doing a great service to the Indian communities seeking recognition?

Mr. LAWSON. I think we were doing the best job that we could under the circumstances and I think that the circumstances are that there weren't enough resources for us to do a job in a timely manner.

Neither, I might add, do I think that there are enough resources for tribes that are seeking Federal recognition to adequately have allowed them to document, to present the large documentary record that's required by the acknowledgement process.

Mr. FALEOMAVAEGA. Recognizing the fact, Chief Gould, that since 1993 you felt that the system of Federal recognition was just bizarre, why have you waited until now to ask the Congress to give full recognition to your tribe? Why didn't you request immediately that let the Congress do the recognition process rather than BAR?

Mr. GERALD GOULD. Well, it's—even the legislative process is difficult. Even the legislative process is complicated for people who don't understand it. Plus, we were gathering documentation.

The case that we present to you today is the result of years and years of research, both here in Washington, DC—where you have the majority of the records and we don't live—and the State of Michigan, and we have spent many, many years gathering the documentation that we provide to you today. But, also, we're not familiar with the entire legislative process as well.

Mr. FALEOMAVAEGA. My problem, Chief Gould—I know, Mr. Chairman, my time is up—you're to come up with 5,000 pages to

justify your position and Chief Chamberlain is going to come up with 5,000 pages justifying his position and then it puts us in a very difficult situation who is who and what and where and, you know, what do we want to do about this. That's my problem and I'm sorry that my time is up.

Mr. CALVERT. You have the staff worried. That means they'd have to read 10,000 pages.

[Laughter.]

Mr. CALVERT. The gentleman from Michigan, Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman, and I want to follow up on the comments of my friend from American Samoa.

Mr. Gover, let me ask you this. If I understand your testimony correctly, the Department of Interior is opposed to H.R. 2822 because there are many unanswered questions regarding this situation.

Mr. GOVER. That's correct.

Mr. CAMP. And, I know that you have questions regarding the group's membership, their history, their community and their tribal government. In fact, I believe you don't even have a current membership list of the Swan Creek Black River Tribe. Is that correct?

Mr. GOVER. That's correct.

Mr. CAMP. And, because of that I know that you feel you could use more information and that because so little information has been provided to you that you aren't even in a position to adequately evaluate the political relationship between the group and the Saginaw Chippewa Tribe.

Mr. GOVER. That's right. At this point, we have no idea. We don't even know who the group is because we don't have a membership list. So, we're unable to say whether they're even Indians except by looking at them and that's usually not good enough for Federal recognition. That's why we would much prefer to, at least, make some progress on the BAR process so that we can have our historians who have no axe to grind here take a look and give us their best opinion on whether or not this group is a separate Indian tribe.

Mr. CAMP. And, the two bands signed a treaty in 1855 and a later one in 1864 which established a reservation for these bands right near Mt. Pleasant, Michigan. Is that accurate?

Mr. GOVER. That's my understanding, yes.

Mr. CAMP. And that you don't have any clear evidence that the Swan Creek band remained after these treaties as a separate and distinct entity or independent tribe?

Mr. GOVER. We don't rule that out but we have no such evidence at this point.

Mr. CAMP. And you haven't received any evidence since 1993 to the contrary?

Mr. GOVER. Only a very minimal amount of evidence.

Mr. CAMP. Is it also true that, in 1986, in the Distribution of Judgment of Funds Act, there was a provision that said that the Saginaw Chippewa Tribe should open its enrollment for 18 months and that was open to individual who could demonstrate either Swan Creek or Saginaw Chippewa ancestry, is that correct?

Mr. GOVER. Yes.

Mr. CAMP. And, because of that, tribal membership increased during that 18 month enrollment period?

Mr. GOVER. Considerably, yes; it tripled.

Mr. CAMP. And you believe that much of the off-reservation Swan Creek band were likely to have become members of the tribe during that open enrollment process——

Mr. GOVER. Yes.

Mr. CAMP Is that true?

Under this legislation, there is a 12-county service area proposed for this tribe, which would include the most populated counties in the State of Michigan—including the entire city of Detroit. Are there any problems with a service area of that size?

Mr. GOVER. Well, there are. That's unusually large for the tribes in Michigan and I notice that they define a service area as basically the aboriginal lands before their Treaty of Detroit. And, that's a very considerable service area for a tribe in that part of the country. It will certainly tax the tribe's resources and our own to be able to serve people in that broad of a geographic area.

Mr. CAMP. Thank you very much and I would just say that I think this is why the specialized staff of BAR exists—for reviewing this complex information and for analyzing these petitions for Federal recognition—and I guess, again, I would say that this process has not been utilized fully. There are some situations where unfair denial has occurred in the history of this country but there is a process there that is available and open and it's clear that that has not been used yet. And I would again thank the chairman for allowing me to testify and also to be a part of the panel later. Thank you.

Mr. CALVERT. I thank the gentleman. If everyone will be patient for a minute, Mr. Kildee has a couple of extra questions——

Mr. GERALD GOULD. Mr. Chairman?

Mr. CALVERT But before I do that, I'm going to go through a little business of this Committee and then I'll be recognizing Mr. Kildee and others for another round of questions.

Mr. GERALD GOULD. Could we have an opportunity to respond to the——

Mr. CALVERT. The gentleman will have some time to respond after I get through with this additional business.

[Whereupon, at 2:36 p.m., the committee proceeded to other business, to resume at 2:37 p.m.]

Mr. CALVERT. [presiding] Mr. Kildee.

Mr. KILDEE. I thank you again, Mr. Chairman.

Back in the—it would be 10 years ago or more, I introduced and was chief sponsor of a settlement bill for the Saginaw Chippewa Tribe. Were the Swan Creek Black River members of the Saginaw Chippewa Tribe involved in that settlement and in the distribution of that settlement? Chief Chamberlain?

Mr. CHAMBERLAIN. Yes, they were.

Mr. KILDEE. They were. So—and, in that, the settlement was between the sovereign nation of the United States and the sovereign Saginaw Chippewa Tribe and the Swan Creek Black River people participated in that settlement?

Mr. CHAMBERLAIN. Definitely. Again, I want to clarify the earlier question just for your own clarifications, if you don't—if it didn't make sense. When he asked me how we're interrelated, I said I was Swan Creek Black River. What I mean by that—and this is

how I participated—I'm a descendant of the Swan Creek Black River people. Within tribes, they'll ask you, I'm a turtle clan, I'm bear clan. I am a descendant—and that's where I descend totally from—but I'm Saginaw Chippewa and that's what compiles—I mean, it was a question that you asked earlier, that's why——

Mr. FALEOMAVAEGA. It was my question.

Mr. CHAMBERLAIN. Yes. But, that goes and it correlates into what you just asked. Yes, they participated.

Mr. KILDEE. So, they were—it was a settlement between the sovereign United States and the sovereign Saginaw Chippewa Tribe and the Swan Creek Black River were involved in that settlement as members of the Saginaw Chippewa Tribe?

Mr. CHAMBERLAIN. Definitely.

Mr. KILDEE. Let me ask this to Mr. Gould. You sent your letter of petition—or a letter of intent, I should say—in 1993. Why did you not ever followup with a formal petition?

Mr. GERALD GOULD. For two reasons, Congressman. One, we were following—we examined the process of the BAR, which is extensive, we realized it could take us 15 to 20 years. Two, we were in the process of doing research and the research and documentation that you have here today. And, three, after realizing that we had been federally recognized before in numerous treaties, that we wanted to reaffirm our trust relationship through the legislature, which was the appropriate method to go.

Mr. KILDEE. I always, myself, whenever I introduce a bill call it reaffirmation because you're—the sovereignty of the Saginaw Chippewa Tribe, for example, was not granted to them. It was a sovereignty they retained before the first Europeans ever came here.

Let me ask you this—another question. Were you ever yourself, Mr. Gould, considered a member of the Saginaw Chippewa Tribe?

Mr. GERALD GOULD. Yes.

Mr. KILDEE. Did you participate in the government——

Mr. GERALD GOULD. I was a member of Swan Creek——

Mr. KILDEE. [continuing] of the Saginaw——

Mr. GERALD GOULD. [continuing] Black River.

Mr. KILDEE. OK. As the present Chief participates.

Were you ever involved in the government of the Saginaw Chippewa Tribe?

Mr. GERALD GOULD. Yes, I was involved and I felt I was representing Swan Creek Black River.

Mr. KILDEE. What capacity were you involved in the government of the Saginaw Chippewa?

Mr. GERALD GOULD. The tribal council of Swan Creek Black River.

Mr. KILDEE. You were on the tribal council of the Saginaw Chippewa Tribe.

You brought documentation here. Do you intend to turn that documentation over and complete your letter of intent to Kevin Gover on trying to achieve recognition in that manner?

Mr. GERALD GOULD. What is the question?

Mr. KILDEE. Well, you brought a box of documentation here——

Mr. GERALD GOULD. Right.

Mr. KILDEE. [continuing] for our staff to look over. Will that documentation also be sent to the BIA as part of the BAR process?

Mr. GERALD GOULD. It's part of the legislative process that we're involved in now. That's why we're turning the documentation over to you.

Mr. KILDEE. So, you are precluding, then, using the BAR process?

Mr. GERALD GOULD. Because we feel that it's not appropriate. Just like other tribes that you have supported to go through the legislative process, we feel it's not appropriate for us either.

Mr. KILDEE. Well, the Huron Potawatomi band, about 2 years ago, went through the BAR process and achieved recognition. That's another Michigan tribe that received recognition through the BAR process. It would seem to me that you might want to pursue that BAR process as the Huron band of the Potawatomis did. And, they did get their sovereignty reaffirmed. Why are you reluctant to go through the BAR process?

Mr. GERALD GOULD. Because we feel we're akin to the two Odawa groups—Little River and the Grand Traverse bands—which went through the legislative process which didn't really provide—well, it provided probably as much as documentation as we have to the BAR.

Mr. KILDEE. Yet, the Huron Potawatomi—they found a successful road to follow and got recognition through the BAR process and that's a Michigan tribe——

Mr. GERALD GOULD. Right.

Mr. KILDEE. [continuing] also. The Potawatomi, I know, are not quite Odawa or Chippewa but—or the Algonquin—it would seem to me that precluding the BAR process and not following through with your letter of intent might be reconsidered.

Mr. GERALD GOULD. Well, that's what Little River did and we know the process that we're going through now is one that is not precedent-setting and we know that you're aware of, for example, in Michigan that Sioux Saint Marie had previously been a part of Bay Mills and they realized—the U.S. Government realized—that they had made an error, that they had combined two tribes that were separate politically. They were both Ojibwa but they had different tribal Indian entities.

This error occurred again by previous government when Keweenaw Bay was combined with Lac Vieux Desert; two different Ojibwa groups of people—like we are—geographically apart and the United States, at their request, was able to resolve the situation and allow the two groups to be recognized separately.

So, now there is Lac Vieux Desert, there is Keweenaw Bay, there is Sioux Saint Marie, there is Bay Mills. These are separate, political Indian entities and the U.S. Government realized that mistake just like when we had been artificially combined with other groups of Ojibwa, Potawatomi, Odawa up in Mt. Pleasant. We had been relocated there by our Treaty of 1836 and our previous Treaty of 1807, which established our own—our singly own—reservation, and an amendment was made that, you know, the geographic areas are going to be separated.

No, we are not from the Saginaw Valley area. Unfortunately, good, bad, or indifferent, we have no control over history but we are from southeastern lower Michigan, which is Swan Creek. That is where our people lived, that is where our treaties were devel-

oped, that's where our reservations were. We had approximately 12 square miles of reservations down in that area and that's where we're from. That's where our people lived until we were relocated.

And, even after we were relocated to the reservation, we continued to be separate because we still maintained our annuity roles separately from other tribes while we were there.

Mr. KILDEE. Thank you. Before I close, I'd like to just thank Kevin Gover for everything he's done to improve this administration's relationship with the Indian tribes. I find it a pleasure of working with you, Kevin, and I just wanted to put that on the record.

Mr. GOVER. Thank you.

Mr. CALVERT. I thank the gentleman.

Mr. Knollenberg.

Mr. KNOLLENBERG. Mr. Chairman, thank you very much.

I have a quick question for Mr. Gover. How long would it—if you had everything tomorrow—if you had all the documentation you needed, everything in your lap, how long would it take you to come to a point of Federal recognition?

Mr. GOVER. I don't know the answer to that. It's a hard question.

Mr. KNOLLENBERG. No, no, no. You had it all tomorrow. If you had all tomorrow. It's on your lap. You've got it. How long does it take you to come to the grips with the question and determine one way or the other?

Mr. GOVER. It would depend upon my willingness to bump aside a number of other petitioners who have been waiting a long time. If we took in that information and told you we were going to consider it starting tomorrow, maybe a year from now we'd have a determination from the BAR staff.

Mr. KNOLLENBERG. Maybe a year?

Mr. GOVER. I'm not going to tell you that we would do that because I'm not, at this point, willing to set aside those other petitioners.

Mr. KNOLLENBERG. But you could do it in a year?

Mr. GOVER. We could probably do the initial round of findings. The way the process works, we do an initial round of findings, put it out for comment from the public from the interested parties and the petitioner, and then we consider those comments. So, it's a process of probably 2 years from the moment that we actually begin active consideration.

Mr. KNOLLENBERG. With all of the other petitions, how long would it take?

Mr. GOVER. Well, that's what I say. I don't know. A lot of those petitions fall by the wayside over time.

Mr. KNOLLENBERG. So, it could be sooner.

Mr. GOVER. Pardon me?

Mr. KNOLLENBERG. It could be sooner.

Mr. GOVER. Sooner than 2 years? No, sir; it cannot be any sooner than that.

Mr. KNOLLENBERG. It's interesting how you came to that determination. But, I would just say to you that it would seem to me that if you had everything tomorrow, it would not take quite so long. And, you could give us something in terms of a finite date that might suggest when.

I want to turn and yield some time now to Chief Gould, who might wish to respond in closing or through the historian on any matter that was brought up during the previous questioning.

Chief Gould.

Mr. GERALD GOULD. Thank you, Congressman. I would like to have our expert from the BAR respond to your question on the length of the BAR process, assuming that they had all of the documents immediately.

Mr. LAWSON. Well, if there was a consideration to waive the other active petitioners at this point, there are approximately 27 fully documented petitions before the BAR as of their latest petition status sheet. There are approximately 15 that are in various stages of active consideration and about 12 that are on the waiting list.

So, if you do the math—there's 27 cases that are unresolved at this point and the historic record has been that they've been resolving 1.25 cases per year, then—without a waiver of those other cases—you're looking at approximately 20 years before you'd get a final decision, in my view.

Mr. KNOLLENBERG. That contrasts sharply with what I just heard from the other gentleman.

Any other comments? Chief Gould?

Mr. GERALD GOULD. Congressman Knollenberg, may our allow our subchief to do our summary for us?

Mr. KNOLLENBERG. Very good.

Mr. GERALD GOULD. Thank you.

Mr. CALVERT. This will be the final witness.

Would you please recognize yourself for the record?

STATEMENT OF HAROLD GOULD, ADMINISTRATIVE SUBCHIEF, SWAN CREEK BLACK RIVER

Mr. HAROLD GOULD. My name is Harold Gould, Administrative Subchief of Swan Creek Black River.

Mr. CALVERT. The gentleman is recognized.

Mr. HAROLD GOULD. OK. I'm here—it's very much of a preponderance to me of what words I put forward to you of our peoples. We were a separate nation. We've been waiting a long time. In 1934, we were rejected. In 1855, we were combined.

We just seek justice. We seek justice for our people—for our old people and our children and children unborn. We've been waiting a long time. I've been associated with the Saginaw Chippewa. I dearly love those people, a wonderful people. But, they are not my people.

Kevin has worked earnestly and hard to bring about change and he has been successful in some areas and I've been very supportive of him in this change. I feel that, all in all, we still need our people who are the leaves in the fall which blow across a stream, who fill the earth. We just want a small piece to reside. That is all we ask for; we don't ask for all of Detroit, we don't ask for anything like that, we just want a place to raise our children, a place to continue our culture. That's all we ask for.

We want to work with the Saginaw Chippewas. They're brothers, just like us. And, we want to help each other, lift each other up. That's what it's all about. These people have travelled a long dis-

tance here. Most of them are not members of the Saginaw Chippewa Tribe or will never be members of the Saginaw Chippewa Tribe, as the constitution has forbade. And, for them, we strive. We are willing to give up all for them. That is the hope of our future. That is true tribalism, as we understand it; giving to each other, sharing with each other, and maintaining our culture together.

This, I feel—this striving effort which we must make—we understand Kevin Gover here is working very diligently for Indian people but, unfortunately, Congress has chosen repeatedly in the past to underfund the Bureau. That is the reason for the bottleneck. If he had had enough money, he could resolve these issues immediately. But, Congress is the fault, not Kevin, not the previous Director.

We only ask for our little piece of land. We ask for a future for our children. That's all we ask for. I ask you to render a favorable decision for us. Give us a chance for the future. Give us an opportunity to live as we're meant to live. We have been pursuing this vision for decades; one generation after another have been handed this same vision. It is an effort and a burden upon. We have spend unending hours pursing it. And, now, we are about to achieve, or we hope to achieve, with your help and that's all we ask.

Mr. Kildee, you have been strong in supporting Native people through out history. Your whole life is dedicated to helping Native people. We ask that you support us. Don't turn your back. We ask that you bring—vote for it and we hope that, in the future, our people and the Saginaw Chippewa people will work together to uplift ourselves, bring out some meaningful change for the entire Native American community.

Thank you very much for hearing me out. Any questions? I'll be happy to answer them.

Mr. KNOLLENBERG. Mr. Chairman, I do not have any questions. I would like to yield back my time. Thank you, thank Mr. Kildee, thank the entire group that's assembled here today for your courtesy in allowing this testimony and we very much appreciate your allowing us that extension of courtesy. Thank you.

Mr. CALVERT. I thank the gentleman.

Mr. Kildee has a quick change in a statement that I know. The gentleman from American Samoa has a quick closing statement. I'm attempting to close the hearing up by 3 o'clock for our commitments.

So, Mr. Kildee?

Mr. KILDEE. This is primarily for the court reporter but I meant to say the Huron Band of Potawatomi and I may have said Huron Band of Pokagon. But, there's a Pokagon Band of Potawatomi. So, for the record, I was referring to the Huron Band of the Potawatomi.

Mr. CALVERT. I thank the gentleman..

Mr. FALEOMAVAEGA. For the record, I want to commend Assistant Secretary Gover with whom I've had the privilege of working very closely with in developing and streamlining this proposed legislation that was defeated yesterday by the House to better improve the procedures on how to federally recognize a Native American Indian tribe.

I would be the last person sitting here, as a member of this Committee, to say that I know all about the differences between the

Chippewas and the Ojibwas. And, to suggest that we're going to make a judgment on this thing—I want to, again, recall the suggestion by our friend from Michigan, Congressman Knollenberg.

It is my sincere hope that Congressman Kildee, our colleague on this side of the aisle, and the members of the Majority will sit in council again with the leaders of both groups and hopefully that there will be some common solution to this problem. I sincerely hope that we will be able to do that and, again, thank both Chief Gould and Chief Chamberlain, again. I can't make a judgment. I mean, I'm a chief myself but a small chief. But, I sincerely hope that we will find a remedy to this problem before the Committee.

Thank you, Mr. Chairman.

Mr. CALVERT. I thank the gentleman, and, in closing, I would say as the others have pointed out that hopefully during the Thanksgiving holiday, everyone gets together and attempts to work out some remedy to this very complex problem. And, we thank you for traveling such a great distance to testify at this hearing today. I'm sure we have not heard the last of this and look forward to seeing you probably next year, if Mr. Knollenberg has anything to say about it.

With that, this hearing is adjourned.

[Whereupon, at 2:55 p.m., the Committee adjourned subject to the call of the Chair.]

[Additional material submitted for the record follows.]

STATEMENT OF KEVIN CHAMBERLAIN, CHIEF OF THE SAGINAW CHIPPEWA TRIBE OF MICHIGAN

Introduction

Good morning, Congressman Calvert, Congressman Kildee and Members of the Resources Committee. My name is Kevin Chamberlain, Chief of the Saginaw Chippewa Indian Tribe of Michigan. Thank you for the opportunity to appear before this distinguished body to voice the Tribe's opposition to H.R. 2822.

My testimony will consist of brief remarks on why this Committee should oppose H.R. 2822. I respectfully request that this written testimony, including the Tribe's historical analysis prepared by Dr. McClurken, be entered into the record.

The Saginaw Chippewa Tribe vehemently opposes H.R. 2822. Any action on this bill is of utmost concern to the Tribe because its effect, if passed, would be to separate the federally recognized and long-standing Saginaw Chippewa Tribe into two separate federally recognized tribes. It would allow a splinter group to claim treaty-preserved rights, political jurisdiction and sovereignty currently held by the Saginaw Chippewa Tribe. Our position is staunchly set upon our desire to preserve our Tribe's heritage and sovereign status and to protect the tribal sovereignty of all Indian nations by preventing political factions and splinter groups from being able to secede from their tribes and create sovereign nations unto themselves.

The Saginaw Chippewa Tribe opposes H.R. 2822 because (1) the bill deals with a tribal membership issue; (2) the bill seeks to circumvent the appropriate administrative process; (3) because the driving factor behind H.R. 2822 is gaming; and (4) because the Swan Creek Group cannot meet the criteria necessary to become a tribe.

This is not a meritorious claim—it is an attempt by wealthy businessmen to buy a tribe and push a bill through Congress for the ultimate purpose of establishing a new casino in Southeastern Michigan.

Membership Issue

The Saginaw Chippewa Tribe not only opposes H.R. 2822's content, but also opposes the holding of this hearing today. With all due respect, we challenge the Resources Committee's decision to hold a hearing on this bill. H.R. 2822 deals strictly with an intra-tribal membership matter. There should be no Congressional intervention on a matter so fundamental to a sovereign nation's existence.

As you know, Indian tribes are "distinct, independent political communities"[1] qualified to exercise powers of self-government, not by virtue of any delegation of powers by Congress but by reason of their original tribal sovereignty.[2] The United States' courts have consistently held that one of an Indian tribe's most basic powers is the authority to determine questions of its own membership.[3] The Saginaw Chippewa Tribe has long been recognized by the United States as a sovereign nation and should be allowed to handle this membership issue as such.

The Swan Creek Group, the party pushing this bill, claims that they are the successor in interest of the Swan Creek and Black River Bands of Chippewa Indians. Yet, the Swan Creek and Black River Bands had always been two constituent parts of the Missisauga Chippewa, the name used before and during the treaty era when referring to the Chippewa Bands in Southeastern Michigan. Later, after the 1855 Treaty of Detroit, these bands combined with the Saginaw band to become the Saginaw Chippewa Tribe. The United States has consistently recognized the Saginaw Chippewa Tribe as the exclusive successor in interest to the Saginaw, Swan Creek and Black River Chippewa Indians. These bands are indistinguishable from one another and have no separate existence as distinct entities. For over 140 years, the Tribe has accepted the bands within its membership and provides services to all members in the process, regardless of band affiliation.

The Swan Creek Group, however, claims that they are a separate entity deserving of sovereign nation status. This is absolutely untrue. Most of the Swan Creek Group's participants are currently enrolled members of the Saginaw Chippewa Tribe, including Mr. Gerald Gould, the Swan Creek Group's organizer. In forming his group, Mr. Gould recruited members for his group by sending membership forms to enrolled members of the Saginaw Chippewa Tribe. The Swan Creek Group is merely a group of individuals who wish to split from the Tribe. Individuals who are members and beneficiaries of one Indian nation should not be able to simply secede

[1] *Worcester v. Georgia,* 31 U.S. (6 Pet.) 515 (1832).

[2] *United States v. Wheeler,* 435 U.S. 313 (1978).

[3] Felix S. Cohen's *Handbook of Federal Indian Law* citing *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978); *Cherokee Intermarriage Cases,* 203 U.S. 76 (1906); *Roff v. Burney,* 168 U.S. 218 (1897).

and create their own nation complete with the rights and privileges of all Indian tribes whether because of political differences, personal choices to live away from the reservation, or for any other reason. The existing sovereign nation to which the individuals belong should resolve such membership issues internally. Tribal politics is not a matter for Congress; it is a matter for the members of the Saginaw Chippewa Tribe and their elected leaders.

For the record, the Saginaw Chippewa's Tribal Council has exercised due diligence in addressing the Swan Creek Group's needs. Again, the Tribe serves all its members with health, education, vocational, housing and other programs without distinguishing which members may descend from the Saginaw, Swan Creek or Black River Bands. Indeed, because there has been so much intermarriage between band members over the generations, most members of the Tribe descend from more than one band. The needs of members who live off the reservation are met through its At-Large Program which provides numerous services and benefits specifically for them. None of the Swan Creek Group participants including Mr. Gould have relinquished membership in the Saginaw Chippewa Tribe and they remain eligible for all tribal benefits and rights, including gaming per capita payments.

Annually, the Tribe spends approximately $970,000 on At-Large Programs which include, but are not limited to, health services; medical services—including transportation to medical appointments; living expense needs, (food costs; house payments; rent; land tax payments; utilities) burial grants; educational seminars; and family services. Further, the Tribe spends roughly $550,000 per year on cultural enrichment programs for the At Large residents and $468,000 on medical coverage.

The programs are freely accessible to all At-Large persons. Over 1290 At-Large persons live within two-hours of the reservation and take full advantage of these programs. If the Swan Creek Group is stating that they get disparate treatment for not living on the reservation—this is absolutely not the case. They are free to take advantage of all the programs. It is not the Tribe's fault if persons live far from the reservation—it can only provide the services and programs to the best of its ability. The At-Large Programs funded and administered by the Tribe generously provide for myriad needs of the Tribe's At-Large membership.

Also, there is a seat guaranteed on the Council for a representative from the At Large District so that such individuals that comprise this District are fully represented and have a voice in the governing body.[4]

The Saginaw Chippewa Tribal Council has also met many times with representatives of the Swan Creek Group to better understand and address its concerns. In most recent meetings held earlier this year, the Swan Creek Group informed tribal leaders that no political accommodations or additional benefits would appease them. They simply want their own Tribe.

Again, it is the sovereign nation of the Saginaw Chippewa Tribe that must resolve this issue, not Congress. Congress' intervention in this manner is an affront to the Tribe's sovereignty and sets a dangerous precedent for all tribes.

H.R. 2822 Circumvents the Administrative Process

Since Congress has decided to participate in this intra-tribal issue, the Saginaw Chippewa Tribe must voice its opinion that H.R. 2822 is nothing more than an attempt to politically circumvent the appropriate process for becoming a federally recognized Indian tribe—and to do so without first contacting the Congressmen whose districts would be most affected by such legislation.

The Bureau of Indian Affairs'(BIA) Bureau of Acknowledgment (BAR) exercises the United States' authority to determine Federal recognition of Indian tribes. The BIA's Federal Acknowledgement Process (FAP), set forth in 25 C.F.R. Part 83, delineates the criteria a group must meet before it can be deemed a tribe. Since acknowledging a group as a tribe carries with it many rights and privileges, the FAP process calls for in-depth historical and cultural analysis and a finding that the group has existed as a distinct, social and political entity from the time of the last unambiguous Federal recognition. This method requires extensive ethnological scrutiny. With all due respect, Congress is not equipped with time or expertise to engage in such detailed study and review. Recognizing a sovereign nation certainly cannot rest on five minutes of oral testimony from the parties involved.

Nor should it. It is of too great significance. Recognizing a sovereign nation, must be a deliberative process. It warrants prudence, examination and expertise. This is exactly why Congress and the courts have deferred to the BIA which is specialized to handle the issue.

---

[4] Article IV, The Amended Constitution and By-laws of the Saginaw Chippewa Indian Tribe of Michigan, approved by the United States Congress by Public Law 99-346.

Legislative recognition and abandonment of the FAP process is not only heedless of longstanding procedure, but it is unjust because it allows financially supported and politically connected groups to "jump the line" ahead of legitimate tribes that have adhered to the administrative process and are awaiting review of their applications.

True, Congress has legislatively recognized tribes in the past. Yet, since the FAP process was implemented in 1978, there have only been seven instances of legislative recognition. The Swan Creek Group, in the findings section of H.R. 2822, attempts to liken its situation to that of a few tribes that recently received legislative recognition. The Swan Creek Group's situation, however, does not compare to these tribes. Those tribes had nearly completed the BAR process and were on active consideration at the BIA,[5] or otherwise had proved their long histories of being distinct social and political organizations that maintained relationships with the United States from treaty times to the present.[6] Unlike these tribes the only action the Swan Creek Group has taken towards the FAP process was the filing of a letter of intent to petition in 1993. The Swan Creek Group has not yet filed a petition, or any other documentation to further their pursuit of recognition, even after the BIA contacted the group and requested additional information from it.

The Swan Creek Group hopes for the same treatment given the aforementioned tribes regardless of the differing circumstances. It urges legislative recognition on the basis that the FAP process is too long and burdensome. It is the Saginaw Chippewa Tribe's contention that it should be. Because of the significance of becoming a federally recognized Indian tribe, there should be strict criteria to adhere to and a specialized team that ensures, without doubt, that the group's historical background justifies the granting of Federal recognition.

If the FAP process is too long or burdensome for applicants to manage, Congress' role should be to rectify the process. The answer is not to legislatively recognize groups on a piecemeal basis—especially, groups such as the Swan Creek Group. According to the BAR's Summary Status of Acknowledgment Cases, dated June 17, 1998, the Swan Creek Group is listed as #135 on the list. To grant the Swan Creek Group legislative recognition would allow it to be recognized before 134 other groups who have adhered to the administrative standard and played by the rules. Some of these groups have been waiting since 1978 for Federal recognition, long before the Swan Creek Group filed its letter of intent and long before it found money to hire powerful people to walk the halls of Congress for them. To allow H.R. 2822 to pass will only encourage other groups to seek recognition through Congress and the Resources Committee will be deluged with bills.

We request, too, that Congress give deference to the Governor of Michigan who has stated that he is strongly opposed to H.R. 2822 because it circumvents the administrative process for obtaining recognition as an Indian tribe.

Gaming Interests Fuel H.R. 2822

The motivation behind H.R. 2822 is gaming. The organizers of the Swan Creek Group have reportedly informed people of their plans to build a casino on an old racetrack at Hazelpark in Oakland County, Michigan. It is understood, too, that the group is financially backed by successful businesspersons from the Detroit area. This is the simple answer to why the Swan Creek Group is working so hard to push H.R. 2822 through and how they can afford the costly resources for the effort.

In response to the question, "What is it you want," posed by a Saginaw Chippewa Tribal Council Member to the Swan Creek Group at a recent meeting between the two parties, the Swan Creek Group answered, "We want our own tribe." Now, we understand that this is because they wish to pursue their plans for Hazelpark as expeditiously as possible. They found an interested financial backer to buy them as a tribe and legislative recognition is the quickest way to their goal. Significant, though, is that the suggested gaming site, if built, would be located in a Congressional district not represented by either of the bill's sponsors.

Congress should recognize the fundamental problems with the tactics of the Swan Creek Group. Allowing a group of individuals to be bought and pushed through Congress as a tribe to further gaming interests makes a mockery out of tribal sovereignty. Congress' only role here should be to direct the Swan Creek Group to comply with the administrative process if they wish to pursue such endeavors.

The Swan Creek Group Does Not Meet the Criteria for Federal Recognition.

---

[5] Statement of Deborah Maddox, Acting Director, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, Senate Report No. 103-260, 103rd Cong., 2nd Sess. 1994.

[6] H.R. Rep. No. 103-631, 103rd Cong., 2nd Sess., 1994; 25 U.S.C. §1300k.

It is the Saginaw Chippewa Tribe's contention that even if the Swan Creek Group pursued recognition through the administrative process, it could not meet the necessary criteria to merit tribal status. As mentioned above, the FAP process calls for an in-depth analysis of history, culture, ethnology, social and political status of an applicant. It is our understanding that the Swan Creek Group, many years ago, filed a letter of intent to apply for BIA recognition. Yet, since the group has failed to submit the required historical documentation to support their claim, the file has remained dormant. The Saginaw Chippewa Tribe believes that the Swan Creek Group failed to submit additional documentation demonstrating that the group meets the FAP criteria because such documents do not exist.

Under the FAP process, a group must have been identified as an Indian entity on a substantially continuous basis from 1900 until the present.[7] The Swan Creek Group, however, cannot meet this criteria. It has not been identified as an autonomous Indian entity. Rather, the Swan Creek and Black River Bands were considered two constituent parts of the Missisauga Chippewa until 1855. After the 1855 Treaty of Detroit, which officially joined them with the Saginaw Chippewa Tribe, the United States acknowledged the Swan Creek and Black River Bands only as part of the Saginaw Chippewa Tribe. The 1864 Treaty, the Federal annuity rolls, and the Indian Claims Commission decisions confirm this assertion. None of these documents or proceedings differentiate the bands; they all treat the Saginaw Chippewa Tribe as one tribe.

Although the 1864 Treaty mentions the three bands in its preamble, the remainder of the treaty makes it clear that the treaty is with one Saginaw Chippewa Tribe. Further, the Federal annuity rolls which provide counts of Michigan Indians during the mid-1800's distinguished between the three bands before the 1855 Treaty but not after it. Also, in the early 1970's, the Indian Claims Commission, in its efforts to resolve claims brought by the Saginaw Chippewa Tribe, conducted a detailed review of the circumstances surrounding the signing of treaties involving the Saginaw, Swan Creek and Black River Bands of Chippewas. The Commission, on a consistent basis, identified the Swan Creek and Black River Bands only as part of the Saginaw Chippewa Tribe.

Further, the Swan Creek Group does not comprise a distinct community from historical times until the present as called for in the FAP process.[8] The Swan Creek and Black River Bands have long lived with the Saginaw Chippewa Tribe, so much so that individual members cannot tell from which band they descend. If there ever was any meaningful distinction among the bands, it was fully eroded with the signing of the 1855 Treaty of Detroit. Also, the Swan Creek Group has not maintained any political authority over its participants as is required in the FAP process.[9] There were no actions taken by an individual constituent band of the Saginaw Chippewa Tribe which displays any political authority of a particular band after the 1855 Treaty of Detroit. The authority always was in the governing body of the Saginaw Chippewa Tribe. It is the Tribal Council that governs the tribe and deals with the Federal Government. The Swan Creek Group is nothing more than a splinter group of the Saginaw Chippewa Tribe and should not be recognized as its own entity.[10]

The Swan Creek Group's Arguments

One of the Swan Creek Group's main arguments for Federal recognition seems to be based upon the interpretation of the 1855 Treaty of Detroit and the circumstances surrounding the reorganization of the Saginaw Chippewa Tribe. Our historical analysis, which is attached as a part of this testimony, explains in detail how a close look at these two events can only conclude that the Federal Government meant to deal with one tribe, the Saginaw Chippewa Tribe, consisting of the Swan Creek, Black River and Saginaw Bands of Chippewa.

The 1855 Treaty of Detroit joined the three bands as the one Saginaw Chippewa Tribe and the reorganization of the Tribe included members regardless of from what band they descended. The constitution the Tribe submitted for reorganization reveals the intent to reorganize as one tribe when stating, "We, the members of the Saginaw, Swan Creek and Black River Bands of the Chippewa Indians of the State of Michigan, in order to reestablish *our* tribal organization . . ."[11] (emphasis added).

---

[7] 25 C.F.R., §83.7 (a).
[8] 25 C.F.R. §83.7 (b).
[9] 25 C.F.R. §83.7 (c).
[10] 25 C.F.R. §83.7(f).
[11] Elmer B. Simonds et al. To Secretary of Interior, received December 5, 1934, CCF 9069-A-1936 Tomah 068.

The United States supervised the reorganization process, and, at the insistence of the Tribe, included Tribal members from all of the scattered Saginaw Chippewa Communities in the vote or the referendum for reorganization.[12] The officials did not intend to limit membership in the tribe only to descendants of the original Saginaw Chippewa band. They spoke of what recognition would offer to the people at Bay City, Saganig, Osoda, Peconing, Clare and Mt. Pleasant—where persons from the Swan Creek and Black River Bands who did not move to the Isabella Reservation migrated to in 1856.[13]

In 1937, the Saginaw Chippewa Tribe reorganized under the statute as an organization of Indians living on one reservations.[14] Although this constitution did not automatically include persons living off the reservation, including some of the Swan Creek and Black River Band descendants, the Tribe's constitution allowed for the adoption of the non-residents of the reservation as members of the Tribe.[15] At the recommendations of the BIA, the Saginaw Chippewa Tribe enacted an ordinance for the purpose of adopting these persons who lived off the reservation. The BIA did not decline to reorganize the Swan Creek and Black River Bands. On the contrary, they were reorganized as part of the Saginaw Chippewa Tribe. Therefore, these bands should not be allowed now to obtain recognition as a separate entity.

Conclusion

The Saginaw Chippewa Tribe would like to reiterate its opposition to the holding of this hearing. The Tribe firmly believes that this is a tribal membership issue in which Congress should play no role.

Further, the Saginaw Chippewa Tribe believes that since the Swan Creek Group cannot meet the established administrative criteria for becoming a tribe, it certainly should not gain recognition from Congress based upon five minutes of testimony. Federal recognition of a sovereign nation should be granted only after careful research and deliberative review. It is too significant a measure to be hastily passed in a bill. The recognition of new tribes must be left to the established administrative process. To provide legislative recognition to the Swan Creek Group would be wholly unjust to the other groups who followed the FAP process and have patiently waited review. H.R. 2822, if passed, will only encourage the introduction of more bills for legislative recognition. Congress should direct the participants of the Swan Creek Group to resolve their issues with their tribe, the Saginaw Chippewa Tribe. In summary, H.R. 2822 is merely an attempt by self interested businessmen to buy a tribe. It should absolutely not be passed.

For these reasons, the Saginaw Chippewa Tribe respectfully requests that this Committee vote against H.R. 2822. I have attached our historical analysis and the relevant documentation as part of my testimony. Thank you for the opportunity to speak on this issue.

STATEMENT OF GERRY SON-NON-QUET GOULD, CHIEF OF THE SWAN CREEK BLACK RIVER CONFEDERATED OJIBWA TRIBES OF MICHIGAN

Good afternoon, Mr. Chairman, members, and guests. My name is Gerry Son-non-quet Gould and I am the Chief of the Swan Creek Black River Ojibwa Tribe. I would first like to thank Representatives Knollenberg and Barcia for sponsoring H.R. 2822 and recognizing the issues facing my people. This is an historic moment in our Tribe's history. I am honored to address you on behalf of our Tribe, many of whom have traveled all night by bus in order to witness this historic occasion. We come to ask that Congress enact promptly H.R. 2822 to reaffirm the trust relationship promised to our ancestors over one hundred and ninety years ago.

When I was a young boy, my mother shared with me, as her mother shared with her, and as my great-grandmother shared with my grandmother, the rich traditions of our people. My great grandmother was born in 1848, and lived in the areas beyond the white settlements. The story my mother told me was of a land of abundance, and a time of health and simple prosperity in Southeast Michigan. My people were trappers, fishermen, hunters and farmers. They were communities of grandfathers and grandmothers, fathers and mothers, sons and daughters, elders and in-

---

[12] George Blakeslee to J. V. King May 27, 1985. CCF—Great Lakes 9592-1936, 066; Eligible Voters of Saginaw, Swan Creek and Black River Band of Chippewas. June 17, 1935. CCF—Great Lakes 9592-1936, 066.

[13] Ibid.

[14] Letter from William Zimmerman, Assistant Commissioner of Indian Affairs, to Chairman, Constitutional Committee, Saginaw Chippewa Indians, July 31, 1936. RG 75 CCF No. 9609-A 1936 Tomah 068 Indian Organization—Saginaw.

[15] Ibid.

fants. It was a time before the reservations when our people lived in harmony with their environment, with nature, and with each other. This was our proud heritage before the settlers came.

As my mother explained to me, and her mother to her, the non-lndians promised that if we would sign the Treaty of Detroit of 1807, they would take only a small portion of our lands leaving us the rest upon which to hunt, fish and make our living. We signed with the belief or hope that our people and the non-natives would dwell together in peace. As white settlements grew, we were forced to move, sometimes several times.

We have awaited this moment with great anticipation and also with some regret, for there is much to be said, and, yet, precious few moments that we have to spend together. This afternoon, I would like to describe how, as a result of Federal Government action which violated the trust relationship, the BIA refuses to acknowledge our tribe. As a result, our people are disenfranchised by the very governmental agency which is obligated to act in our trust.

We have signed 15 treaties with the United States, including one where we are the sole tribal signatory. Despite our extensive treaty relationship with the United States, Federal actions and policies have resulted in the effective loss of our Federal recognition. First, the U.S. artificially combined us with other tribes on the same reservation, solely for its administrative convenience, pursuant to the Treaty of 1855.

Second, in 1936, the BIA compounded this original error by rejecting (1) the Swan Creek Black River Chief's request to organize as a separate IRA Tribe; and (2) the draft constitution whose preamble listed the Swan Creek Black River and the Saginaw Bands as separate tribes. Instead, the BIA organized an IRA tribe on the Isabella reservation, decreeing that only individuals living on the reservation were eligible for membership. At that time, the individuals residing there were Odawa, Potawatomi and Ojibwa—mostly Ojibwa of the Saginaw Chippewa Band. In contrast, the overwhelming majority of the Swan Creek Black River Tribe lived off the reservation.

To complicate matters, in 1939 the Department of the Interior determined to withdraw funding gradually and prohibit any future tribal organization under the IRA. By ignoring the Swan Creek Black River's separate tribal existence, the U.S. breached its trust obligations to our tribal members. Notwithstanding the Federal Government's unilateral action—which was legally and morally wrong—the Swan Creek Black River people continued to function as a tribe. Indeed, we remain a Tribe since only the Congress can terminate a tribe and it has never taken this action.

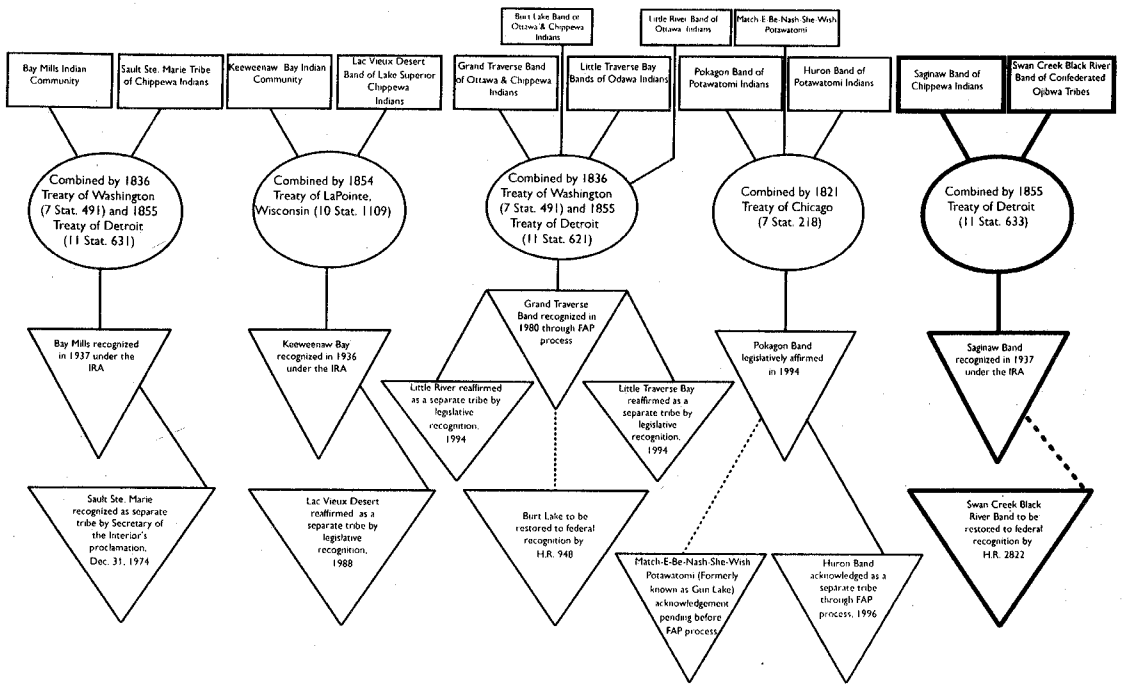
This chart depicts how the U.S. artificially grouped tribes in Michigan together. In virtually every case, the U.S. has untangled these artificial groupings, reaffirming the individual sovereignty of each previously combined tribe.

We appeal to you today to remedy this historic injustice. The Swan Creek Black River Tribe has never surrendered or relinquished our sovereignty. We have undertaken extensive historical, anthropological and genealogical research, all of which supports our position. This research proves that we have maintained ourselves as a distinct tribe, with distinct kinship relationships, distinct annuity rolls, distinct genealogy, distinct culture, and a distinct geographic area. In addition to the substantial documentation we have submitted for the record, we are accompanied by our experts to answer any questions you might pose.

We do not seek to harm any other tribe; we simply seek to be treated like the other sovereign Michigan tribes whose Federal recognition, in recent years, has been reaffirmed by Acts of Congress.

We sincerely hope that you will support our effort toward the restoration of our trust relationship with you. In the Civil War, tribal members fought for the Union to emancipate other subjugated peoples. The outcome of that great conflict brought new meaning to the phrase "we the people." Thus, the concept "we the people" holds a special meaning for us. At this time, "we the Swan Creek Black River people" request the Congress to restore those same rights possessed by all other sovereign Indian nations.

Michigan Tribes Restored As Separately Recognized Tribes



H:\wp\tribal6.pre

STATEMENT OF L. BROOKS PATTERSON, OAKLAND COUNTY EXECUTIVE

Dear Chairman Calvert and Distinguished Members of the Committee on Resources:

My name is Brooks Patterson, and I am the elected County Executive from Oakland County, Michigan.

Permit me to set the stage for my brief remarks by telling you a little bit about the 910 square miles that makes up Oakland. It's a naturally beautiful county with rolling hills and 450 lakes. We are the headwaters for five separate rivers that wind their way through the county, some ending up in neighboring Lake St. Clair, others pouring eventually into the Detroit River. By our very name you can imagine the sturdy oak trees that crowd the landscape.

Back in the 17th and 18th centuries Indian tribes, specifically the Swan Creek Black River tribe, roamed this beautiful territory, fishing its streams and hunting the thick forests.

Much has changed since those early days in Oakland county. Nearly 1.2 million residents now enjoy a unique and rich quality of life in Oakland County. We have 40,400 businesses thriving there, and we are headquarters to many Fortune 500 companies, not least among them Chrysler Corporation, Kmart and Meritor.

Oakland was beautiful and rugged in the 17th and 18th centuries and it combines an urban/rural beauty today. To preserve as much of what the Swan Creek Black River tribe enjoyed, we have set aside in our County over 87,000 acres of park land.

For purposes of identifying Oakland County: we are also home to Senator Spencer Abraham (Auburn Hills), Senator Carl Levin (Southfield), Representative Sandy Levin (Royal Oak), and Representative Joe Knollenberg (Bloomfield).

As Oakland County Executive, among my many responsibilities, I am broadly charged as the steward of Oakland County's vast resources. To that extent, I feel a real connection with those stewards similarly charged 200 years ago. Out of a deep sense of respect and duty to the ancestors of Chief Gerald Gould, I am here to acknowledge the past and rectify a two-century old miscarriage.

My testimony today is small repayment for what the Swan Creek Black River Indians lost. What they seek today is recognition of a historical fact; Oakland County was their aboriginal land, and through the inevitable passage of time and events, they have been disenfranchised.

Their case for recognition is replete with compelling evidence of the tribe's existence and territorial claims. Not least among the evidence are signed treaties with the very Federal Government before which I appear this afternoon. Some experts familiar with the Bureau of Indian Affairs and this whole recognition process have stated that the Swan Creek Black River tribe has presented as compelling a documented case as they have ever examined.

I fear some will oppose the rightful restoration of the tribe's identity and heritage this afternoon for one simple, albeit, selfish reason: what the tribe **might do** with its new found recognition: they will eventually open a casino? Maybe. Will they build clinics and schools? Probably. Will they bask in the pride that their heritage has been restored, their historical role recognized, and the long nightmare in search of their identity and self-esteem is finally over? Absolutely.

What we are engaged in here this afternoon rises far above attempting to influence or manipulate a Congressional committee in hopes of protecting one city or one tribe's avaricious gaming monopoly. What we are engaged in here is far more noble: it truly touches upon dignity, self-esteem, morality and justice.

In conclusion, let me respectfully suggest that the question before this Committee is not what the tribe may or may not do if they are granted Federal recognition. The question is have they proven their case by clear and convincing evidence?

Thank you.

STATEMENT OF JAMES M. MCCLURKEN, PH.D., REGARDING H.R. 2822

Introduction

Mr. Chairman and Committee members, thank you for allowing me to submit testimony on behalf of the Saginaw Chippewa Tribe. I will take this opportunity to summarize my larger and more detailed historical analysis entitled *Historical Identity of the Saginaw, Swan Creek, and Black River Chippewas: A Critique of House Bill 2822.* This text is supported by numerous historical citations that I have appended to the document.

Historical Identity of the Saginaw, Swan Creek, and Black River Chippewas: A Critique of House Bill 2822 raises the issues that I think are most critical for understanding the scope of the Swan Creek Black River Confederated Ojibwa Tribes'

claims and their implications for the Saginaw Chippewa Tribe. Most importantly, H.R. 2822 will legislatively split a federally recognized Indian tribe, the Saginaw Chippewa Tribe, into two distinct federally recognized entities. The bill attacks Saginaw Chippewa Tribe's political sovereignty. The bill would also divide the Saginaw Chippewa Tribe's treaty-based rights and properties between the tribe and a second political entity, another infringement on the Saginaw Chippewa Tribe.

The Swan Creek Black River Confederated Ojibwa Tribe speakers justify their bid for Federal acknowledgment and the division of the Saginaw Chippewa Tribe in Findings One through Thirteen of H.R. 2822. I have examined these findings in detail. My report shows that all of the findings in H.R. 2822 are historically misleading or inaccurate. The report provides a finding-by-finding analysis and provides references to historical works or primary documents that are important for correctly interpreting the findings. The sponsors of H.R. 2822 have given Congress little or no documentary evidence to support their claims.

Historical Scope of the Claims and the Treaties Cited in H.R. 2822

The scope of the Swan Creek Black River Confederated Ojibwa Tribes' over reaching claims is evident from the first line of Finding One. The Swan Creek Ojibwas made two large claims regarding their sovereignty and properties. The drafters of H.R. 2822 claim to be "the [emphasis added] descendant of, and political successor to, the [emphasis added] signatories of . . ." thirteen treaties with the U.S. These treaties cover an immense territory in the northern half of the Old Northwest Territory. This language strongly implies that H.R. 2822 will recognize a Swan Creek Ojibwa claim of sole heirship to the sovereign powers and properties of numerous ancestors who signed treaties with the United States. Historical facts show that that claim this is not true.

The Swan Creek Black River Confederated Ojibwa Tribes claim to be the sole successors to two treaties that no Saginaw, Swan Creek or Black River Chippewas attended at all—the 1785 Treaty of Fort McIntosh and the 1833 Treaty of Chicago. The historic Swan Creek and Black River Chippewas were two of nearly two dozen Mississauga Chippewa bands who lived in southeastern Michigan. While the historic Swan Creek and Black River bands were parties to all of the treaties the Mississauga Chippewas made with the United States, they were one small part of the larger confederacy and cannot claim to be the sole successors to any single treaty except the 1836 Treaty of Washington.[1] In this treaty the Swan Creek and Black River Chippewas sold their last remaining reservations to the United States and agreed to move to new homes "west of the Mississippi or northeast of St. Anthony Falls." While the Swan Creek Black River Confederated Ojibwa Tribes now claim that few of their people were affected by this treaty and that they remained in their traditional homeland, historical analysis shows otherwise. Nearly two thirds of their population left Michigan for western lands or moved to Canada. After the 1836 treaty, the Swan Creek and Black River Band Chippewas who remained in Michigan were a small remnant population with few resources or means to support themselves.

In 1855, the remnant Swan Creek and Black River Chippewas once again joined the far more numerous Saginaw Chippewas to make a new treaty with the United States. The Swan Creek and Black River Chippewas who signed the 1855 Treaty of Detroit did not intend to function as a distinct band, an autonomous political unit, after the 1855 treaty. Treaty provisions stipulated that the remaining Swan Creek and Black River Chippewas would join the Saginaw Chippewa bands on two reservations. The remnant Swan Creek and Black River Bands voluntarily joined with the Saginaw Chippewas. They became part of a single political organization and were indistinguishable from the Saginaw Chippewas after 1860.

The merging of the distinct Chippewa bands into a single political unit is reflected in Federal annuity payrolls. While annuity payrolls before 1855 listed Saginaw, Swan Creek, and Black River Chippewas as distinct bands those rolls created after 1855 make no such distinction. The failure of United States officials to distinguish between the bands was not simply a matter of convenience or oversight. The same officials created similar rolls for the neighboring Ottawa and Chippewa bands and continued to denote band distinctions and regional confederacies among those people. The Saginaw, Swan Creek, and Black River Chippewas had become one people.

The Indian Claims Commission agreed with the historical fact that the Saginaw Chippewa Tribe was the descendant of and political successor to the Saginaw, Swan Creek, and Black River Chippewas who made treaties with the United States. Dock-

[1] Swan Creek and Black River Chippewas made one more with the United States in 1859. The Swan Creek and Book River Chippewas who made this treaty were those who moved from Michigan to lands west of the Mississipi River in the 1830s.

et 13-H, Finding One, which deals with claims under the 1855 and 1864 treaties, reads:

> The Saginaw Chippewa Indian Tribe of Michigan, comprising the Saginaw, Swan Creek and Black River Bands of Chippewa Indians ... maintain this action under provisions of the Indian Claims Commission Act.

The Claims Commission found that the modern-day Saginaw Chippewa Tribe is the exclusive political successor to the formerly distinct bands of the Saginaw, Swan Creek, and Black River Chippewas. This finding contradicts the findings of H.R. 2822, which attempts to make the Swan Creek Ojibwas the sole political successors to this treaty. The three historic bands were all successors to these treaties and the Saginaw Chippewa Tribe is **the** modern successor.

1855 Treaty of Detroit

Another serious flaw in H.R. 2822 is found in Finding Six. The Swan Creek Black River Confederated Ojibwa Tribes have claimed that the 1855 treaty grouped the Saginaw, Swan Creek and Black River Chippewas as a matter of administrative convenience and that the "dissolution" language of that treaty anticipated a time when the fictitious coupling of these bands would end. Finding Six then compares the 1855 treaty language to that of the 1855 treaty made with the neighboring Ottawas and Chippewas of Michigan. The language and implementation of the two treaties are not comparable.

The "dissolution" language of the 1855 Saginaw, Swan Creek, and Black River treaty was drawn directly from the treaty that the Ottawas and Chippewas negotiated with the United States only days before the Saginaw Chippewas made their treaty. The history of the Ottawas and Chippewas and the Saginaw, Swan Creek, and Black River Chippewas is not comparable. Court decisions and subsequent legislation regarding the Ottawas and Chippewas are specific to these tribes and cannot apply to the Saginaw, Swan Creek and Black River Chippewas.

The history of the "dissolution" clause in the 1855 Ottawa and Chippewa Treaty is this, Michigan Indian Agent Henry Schoolcraft in 1836 administratively combined the Ottawas and Chippewas, two historically distinct tribes. They were not administratively joined in 1855 as H.R. 2822, Finding Six, indicates. Schoolcraft created the fictitious Ottawa and Chippewa Nation to compel Ottawa leaders to sell their western Michigan lands against their will. The Ottawas resented this tactic that robbed them of their property and weakened their political status. When the constituent tribes of the fictitious Ottawa and Chippewa Nation came together to make a new treaty in 1855, the Ottawas demanded that the U.S. end the fiction of an Ottawa and Chippewa Nation. The Ottawas wanted each tribe restored to its rightful political autonomy. The U.S. did see some "administrative convenience" in "dissolving" the Ottawa and Chippewa Nation. Doing so would allow the U.S. to call future councils with one or the other tribe without involving all of the widely scattered bands who comprised these tribes. This would save time and expense and help justify the dissolution language.

No historical documentation before, during or immediately after the 1855 negotiations with the Saginaw, Swan Creek and Black River Chippewas, directly comments on the negotiators' reasons for inserting dissolution language in their 1855 treaty. Indeed, the historical situation that treaty negotiators intended to remedy for the Ottawas and Chippewas has no parallel in the relations of the Saginaw, Swan Creek, and the Black River Bands. The Saginaw, Swan Creek, and Black River Chippewas had never been linked in a fictitious political unit like that of the Ottawa and Chippewa Nation. The 1855 treaty legislatively joined, not separated, these joint political successors to the treaties listed in H.R. 2822, Finding One, as a single political unit for the first time.

The "dissolution" language argument is also discredited by the fact that the Saginaw, Swan Creek, and Black River Chippewas negotiated their final treaty with the United States in 1864 as a single tribe. The dissolution clause of the Saginaw Chippewas' 1855 treaty was not mentioned before, during or after the 1864 negotiation. The first discussion of the dissolution of the Saginaw, Swan Creek, and Black River Chippewas does not appear in Federal records until 1870. That year, Michigan Indian Agent James Long questioned the meaning of the language for the first time. How could a "dissolved" tribe make a legally binding treaty with the United States? Commissioner of Indian Affairs Eli Parker affirmed the validity of the 1864 treaty and the right of the confederated Saginaw Swan Creek and Black River Chippewas to make it.

Implementation of the 1855 and 1864 treaties facilitated the physical and demographic commingling of the once distinct Saginaw, Swan Creek, and Black River Bands. In 1855 Swan Creek and Black River bands numbered, at most, 150 people, while more than 1,500 Saginaw Chippewas lived in Michigan. These 150 lived at

one mission station, Nippising Mission, in 1855. Methodist Church records show that when the Nippising Mission closed in 1856, the Swan Creek and Black River Bands' members who lived there divided and moved to several new locations. Some relocated to the Isabella Reserve, others to Saganing, some to Oscoda, and others to Pinconning, all places where the Methodists operated missions. It is highly unlikely that these widely scattered handfuls of families maintained political relationships distinct from those of the communities where they lived 1855.

The Indian Reorganization Act

The Swan Creek Black River Confederated Ojibwa Tribes have claimed that they attempted to reorganize their separate government under provisions of the Wheeler-Howard or Indian Reorganization Act in the 1930s. They have described two letters proving this point without offering citations for these documents. I have examined hundreds of documents generated by United States officials and by Saginaw Chippewa Tribe members about this issue. I have never seen the letters that the Swan Creek Black River Confederated Ojibwa Tribes have called attention to. I have not seen any evidence that they attempted to reorganize an independent tribe or that the United States ever sanctioned Swan Creek reorganization efforts. To the contrary, documents cited in my larger report and the supporting documentation show that United States officials intended to reorganize all of the scattered Saginaw Chippewa communities as the reorganized Saginaw Chippewa Tribe. They did so at the insistence of the leaders of the Saginaw Chippewa Tribe who were drawn from many of these off-reservation communities. The constitution of the Saginaw Chippewa Tribe included provisions that extended membership to all of the Saginaw Chippewa communities

Conclusion

The conclusions and findings in this testimony and in my written report are based on twenty years of extensive study of Michigan Indian history. I have never discovered any documents that would support the Swan Creek Black River Confederated Ojibwa Tribes' claim to have maintained a distinct identity from that of the Saginaw Chippewa Tribe after the closing of the Nippising Mission in the mid-1850s. No document that I have ever read clearly and legitimately raises the claim. I strongly urge this Committee to judge the claims of H.R. 2822 on their historical merit. The claims are spurious and do not merit legislation by the United States House of Representatives.

STATEMENT OF DEBORAH DAVIS JACKSON, PH.D.

Introduction

This statement is in strong support of H.R. 2822 to reaffirm the tribal sovereignty of the Swan Creek Black River Confederated Ojibwa Tribes of Michigan. I hold a Ph.D. in Anthropology from the University of Michigan; I am presently continuing my anthropological research under a multidisciplinary postdoctoral fellowship at the University of Michigan. Over the past seven years, I have carried out extensive historical and ethnographic research on the American Indian peoples of the Great Lakes region, with particular focus on the Ojibwa Tribes of Southeast Michigan. This work has brought me into collaboration with several Native American groups, including the Swan Creek Black River Confederated Ojibwa Tribes of Michigan, with whom I conducted an oral history project documenting the social, cultural and political continuity of tribal settlements throughout the twentieth century. This study, funded by the Kellogg Foundation, resulted in a collection of transcripts and audio tapes of individual and focus group interviews with three generations of several extended Swan Creek Black River families, as well as a report summarizing the findings. These materials, in addition to serving as the beginnings of a more complete oral history for the Tribe, have also been deposited by the Tribe in several Michigan libraries so that Native community leaders, scholars specializing in American Indians of Michigan, and other interested members of the public might benefit from this valuable resource.

The picture of community life that emerges from the inter-generational oral history project, in conjunction with my general knowledge of Michigan Indian culture and history, has convinced me that the Swan Creek Black River people have maintained their tribal identity and cohesion from the time of earliest sustained contact with non-Natives up until the present. Since they were first described in the official documents of non-Natives during the early years of the treaty era over 200 years ago, Swan Creek Black River communities have retained their distinctive identity in contrast both to nearby non-Native towns and cities (and the dominant society

more generally), and to the Saginaw Chippewa Tribe with whom they were combined, for administrative convenience, by the Federal Government in the Treaty of 1855. Despite constant challenges to their unique way of life, and even at times to their very survival, the Swan Creek Black River Tribe has persevered. They seek now to be reaffirmed as the Swan Creek Black River Confederated Ojibwa Tribes of Michigan, thereby acknowledging, for the Federal Government's purposes, the cultural, social and political cohesion they have maintained for so long, against such formidable odds. They have entered into treaties with the Federal Government repeatedly, and have been "acknowledged" in the form of their being a separately-named component of the combined "Chippewas of Saginaw, Swan Creek and Black River" (as stated in the title and preamble of their final treaty with the U.S. Government, made on October 18, 1864). In my considered opinion, there is no doubt that the Swan Creek Black River Confederated Ojibwa Tribes of Michigan does constitute a tribal political entity, and has since its first sustained contact with non-Natives. I strongly urge favorable action on H.R. 2822 to reaffirm the Tribe's Federal recognition as a sovereign tribal entity.

Community Life: Early 1800s through Early 1900s

The very early history of the Swan Creek Black River people is beyond the scope of this statement. Here I will simply say that as Great Lakes area Indian bands came to be designated by their ancestral territories, the terms "Swan Creek" and "Black River" came into usage to refer to the Ojibwa (another term for "Chippewa") people of Southeast Michigan. These were one people, with a common hunting and fishing territory, whose multiple primary villages were originally clustered along Swan Creek and the Black River. By the early nineteenth century, however, land cessions (primarily as a result of the Treaty of Detroit in 1807) and settlement by non-Natives had pushed many Swan Creek Black River people out of their traditional homelands. At first several small reservations were established expressly for Swan Creek Black River people, but these were later extinguished (in the Treaty of 1836), leaving Swan Creek Black River people essentially landless. One small group went to Kansas when land was set aside there specifically for Swan Creek Black River people (many subsequently returned), some stayed in and around the original small reservations, others moved into adjacent areas of Canada (e.g., Sarnia, Walpole Island), and still others established settlements in various locations around Southeast Michigan. Later, during the 10 years between 1855 and 1865, a series of treaties resulted in land being set aside at Mount Pleasant (later named the "Isabella" reservation) specifically for Swan Creek Black River, as well as the Saginaw, bands of Ojibwa. A fair number of Swan Creek Black River families relocated there; but of those, many eventually returned to their home settlements to the southeast.

The nineteenth century as a whole, then, is characterized by disruptions, dislocations, dispersions, and migrations; at the same time, however, a strong social and political cohesion kept Swan Creek Black River people for the most part in their own communities. These small communities—settlements scattered throughout Southeast Michigan—retained a strong sense of their identity as a single, distinct group of Ojibwa, not only within communities, but among communities, as well. The nature of these bonds among tribal members, and the way of life they shared, has been especially well illuminated by the recollections of older Swan Creek Black River tribal members as recorded for the Tribe's oral history project. While these tribal members are recalling the early twentieth century, other sources (archaeological digs; archival records; written accounts by government agents, missionaries and other non-Natives; and long-deceased tribal members' correspondence, photographs, and other documents) corroborate that the same general conditions held throughout the nineteenth century. The social, cultural and political life that sustained Swan Creek Black River people throughout the nineteenth century and into the first few decades of the twentieth are summarized below.

As the nineteenth century progressed, the Swan Creek Black River Ojibwa people of Southeast Michigan found their options drastically restricted by the actions of the Federal Government (confining them to reservations, then extinguishing those reservations, then physically lumping them together with the Saginaw Chippewas on a reservation far from their homeland), the encroachment of non-Native settlers, and the destruction of the habitats from which they had traditionally made their living. Still, these people managed to maintain their traditional life ways and social/political organization in the face of all the pressures and changes, preserving their identity as a distinct Ojibwa people while at the same time making the adjustments necessary to contend with changing circumstances.

Though their settlements remained geographically dispersed throughout Southeast Michigan, Swan Creek Black River people kept in close touch with one another.

The distances between settlements were not any greater than those between the villages and campgrounds of aboriginal times, and the marriages that regularly occurred between Swan Creek Black River families of different settlements (documented in census records and genealogies) served to keep the scattered communities bound together in an intricate network of kinship ties.

While some Swan Creek Black River families in some of the settlements turned to farming, most, especially during the second half of the nineteenth century, did not have enough suitable land to do so. Far more common was a traditional subsistence mix of hunting, fishing and trapping, small-scale gardening, the making of black-ash baskets and other traditional craft items for sale to non-Natives, migrant farm work (such as traveling to northwest Lower Michigan in the summer for cherry picking), and other forms of wage-work for non-Native farmers, lumbering concerns, and local businesses and homes (where Native women sometimes worked as "domestics"). Another form of work, usually provided by women during this period, was to provide midwifery and other such medical services to non-Natives in nearby towns, using traditional Ojibwa practices and remedies. (While charging fees to non-Natives, these traditional healers treated their own tribal community members on the basis of the reciprocity, not fees, that characterized all social interactions among Swan Creek Black River people.)

These various activities allowed Swan Creek Black River families to "get by," but there were many difficult times. People often went without basic necessities, and some times went hungry during winters when game animals—even such small game as rabbits and muskrats—were scarce, and wage work was scarcer. Anti-Indian prejudice on the part of local white authorities resulted in zealous enforcement of hunting and fishing restrictions (this was long before the time when Native rights to hunting and fishing in ceded territories was re-established in Michigan) and even in false accusations of "poaching," with no regard to the fact that Native families needed the animals they hunted and trapped simply to stay alive. Similarly, the only employment opportunities open to Swan Creek Black River people were low-paying farm work and other labor jobs, and Indians were often paid even less than non-Natives for equal work. Yet, there was little if any recourse, legal or otherwise, and families simply pooled their resources and survived as best they could.

Despite these economic hardships, Swan Creek Black River people in the scattered settlements of Southeast Michigan maintained a good quality of life socialed with one another, helped each other out in times of need, attended church together (many of the settlements had Methodist churches which became key community institutions, to the point that they were considered "Indian churches" by their members), communally maintained their local "Indian cemeteries," traveled to other Swan Creek Black River settlements for weddings, funerals, and other such occasions, and held periodic large scale gatherings patterned after aboriginal ceremonial meetings held throughout the warmer months of the year. In former times, these kinds of gatherings had revolved around maple sugar camps in the spring, fishing villages in the summer, and during the fall, the "feasts for the dead" that were held by various families, bringing visitors from near and far. Thus, people who had been separated in smaller hunting camps during the winter had ample opportunity during the warmer months to reconnect, conduct their business, carry out courtships, get married, and enact ceremonial rituals. As the nineteenth century progressed, larger-scale gatherings were more likely to revolve around wage work (lumber camps, cherry-picking camps), tourist areas where baskets and other native crafts could be sold, and religious (Methodist) "camp meetings." But the underlying purpose was still the same—for families in far-flung settlements to keep in touch with one another and keep their social and political ties strong—and the flavor remained very much "Indian" even as such European institutions as wage labor and Christianity came to influence the structure and timing of the gatherings.

In addition to the social cohesion and cultural continuity that was maintained and strengthened at these larger gatherings, political leadership was also exercised. Leadership was, for the most part, loose and informal, as was the case in earlier times before sustained contact with non-Natives. Throughout the nineteenth century and into the twentieth century, some degree of political cohesion was achieved within the larger Swan Creek Black River polity by a number of individuals who, on behalf of their communities: (1) kept people informed of issues affecting their people; (2) represented their people in interactions with government officials and other outsiders (e.g., those who participated in negotiations with the government, signed treaties, and sent letters to government officials seeking redress of unacceptable circumstances); and, (3) kept their people informed of decisions. The large social gatherings discussed above provided good opportunities for political discussions to occur. In addition, there was constant communication among Swan Creek Black River people on a smaller scale, both within and between settlements, as people visiting one

another invariably discussed the latest news with regard to government Indian policy, the local political climate, and news from Mt. Pleasant. Furthermore, as literacy increased among Swan Creek Black River people (mainly due to "Indian schools," both in the form of local day schools and the residential boarding schools at various locations), people began supplementing their face-to-face contacts through regular correspondences, building and strengthening both social and political alliances and keeping up with news of all kinds on topics of interest to local Swan Creek Black River communities.

Life remained surprisingly stable in Swan Creek Black River settlements throughout the first few decades of the twentieth century. Though families continued to struggle economically, communities drew on the strengths of their traditional cultural and social bonds, and leaders continued to try to improve the conditions of their people. With regard to this last point, it is of special significance that specific leaders emerged during the early twentieth century, thus bringing to an end a time during which political leadership must be inferred. That is, during the first two-thirds of the nineteenth century, historical documents such as treaties, the correspondence of Indian agents, and the records of missionaries in the area name certain individuals as "chiefs" of their local communities and as men who had influence over Swan Creek Black River people more generally. But during the last few decades of the nineteenth century, such documentation is rare. However, we can reasonably assume that such leadership continued, because as archival evidence becomes available again in the early twentieth century, supplemented now by oral historical accounts, it is clear that certain individuals were respected leaders not only within their local settlements, but among the larger Swan Creek Black River community as well. Such Swan Creek Black River men as George Wheaton, "Doc" Chatfield, Art Henry, and an unnamed individual at Peonegowink (referred to in a 1909 document) are among those mentioned as "chiefs" who were responsible for keeping their people informed of matters that were of concern to them (both in terms of Federal Indian policy and developments at Mt. Pleasant), and whose opinions people respected when it came to making decisions to improve their circumstances.

With regard to this last issue, it is of particular significance that during the Reorganization Era of the 1930s, the Swan Creek Black River people sought to have their status as a separate Tribe, distinct from the Saginaw Chippewas, reaffirmed through the provisions on the Reorganization Act. Elliot Collins, designated as "Chief of the Swan Creek Black River" in official documents, wrote a letter informing Federal Government officials that his people were "anxious to organize" under the Act to become recognized as a Tribe. Unfortunately, no correspondence has been located that indicates what became of Chief Collins's inquiry; furthermore, correspondence between the Tribe at Mount Pleasant and the office of the Commissioner of Indian Affairs shows that while the Tribe was willing to be designated "the members of the Saginaw, Swan Creek and Black River Bands of Chippewa Indians of the State of Michigan," the Commissioner's office insisted on the wording "Indians residing on the Isabella Reservation of the State of Michigan." Thus, the constitution that was approved in 1936, while retaining the official name "Saginaw, Swan Creek and Black River Bands," in fact excluded off-reservation Swan Creek Black River tribal members—that is to say, the majority of Swan Creek Black River people and their traditional settlement communities. This simply perpetuated the fiction that the Swan Creek Black River people were truly a part of the Tribe at Mount Pleasant, while at the same time they were denied significant participation in the political and economic life of the Tribe.

Mid-Twentieth Century: Urban Migrations

As mid-century approached, changes occurred that led to the dispersal of some of the long-standing Swan Creek Black River settlements. On the one hand, resources that the Ojibwa people had relied on for traditional subsistence became even more scarce, and in some cases, communities that had managed to buy up land in their settlements began losing it again to tax fraud, loan sharking, and other such schemes on the part of local non-Natives. At the same time, factories sprang up in Southeast Michigan cities such as Bay City, Saginaw, Flint and Detroit as the auto industry gained momentum, and jobs became available to Native Americans and others with little education and few conventional job skills. Some Swan Creek Black River people found ways to remain living in their traditional settlements while commuting to factory jobs in nearby towns and cities. Others found it necessary to move to cities for work. As urban migrations peaked at mid-century, Swan Creek Black River Ojibwa and other Native Americans joined together to form urban Indian organizations as a means of maintaining their social and cultural life in the city and facilitating political action.

These urban associations—most of which had many Swan Creek Black River people among their membership as well as in key leadership positions—provided much needed social services to indigent urban Indians. They also reinvigorated the social and cultural life of the Native community by offering culture and language classes, sponsoring informal potluck suppers throughout the year, and organizing annual harvest dinners, Christmas parties, and summer powwows. These programs and events drew Swan Creek Black River people from outlying rural and small-town areas, as well as serving the needs of those who had moved to the cities, and thus provided new settings in which widely-dispersed tribal members could congregate. At the same time, opportunities began emerging at that state level for American Indian people to organize and receive much-needed services. Swan Creek Black River leaders utilized these avenues, as well, in their on-going efforts to represent the interests and meet the needs of their people.

Relations with the Saginaw Chippewa Tribe: Recent History

Since the Swan Creek Black River people had been unsuccessful in their attempt to gain Federal recognition during the Reorganization Era of the 1930s, as a practical matter, to help the Swan Creek Black River people, several tribal members chose to work through thee tribal government at Mt. Pleasant when dealing with the Federal Government. Some of the Swan Creek Black River families who had originally relocated to the reservation at Mt. Pleasant during the 1860s had remained there. These families lived for the most part in a particular region of the reservation and maintained an identity separate from the Saginaw Chippewa Band. Off-reservation Swan Creek Black River people possessed these social and familial ties to the reservation community. However, it has always been on-reservation Saginaw Chippewa people who controlled the Saginaw Chippewa tribal government. Given the scarce resources of those times, the needs of Swan Creek Black River people who lived off the reservation—either in traditional Swan Creek Black River settlements, or in urban areas—usually went unaddressed and unmet.

In the context of these circumstances, a number of Swan Creek Black River leaders arose during the sixties, seventies and eighties who sought to work within the structure of the tribal government at Mt. Pleasant—the only venue open to the Swan Creek Black River Tribe at that time—to improve the lot of their people. One of the most prominent was George Cook, also known as Chief Whitebird, a direct descendant of one of the nineteenth-century treaty signatories for the Swan Creek Black River Tribe. Throughout the sixties and seventies, Chief Whitebird worked tirelessly to encourage his people to register as tribal members (of the combined Saginaw, Swan Creek and Black River Tribe—the only recognized tribal entity that existed at the time) specifically so that they would be eligible for land-claims money that would soon become available. He established and maintained contacts in each of the scattered settlements, as well as with Swan Creek Black River people in urban centers, so as to disseminate information effectively and keep himself up to date on the wishes of the people. Community leader Juanita Spencer, mother of Robert Spencer (sub-chief of the Swan Creek Black River Tribe) was a key organizer for Chief Whitebird in the Caro area and beyond. Other men and women took the lead in other locales, all keeping Chief Whitebird informed of the sentiments and opinions in their communities. In turn, they were being apprised by Chief Whitebird of developments in Mt. Pleasant and in Washington. It was largely due to this leader's efforts that many Swan Creek Black River people who had become disenchanted with the tribal government at Mt. Pleasant did end up signing on as members, not with the intent of changing their tribal affiliation from Swan Creek Black River Ojibwa to Saginaw Chippewa, but rather as the only means open to them of receiving their rightful share of land-claims money and other benefits.

Another political leader who attempted to help his people through the Saginaw Chippewa tribal structure at Mt. Pleasant was Gerry Son-Non-Quet Gould, also the direct descendant of a nineteenth-century Swan Creek Black River signatory chief. Chief Gould served as At-Large Representative on the tribal council at Mt. Pleasant throughout the latter half of the 1980s. Though he tried to serve his people as best he could through this position, the obstacles were great and he eventually concluded that this was not a realistic means through which he might meet the needs of the Swan Creek Black River tribal members, including many who never became eligible to join the Saginaw Tribe. In traveling around to meet with people in various locations throughout the region, Chief Gould learned first hand of the widespread dissatisfaction and frustration felt by Swan Creek Black River people who wanted to maintain their separate tribal identity and make their own decisions—decisions that would reflect their own unique background, experience and perspective developed over their long history of maintaining social, cultural and political institutions separate from both non-Native society and the Saginaw Chippewa Tribe.

The Swan Creek Black River Confederated Ojibwa Tribes of Michigan

It was for these reasons that Chief Son-Non-Quet, together with other Swan Creek Black River leaders, incorporated the Swan Creek Black River Confederated Ojibwa Tribes of Michigan in the State of Michigan on December 26, 1991. They become recognized by the State of Michigan as a tribe in February of 1992. The Swan Creek Black River Tribe held, and continues to hold, regular monthly meetings and to sponsor events to benefit Swan Creek Black River and other off-reservation Indian people throughout Southeast Michigan. They have carefully researched and documented their tribal history through both archival and oral historical means, and have established specific genealogies for tribal members that show lines of descent all the way back to original treaty-signers in the nineteenth century. The Tribe provides a venue within which the Swan Creek Black River people of the scattered traditional settlements and urban Indian communities around Southeast Michigan can maintain their social cohesion, revitalize their cultural traditions, and address the political issues unique to the Tribe.

The history of Swan Creek Black River people is rife with dislocation, dispossession, forced migration, discrimination, and oppression. Yet, it also reveals strong communities that united around a common culture and shared institutions, maintained a group identity distinct from the surrounding non-Native society, and formed larger networks with other Swan Creek Black River communities through bonds of marriage, ceremonial gatherings, and over-arching political leadership. Swan Creek Black River people, throughout their long history in Michigan, have been referred to by name in numerous documents by many different non-Native outsiders (such as government officials, military personnel, missionaries, and local politicians), and have been recognized as Indians by surrounding non-Native communities.

The Federal Government attempted to right its past wrongs against the Swan Creek Black River people in the mid-1800s by giving them land at Mt. Pleasant, and again in the 1930s by creating an combined Saginaw, Swan Creek and Black River Tribe. Ironically, however, these moves excluded most Swan Creek Black River tribal members, thereby, in fact, perpetuating the injustice to a people who have simply wanted to remain in their homelands and be recognized as what they are: a separate and distinct Ojibwa people with a unique identity and history. It is my strongest recommendation and hope that H.R. 2822 will be enacted promptly to reaffirm this Tribe's Federal recognition. By that act, the present-day Federal Government would reverse the wrongs of the past, and allow the people of the Swan Creek Black River Confederated Ojibwa Tribes of Michigan to take charge of their own destiny, as a fully sovereign people again.

STATEMENT OF HON. PATRICK J. KENNEDY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. Chairman, on November 5, 1997, my friend and colleague, Mr. Knollenberg, introduced H.R. 2822, a bill that would recognize a group of individuals self-named the Swan Creek Black River Confederated Ojibwe as a distinct recognized Indian tribe. I have reviewed the bill in detail and have concluded that it reduces to two concepts: sovereignty and process. It is this bill's affect on these two concepts that convinces me that I must oppose this legislation. I encourage my fellow Representatives to oppose it as well.

Congress has been discussing sovereignty in relation to Indian tribes since the first instance a European settler set foot on this continent. It is time we learned to respect tribal sovereignty and uphold it to its fullest extent. The Saginaw Chippewa Indian Tribe of Michigan is a sovereign nation. It has exercised and retained its sovereignty throughout history and throughout its many encounters with the Federal Government. The Saginaw Chippewa Tribe's sovereignty is not something that Congress granted to it. Rather, it is something the Tribe has retained. The Saginaw Chippewa Tribe is a nation unto itself—with the sovereign authority, power, and right to manage its own affairs and govern its own members. Congress must respect this and must not become involved in internal tribal political affairs—which H.R. 2822 asks us to do.

H.R. 2822 proposes to federally recognize a group that calls itself the Swan Creek Black River Confederated Ojibwe Tribes. This group claims to be the successor in interest to the Swan Creek and Black River Bands of Chippewa Indians. It is my understanding that although these bands were once considered parts of the larger Chippewa group in southeastern Michigan before and during the treaty process, that these bands, by virtue of the 1855 Treaty of Detroit, were affirmatively merged with the Saginaw Band to become the one sovereign nation of the Saginaw Chip-

pewa Tribe. For over 140 years the Saginaw Chippewa Tribe has functioned as one tribe without regard to any band distinctions and has been treated as such by the Federal Government.

Further, I also understand that most of the participants of the Swan Creek Group pushing the bill, including its organizer, are currently members of the Saginaw Chippewa Tribe and that most tribal members, because of more than a century of intermarriage among the three component bands of the Tribe, find it difficult to determine from which band they descend. Of course, the Saginaw Chippewa Tribe has and continues to serve all of these members equally regardless of their band affiliation.

In reviewing the history and the circumstances surrounding this bill, I can only conclude that H.R. 2822 addresses nothing more than a tribal membership issue of the Saginaw Chippewa Tribe, and that Congress should not interfere in this matter. It is an issue for the sovereign Saginaw Chippewa Tribe and its governing body. Congress must respect this.

If Congress were to do otherwise and pass H.R. 2822, its effect would be to mandate that a splinter group of a well established and long recognized tribe break off and form its own nation, complete with the rights and privileges of all legitimate Indian tribes. It would allow the Swan Creek Group to claim the treaty-preserved rights, jurisdiction and sovereignty currently held by the Saginaw Chippewa Tribe. This is an affront to the Saginaw Chippewa Tribe's sovereignty—and to the sovereignty of all Indian nations. If Congress were to split the Saginaw Chippewa Tribe with H.R. 2822, nothing will stop it from unilaterally splitting other federally recognized tribes when splinter groups come forward. This cannot be the precedent Congress sets—especially when, as in this case, gaming and the establishment of a casino are the motivating factors for recognition. H.R. 2822 would set this dangerous precedent—and I cannot allow that to happen.

Process. The second argument against H.R. 2822 boils down to process. Since 1978, the Bureau of Indian Affairs (BIA), through its Bureau of Acknowledgement and Research (BAR), has been the appropriate forum for determining whether groups merit Federal recognition as Indian tribes. The BAR process calls for extensive research and analysis. The BAR staff has the expertise and the experience to conduct such study and review. With all due respect to my fellow Representatives, Congress does not. Congress cannot play the role of the BIA.

Of course, I realize that Congress has granted legislative recognition to tribes in the past. Yet, the circumstances of those were quite different from what we see before us today with the Swan Creek Group. The Swan Creek Group has not even attempted the administrative process. It is my understanding that they filed a letter of intent with the BIA in 1993. This merely opens a file in anticipation of a petition for recognition. As of yet, however, the Group has failed to provide any documentation or to even pursue this process in any way. The Group's file lays dormant in line behind over 100 groups awaiting recognition.

It is my contention that the Swan Creek Group, if it is to pursue Federal recognition, should be directed back to the BIA. It would be wholly unfair for Congress to allow this Group that has provided no documentation whatsoever for recognition to be recognized ahead of all the other groups who have abided by the process simply because the Swan Creek Group and its representatives have walked the halls of Congress pushing legislation.

Congress is not equipped to decipher the Group's history and genealogy to determine whether it merits recognition. This, along with the simple fact that many of the Group's participants remain members of the Saginaw Chippewa Tribe and receive the benefits and privileges as such, convinces me that Congress should not pass this bill. Congress must not interfere with the Saginaw Chippewa Tribe's sovereignty. If we are to take any action at all on H.R. 2822, it should be to oppose it to allow the Saginaw Chippewa Tribe, the appropriate governing body for this issue, to resolve the matter. Beyond that, the Group is welcome to pursue the established administrative process for recognition. In efforts to uphold tribal sovereignty and established process, I cannot condone any other action by Congress on this issue.

STATE OF WASHINGTON,
OFFICE OF THE GOVERNOR,
August 20, 1998.

The HONORABLE JOSEPH KNOLLENBERG,
11th District,
1511 Longworth House Office Bldg.,
Washington, DC

Dear Congressman Knollenberg:

It has recently come to my attention that yet another group of Native Americans in Michigan is poised to seek federal recognition via an act of Congress. This is in addition to the Burt Lake Band of Ottawa and Chippewa Indians, which is now seeking recognition through H.R. 948 and which unsuccessfully sought recognition in the last Congress through H.R. 377. I am writing to reiterate my strong opposition to the recognition of additional Indian tribes in Michigan via congressional action, which I expressed in a December 6, 1995, letter to Congressman Donald Young (attached) regarding my opposition to H.R. 377.

I fully stated the reasons for my opposition to congressional acknowledgement of additional Indian tribes in my letter to Congressman Young. While some of the facts have changed since I wrote that letter, notably with respect to the legality of casino gaming in Michigan, the fundamental reasons for my opposition remain the same.

First, recognizing tribes in this manner circumvents and undermines the established process for federal acknowledgment that exists in the Department of the Interior's Bureau of Indian Affairs ("BIA"). This process requires that tribes make a detailed showing of their entitlement to federal recognition that involves extensive examination of the historical record of the tribe in question. This is a function that congress is simply not equipped to carry out. If, as some claim, the BIA process has broken down, I would suggest that congress direct in energies toward fixing that process rather than assuming the BIA's duties unto itself. It is my understanding that the tribe that recently surfaced has taken no action to further its application for acknowledgement since filing its original "letter of intent" with the BIA in 1993. In this case, the federal acknowledgement process has not even been permitted to work.

Second, recognition of Indian tribes by act of congress sets a bad precedent that other tribes are likely to follow fact. In fact, Michigan is a prime example of this trend. The Michigan tribes that are now seeking federal acknowledgement from congress are merely following the lead of three tribes that gained acknowledgement in the same manner in 1994. The tribes are lobbying congress rather than marshalling the historical evidence that the BIA properly demands that tribes seeking federal acknowledgement produce. This is a trend that should not be allowed to continue.

Third, recognition of an additional Indian tribe in Michigan will serve to undermine state sovereignty and will inevitably lead to increased litigation on a variety of fronts where state and tribal policies conflict. Finally, acknowledgement of additional tribes could lead to a proliferation of casino gaming in Michigan, which I oppose. The tribes should, therefore, only be recognized following the searching inquiry that the BIA performs, not as a result of the political process.

Thank you for taking my concern into consideration. I urge you to oppose efforts to acknowledge additional Indian tribes via congressional action.

Sincerely,

JOHN ENGLER,
Governor.

JE/mg/jp
Enclosure
cc: Michigan Delegation

I

105TH CONGRESS
1ST SESSION

H. R. 2822

To reaffirm and clarify the Federal relationship of the Swan Creek Black River Confederated Ojibwa Tribes as a distinct federally recognized Indian tribe, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 1997

Mr. KNOLLENBERG (for himself and Mr. BARCIA) introduced the following bill; which was referred to the Committee on Resources

---

A BILL

To reaffirm and clarify the Federal relationship of the Swan Creek Black River Confederated Ojibwa Tribes as a distinct federally recognized Indian tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Swan Creek Black
5 River Confederated Ojibwa Tribes of Michigan Act".

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act—

1 (1) the term "Tribe" means the Swan Creek
2 and Black River Confederated Ojibwa Tribes of
3 Michigan;
4 (2) the term "member" means an individual
5 who is eligible for enrollment in the Tribe pursuant
6 to section 4; and
7 (3) the term "Secretary" means the Secretary
8 of the Interior.
9 **SEC. 3. FINDINGS.**
10 The Congress finds the following:
11 (1) The Tribe is the descendant of, and political
12 successor to, the signatories of the 1785 Treaty of
13 McIntosh (7 Stat. 16); the 1789 Treaty of Fort
14 Harmar (7 Stat. 28); the 1795 Treaty of Greenville
15 (7 Stat. 49); the 1805 Treaty with the Wyandot (7
16 Stat. 87); the 1807 Treaty of Detroit (7 Stat. 105);
17 the 1808 Treaty of Detroit (7 Stat. 112); the Treaty
18 of 1815 (7 Stat. 131); the Treaty of 1816 (7 Stat.
19 146); the Treaty of 1817 (7 Stat. 160); the Treaty
20 of 1833 (7 Stat. 431); the 1836 Treaty of Washing-
21 ton (7 Stat. 503); the 1855 Treaty of Detroit (11
22 Stat. 633); and the Treaty of 1864 (14 Stat. 657).
23 (2) The aboriginal lands of the Tribe comprise
24 the area which is now known as Monroe,
25 Shiawassee, Lenawee, Wayne, Oakland, Macomb, St.

1 Clair, Lapeer, Sanilac, Livingston, Washtenaw, Gen-
2 esee, and Tuscola Counties in southeastern lower
3 Michigan. The boundaries of the Tribe's aboriginal
4 lands extend from Monroe County in the Southeast,
5 to Sanilac County in the North, to Genesee County
6 in the West.

7 (3) The cession treaties, from the 1807 Treaty
8 of Detroit through the 1836 Treaty of Washington,
9 legitimated seizure of tribal lands by settlers, forced
10 the Tribe to relinquish most of its rich aboriginal
11 lands in southeastern Michigan, relegating the Tribe
12 to small tracts of land in Macomb, Wayne,
13 Washtenaw, and St. Clair counties in Michigan, and
14 its members to small annuity payments by the Unit-
15 ed States.

16 (4) The 1836 Treaty of Washington compelled
17 the Tribe to relinquish the small tracts of land
18 granted in the 1807 Treaty of Detroit, purportedly
19 in exchange for future annuity payments and an
20 equivalent amount of land in Kansas. The 1807
21 treaty did not require the Tribe to relocate to the
22 lands in Kansas and only 51 members actually did
23 so. According to the 1845 United States Richmond
24 census documents, the majority of the Tribe mi-
25 grated north to Lapeer County, Michigan or re-

1 mained in the counties of Macomb, Wayne,
2 Washtenaw, and St. Clair.
3 (5) Pursuant to the 1855 Treaty of Detroit,
4 members of the Tribe were requested to relocate
5 from their homes in Lapeer, Macomb, Wayne,
6 Washtenaw, and St. Clair counties in Michigan to
7 non-aboriginal lands further north in Isabella Coun-
8 ty, Michigan, where tribal members were entitled to
9 individual land allotments. Many members remained
10 in Lapeer, Macomb, Wayne, Washtenaw, and St.
11 Clair counties. For the administrative convenience of
12 the Federal Government, the 1855 Treaty of Detroit
13 also relocated the Saginaw Band of Chippewa Indi-
14 ans, including some Potowatomis and Ottawas to the
15 newly-established reservation lands in Isabella Coun-
16 ty. Article 6 of that treaty also provided that the or-
17 ganization of the Tribe and of the Saginaw Band of
18 Chippewa Indians was dissolved, "except so far as
19 may be necessary for the purpose of carrying into ef-
20 fect" the provisions of the treaty.
21 (6) Another 1855 Treaty of Detroit (11 Stat.
22 624) similarly grouped different bands of Ottawa
23 and Chippewa Indians for administrative conven-
24 ience. Article 5 of that treaty provided for dissolu-
25 tion of the organization of these bands except so far

1 as may be necessary for the purpose of carrying into
2 effect the provisions of that treaty. Subsequent judi-
3 cial interpretation of that article determined that its
4 intent was to dissolve the Federal Government's fic-
5 tional coupling of these tribes, not to destroy their
6 independent sovereign existence. Public Law 103–
7 324 confirmed this interpretation by reaffirming the
8 Federal recognition of the Little River Band of Ot-
9 tawa Indians as a tribe separate and distinct from
10 the Chippewa Indians.

11 (7) The Treaty of 1864 confirmed continued
12 Federal acknowledgement of the Tribe by specifically
13 naming the Swan Creek and Black River Chippewas
14 in that treaty's preamble.

15 (8) Over time and without justification, the
16 Federal Government unilaterally withdrew from the
17 Federal relationship established with the Tribe
18 through the aforementioned treaties. The Tribe
19 brought suit against the Federal Government for
20 amounts past due under the treaties. In 1910 and
21 1924, the Congress enacted jurisdictional acts (36
22 Stat. 829 and 43 Stat. 137, respectively) to enable
23 the Tribe and the Saginaw Band of Chippewa to file
24 their respective claims against the United States.
25 These claims, filed in 1927, were later incorporated

1 into Indian Claims Commission Dockets 57, 59, and
2 13–E, and United Claims Court Docket 13–F.
3 (9) Beginning in 1935, the Tribe petitioned for
4 reorganization and assistance pursuant to the Act of
5 June 18, 1934 (25 U.S.C. 461 et seq., commonly re-
6 ferred to as the "Indian Reorganization Act"). Due
7 to misinterpretation of Article 6 of the 1855 Treaty
8 of Detroit, the Commissioner of Indian Affairs con-
9 cluded that the Tribe could not organize separately
10 from the Saginaw Band of Chippewa Indians. Due
11 to the lack of funding available for tribal land acqui-
12 sition, the Swan Creek Black River Ojibwa Bands
13 were unable to purchase their own reservation lands.
14 (10) In 1939, agents of the Federal Govern-
15 ment made an administrative decision not to provide
16 services or extend the benefits of the Indian Reorga-
17 nization Act to any additional Indian tribes located
18 in Michigan's lower peninsula, as recognized by the
19 1807 Treaty of Detroit (7 Stat. 105), the 1819
20 Treaty of Saginaw (7 Stat. 203), the March 28,
21 1836 Treaty of Washington (7 Stat. 491), and the
22 May 9, 1836 Treaty of Washington (7 Stat. 503).
23 (11) In 1986, Congress enacted Public Law
24 99–346 (100 Stat. 674) to distribute judgment
25 funds awarded in settlement of the claims brought

1 by the Tribe and the Saginaw Band in Dockets 57,
2 59, 13–E, and 13–F in a nondiscriminatory manner
3 to the claimants and their descendants. This Act,
4 like the jurisdictional Acts of 1910 and 1924, con-
5 tained no clear and unambiguous intent to terminate
6 the Federal relationship with the Tribe. To the con-
7 trary, these Acts acknowledged that the Tribe pos-
8 sessed collective sovereign rights in tribal lands and
9 funds, a primary criterion for Federal recognition.
10 (12) Despite administrative denials of requests
11 by the Tribe to organize its own federally recognized
12 tribal government, the Tribe continued to carry out
13 its governmental functions through various formal
14 and informal political and social structures, includ-
15 ing a Tribal Council. Between 1937 and 1991, the
16 Tribe conducted many of its government functions
17 through associations organized by Swan Creek mem-
18 bers, including the Saginaw Rural and Urban Indian
19 Association. In 1991, the Tribe chartered a State-
20 sanctioned, non-profit tribal government and agreed
21 to seek Federal recognition of its confederation of
22 Swan Creek and Black River Ojibwa Bands as a dis-
23 tinct tribe.
24 (13) Other tribes in Michigan, whose members
25 are descendants of the signatories to one or more of

1 the treaties listed in paragraph (1) have been recog-
2 nized by the Federal Government as distinct Indian
3 tribes, including the Pokagon Band of Potawatomi
4 Indians, the Huron Potawatomi Band of Indians,
5 the Grand Traverse Band of Ottawa and Chippewa
6 Indians, the Sault St. Marie Tribe of Chippewa Indi-
7 ans, the Bay Mills Band of Chippewa Indians, the
8 Saginaw Chippewa Tribe of Michigan, and the Little
9 Traverse Bay Bands of Odawa Indians.
10 (14) The Tribe has at least 300 eligible mem-
11 bers who continue to reside close to what was recog-
12 nized in the 1807 Treaty of Detroit as their ances-
13 tral homelands in southeastern lower Michigan.
14 (15) The United States Government, the gov-
15 ernment of the State of Michigan, and local govern-
16 ments have had continuous dealings with the recog-
17 nized political leaders of the Tribe since 1785.
18 (16) In light of the treaty relations between the
19 Tribe and the United States, the Tribe's recognition
20 as a tribe in Acts of Congress, and Federal recogni-
21 tion of the Tribe's rights in tribal lands and funds,
22 it is appropriate for Congress to reaffirm and clarify
23 the Federal relationship of the Tribe in the same
24 manner as Congress has reaffirmed Federal recogni-
25 tion of the Lac Vieux Desert Band of Lake Superior

1 Chippewa Indians, the Pokagon Band of Potawatomi
2 Indians, the Little Traverse Bay Bands of Odawa
3 Indians, and the Little River Band of Ottawa Indi-
4 ans.

5 **SEC. 4. FEDERAL RECOGNITION.**

6 (a) FEDERAL RECOGNITION.—Federal recognition of
7 the Swan Creek Black River Confederated Ojibwa Tribes
8 of Michigan Indians is hereby affirmed. All laws and regu-
9 lations of the United States of general application to Indi-
10 ans or nations, tribes, or bands of Indians, including the
11 Act of June 18, 1934 (25 U.S.C. 461 et seq.) (commonly
12 referred to as the "Indian Reorganization Act"), which are
13 not inconsistent with any specific provision of this Act
14 shall be applicable to the Tribe and its members.

15 (b) FEDERAL SERVICES AND BENEFITS.—

16 (1) IN GENERAL.—The Tribe and its members
17 shall be eligible, on and after the date of the enact-
18 ment of this Act, for all future services and benefits
19 furnished to federally recognized Indian tribes with-
20 out regard to the existence of a reservation for the
21 Tribe or the location of the residence of any member
22 on or near any Indian reservation.

23 (2) SERVICE AREA.—For purposes of the deliv-
24 ery of Federal services to enrolled members of the
25 Tribe, the Tribe's service area shall be deemed to be

1 the area comprised of Monroe, Shiawassee, Lenawee,
2 Wayne, Oakland, Macomb, St. Clair, Lapeer,
3 Sanilac, Washtenaw, Genesee, and Tuscola Counties
4 in southeastern lower Michigan. Such services shall
5 be provided notwithstanding the establishment of a
6 reservation for the Tribe after the date of enactment
7 of this Act. Services may be provided to members
8 outside the named service area unless prohibited by
9 law or regulation.

10 **SEC. 5. REAFFIRMATION OF RIGHTS.**

11 (a) IN GENERAL.—All rights and privileges of the
12 Tribe, and the members thereof, which may have been ab-
13 rogated or diminished before the date of enactment of this
14 Act are hereby reaffirmed.

15 (b) EXISTING RIGHTS OF TRIBE.—Nothing in this
16 Act shall be construed to diminish any right or privilege
17 of the Tribe, or the members thereof, that existed prior
18 to the date of enactment of this Act. Except as otherwise
19 specifically provided in any other provision of this Act,
20 nothing in this Act shall be construed as altering or affect-
21 ing any legal or equitable claim the Tribe might have to
22 enforce any right or privilege reserved by or granted to
23 the Tribe which was wrongfully denied to or taken from
24 the Tribe prior to the enactment of this Act.

1 **SEC. 6. TRIBAL LANDS.**

2 The Tribe's tribal lands shall consist of all real prop-
3 erty, now or hereafter held by, or in trust for, the Tribe.
4 The Secretary shall acquire real property for the benefit
5 of the Tribe. Any such property shall be taken by the Sec-
6 retary in the name of the United States in trust for the
7 benefit of the Tribe and shall become part of the Tribe's
8 reservation. All lands restored to the Tribe pursuant to
9 this section, whether now or hereafter held, shall be within
10 those lands previously ceded by the Tribe in the 1807
11 Treaty of Detroit (7 Stat. 105).

12 **SEC. 7. MEMBERSHIP.**

13 Not later than 18 months after the date of the enact-
14 ment of this Act, the Tribe shall submit to the Secretary
15 membership rolls consisting of all individuals eligible for
16 membership in the Tribe. The qualifications for inclusion
17 on the membership rolls of the Tribe shall be determined
18 by the membership clause in the governing documents of
19 the Tribe in consultation with the Secretary. Upon com-
20 pletion of the rolls, the Secretary shall immediately publish
21 notice of such in the Federal Register. The Tribe shall
22 ensure that such rolls are maintained and kept current.

23 **SEC. 8. CONSTITUTION AND GOVERNING BODY.**

24 (a) CONSTITUTION.—

25 (1) ADOPTION.—Not later than 24 months
26 after the date of the enactment of this Act, the Sec-

1 retary shall conduct, by secret ballot and in accord-
2 ance with the provisions of section 16 of the Act of
3 June 18, 1934 (25 U.S.C. 476), an election to adopt
4 a constitution and bylaws for the Tribe.
5 (2) INTERIM GOVERNING DOCUMENTS.—Until
6 such time as a new constitution is adopted under
7 paragraph (1), the governing documents in effect on
8 the date of enactment of this Act shall be the in-
9 terim governing documents for the Tribe.
10 (b) OFFICIALS.—
11 (1) ELECTION.—Not later than 6 months after
12 the Tribe adopts a constitution and bylaws pursuant
13 to subsection (a), the Secretary shall conduct elec-
14 tions by secret ballot for the purpose of electing offi-
15 cials for the Tribe as provided in the constitution.
16 The election shall be conducted according to the pro-
17 cedures described in subsection (a) except to the ex-
18 tent that such procedures conflict with the constitu-
19 tion of the Tribe.
20 (2) INTERIM GOVERNMENT.—Until such time
21 as the Tribe elects new officials pursuant to para-
22 graph (1), the governing body of the Tribe shall be
23 the governing body in place on the date of the enact-
24 ment of this Act, or any new governing body selected

1 under the election procedures specified in the in-
2 terim governing documents of the Tribe.

3 **SEC. 9. JURISDICTION.**

4 The Tribe shall have jurisdiction to the full extent
5 allowed by law over all lands taken into trust for the bene-
6 fit of the Tribe by the Secretary. The Tribe shall exercise
7 jurisdiction over all its members who reside within its serv-
8 ice area, as specified in section 4(b)(2) in matters pursu-
9 ant to the Indian Child Welfare Act of 1978 (25 U.S.C.
10 1901 et seq.) as if the members were residing upon a res-
11 ervation as defined in that Act.

○

JOHN ENGLER
GOVERNOR
LeAnne Redick, Director

STATE OF MICHIGAN
WASHINGTON OFFICE
444 North Capitol Street, NW, Suite 411
Washington, DC 20001
202/624-5840

MEMORANDUM

TO: House Resources Committee Members
Michigan Delegation

FROM: Debbie Marshall, Federal Legislative Liaison

DATE: October 1, 1998

RE: HR 2822 - Federal Recognition of Indian Tribes

Attached is a letter from Governor Engler to Congressman Knollenberg from August 1997 with an attached letter to Chairman Young from December 1995, which clearly state his opposition to the congressional acknowledgement of additional Indian tribes. The fundamental reasons for his opposition remain the same as outlined in these letters.

On October 7, the House Resources Committee will hold yet another hearing on recognizing additional Indian tribes. I hope that you will use this letter as a reference while considering this bill.

Thank you in advance for your consideration. Please feel free to contact our Washington Office at 202-624-5840 should you have any questions regarding this transmission.

PRINTED ON RECYCLED PAPER

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN ENGLER
GOVERNOR

August 20, 1997

The Honorable Joseph Knollenberg
11th District
1511 Longworth House Office Bldg.
Washington, DC 20515

Dear Congressman Knollenberg:

It has recently come to my attention that yet another group of Native Americans in Michigan is poised to seek federal recognition via an act of congress. This is in addition to the Burt Lake Band of Ottawa and Chippewa Indians, which is now seeking recognition through HR 948 and which unsuccessfully sought recognition in the last Congress through HR 377. I am writing to reiterate my strong opposition to the recognition of additional Indian tribes in Michigan via congressional action, which I expressed in a December 6, 1995, letter to Congressman Donald Young (attached) regarding my opposition to HR 377.

I fully stated the reasons for my opposition to congressional acknowledgement of additional Indian tribes in my letter to Congressman Young. While some of the facts have changed since I wrote that letter, notably with respect to the legality of casino gaming in Michigan, the fundamental reasons for my opposition remain the same.

First, recognizing tribes in this manner circumvents and undermines the established process for federal acknowledgement that exists in the Department of the Interior's Bureau of Indian Affairs ("BIA"). This process requires that tribes make a detailed showing of their entitlement to federal recognition that involves extensive examination of the historical record of the tribe in question. This is a function that congress is simply not equipped to carry out. If, as some claim, the BIA process has broken down, I would suggest that congress direct its energies toward fixing that process rather than assuming the BIA's duties unto itself. It is my understanding that the tribe that recently surfaced has taken no action to further its application for acknowledgement since filing its original "letter of intent" with the BIA in 1993. In this case, the federal acknowledgement process has not even been permitted to work.

Second, recognition of Indian tribes by act of congress sets a bad precedent that other tribes are likely to follow. In fact, Michigan is a prime example of this trend. The Michigan tribes that are now seeking federal acknowledgement from

Congressman Knollenberg
August 20, 1997
Page 2

congress are merely following the lead of three tribes that gained acknowledgement in the same manner in 1994. The tribes are lobbying congress rather than marshalling the historical evidence that the BIA properly demands that tribes seeking federal acknowledgement produce. This is a trend that should not be allowed to continue.

Third, recognition of an additional Indian tribe in Michigan will serve to undermine state sovereignty and will inevitably lead to increased litigation on a variety of fronts where state and tribal policies conflict. Finally, acknowledgement of additional tribes could lead to a proliferation of casino gaming in Michigan, which I oppose. The tribes should, therefore, only be recognized following the searching inquiry that the BIA performs, not as a result of the political process.

Thank you for taking my concerns into consideration. I urge you to oppose efforts to acknowledge additional Indian tribes via congressional action.

Sincerely,

John Engler
Governor

JE/mg/jp
Enclosure
cc: Michigan Delegation

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN ENGLER
GOVERNOR

December 5, 1995

The Honorable Donald Young, Chairman
House Resources Committee
United States House of Representatives
Washington, D.C. 20515

Dear Representative Young:

I am taking this opportunity to submit to you my strong objection to HR 377, which is before your Committee. HR 377, sponsored by Congressman Stupak, would provide federal acknowledgment to the Burt Lake Band of Ottawa and Chippewa Indians (Band). I have several serious concerns with both the content of HR 377, as well as the precedent the bill would set for Indian tribes throughout the country. Each of these concerns warrant rejection of HR 377.

If the Committee, and ultimately Congress, were to pass HR 377, it would set an untenable precedent whereby all future Indian tribes seeking federal acknowledgment will bypass the appropriate acknowledgment process in favor of lobbying Congress. Such a precedent is both unnecessary and unadvisable. As you are well aware, the Secretary of the Interior has established a detailed procedure under which the Bureau of Indian Affairs (BIA) is to determine whether a particular Indian group is entitled to federal acknowledgment. These procedures, promulgated at 25 CFR pt. 83.1-.13, in general require the petitioning tribe to submit historic documentation to establish that it has had a continuing existence as an autonomous Indian body since 1900. The BIA must consider all evidence submitted, prepare its own factual findings, and specifically determine whether all the necessary criteria have been established. The process also provides all interested parties (which includes states and local units of government) with an opportunity to submit evidence and arguments on the acknowledgment petition.

Quite simply, the process by which the United States is to acknowledge Indian tribes is established. Through this process the BIA can adequately determine whether there is historical justification supporting federal acknowledgment. In bypassing this detailed process via legislation, the Committee will preclude an acknowledgment determination which is based on historical evidence and which is compiled by properly trained persons. It can hardly be argued that Congress has the time or expertise necessary to determine

whether a tribe meets the Secretary of Interior's regulations for acknowledgment. Quite frankly, acknowledgment through legislative fiat does nothing to further the historical legitimacy of a tribe, and in fact detracts from it in the absence of detailed factual findings from the BIA.

If Congress continues to acknowledge tribes in this manner, all future tribes will opt to lobby their congressperson rather than producing historical facts in a more lengthy, yet legitimate and ultimately productive, BIA proceeding. This situation is far from mere speculation. As the Band's own actions in seeking this legislation have proven, this is exactly the course which Michigan tribes are now following, and will continue to follow unless and until Congress discontinues expedited acknowledgment through legislation. In 1994 three Michigan tribes, two of which were amidst the BIA process, bypassed the process and received federal acknowledgment through legislation. Less than four months later the Band, which is also amidst the BIA process, followed suit and had its Congressman submit legislation to recognize the Band, and bypass the BIA process. It would be foolish for anyone to believe that any tribe seeking federal recognition would do anything other than seek the least burdensome and most expeditious acknowledgment process available, i.e., legislative recognition. The Committee should refuse to continue such damaging precedent.

As you may be aware, the BIA has placed similar objections to HR 377 before the Subcommittee on Native American and Insular Affairs. In her November 14, 1995 testimony Deputy Commissioner of Indian Affairs Hilda Manuel indicated, among other things, that only through the BIA process may a particular group be properly identified as a tribe meeting the federal acknowledgment requirements. Deputy Commissioner Manuel also pointed out the difficulties which arise for the BIA and the tribes when expedited, non-BIA processes are utilized to acknowledge Indian tribes.

There are several other reasons why this legislation should not be voted out of Committee, one of which is related to the concern raised above. There is some historical evidence which needs to be carefully scrutinized by BIA genealogists to determine whether the Band can establish two of the required criteria--continuity of existence, and that the Band has substantially existed as an independent community. One such piece of historical evidence is a 1917 decision by the United States District Court for the Eastern District of Michigan, United States v. Shepherd, wherein the court opined that the Band was never considered as an Indian Nation or tribe:

> *The Cheboygan Indians were a small band and have never been treated, considered or recognized as a nation or a tribe.* Their lands, whether held as communal property by the band or in severalty by the individual members, were not tribal lands and hence were not within

> the prohibition of the General Act of Congress forbidding conveyance of lands belonging to a nation or tribe of Indians without the consent of the Government. (emphasis added).

The Court also noted that tribal members had, after 1855, assimilated into the white community, including becoming active in local politics. This decision by a federal judge is worthy of in-depth consideration and examination by the BIA, and further supports the Committee's rejection of expeditiously acknowledging the Band through HR 377. Without a complete professional examination of this and other historical facts, any federal acknowledgment would be both premature and improper.

A final reason for opposing HR 377 is the fact that Michigan has historically been subject to numerous lawsuits by those tribes' which have obtained federal recognition. I am concerned that federal recognition of the Band (as well as additional tribes) will lead to increased litigation between the state and the Band and will likewise heighten conflict between state and tribal public policies.

Michigan now has ten federally-recognized tribes within its borders. To date, seven of these tribes have pursued litigation against the state which has eroded state sovereignty and allowed tribes and their members to conduct activities that are in conflict with state policy in a number of areas. These activities include both the use of gill nets in fishing the Great Lakes, which has seriously depleted the commercial and sport fishing stocks in our lakes and is prohibited for non-Indians, as well as casino gambling, which can only be conducted in Michigan by federally-recognized Indian tribes. Each of these issues has involved protracted litigation between the state and the tribes.

In addition, the Band has threatened lawsuits against the state and private landowners regarding hundreds of acres of land in the Burt Lake area to which the Band claims an entitlement. A lawsuit against at least the state will most surely follow federal recognition.

I am further concerned that recognition of the Band could create the opportunity for the operation of another new gambling casino in our state. As I noted above, Michigan law does not allow non-Indians to conduct casino gaming. To date, I have signed Class III gaming compacts with our ten federally-recognized tribes for the conduct of on-reservation casino gaming. I have vetoed any off-reservation casino gambling. I am, however, opposed to the widespread, uncontrolled expansion of casino gaming that the recognition of at least one additional tribe could bring.[1]

---

[1] According to BIA records, there are seven other Michigan tribes which have at least submitted letters of intent to seek federal acknowledgement.

Thank you for allowing me to submit my objections on HR 377 to the Committee. I sincerely hope that the entire Committee will consider the seriousness of these issues, reject HR 377 and not vote it out of Committee.

Sincerely,

John Engler
Governor

JE/cm/kh

cc: Michigan Delegation

TESTIMONY

ON H.R. 2822

"THE SWAN CREEK BLACK RIVER CONFEDERATED OJIBWA TRIBES OF MICHIGAN ACT"

BEFORE THE

COMMITTEE ON RESOURCES

U.S. HOUSE OF REPRESENTATIVES

OCTOBER 7, 1998

SUBMITTED BY

MICHAEL L. LAWSON, PH.D.
SENIOR ASSOCIATE
MORGAN, ANGEL & ASSOCIATES
WASHINGTON, D.C.

Mr. Chairman and members of the House Resources Committee, I am grateful to have the opportunity to present this written testimony to you today on behalf of the Swan Creek Black River Confederated Ojibwa Nation in support of H.R. 2822, The Swan Creek Black River Confederated Ojibwa Tribes of Michigan Act."

I. INTRODUCTION

A. *My Background.*

As a historian and expert on tribal recognition, I have been working with the Swan Creek Black River Tribes (hereinafter referred to as "Swan Creek Black River," "SCBR," or "The Tribe") in the effort to reaffirm its Federal recognition. I have had extensive experience working on issues related to Federal recognition and acknowledgment. Since earning a Ph.D. in American Indian History at the University of New Mexico, I have spent nearly 20 years conducting research on various aspects of Native American history. For 13 of those years, I served as a historian with the Bureau of Indian Affairs (BIA) and worked most of that time with the BIA's Branch of Acknowledgment and Research (BAR). There I regularly provided technical assistance to unrecognized tribes and helped evaluate the evidence contained in the documented petitions of tribes that advanced in the BIA's Federal Acknowledgment Process (FAP). On occasion I also reviewed the evidence presented to the BIA by tribes seeking recognition or restoration by Congress. In addition, I helped draft the current revisions to the Acknowledgment regulations.

I retired from the BIA in 1993 and subsequently became the Senior Associate for Morgan, Angel and Associates, a public policy consulting firm in Washington, D.C. that provides research and analysis on American Indian, Natural Resource, and Environmental issues. A major part of my practice involves providing consultation and research to unrecognized tribes seeking Federal recognition.

In addition to my professional experience, I am familiar with Ojibwa history having grown up in Genesee County, Michigan, one of the six counties in which the Swan Creek Black River people primarily reside.

The point I wish to make in describing my background is that I have had a wide range of experience from which to evaluate and compare the relative merits of tribal entities seeking Federal recognition through both the administrative process and through legislation. On the basis of my experience and the extensive documentation I have reviewed, it is my conclusion that Swan Creek Black River presents a particularly compelling case for Federal reaffirmation.

B. *SCBR Is A Distinct, Treaty-Based Tribal Entity.*

Swan Creek Black River is a legitimate tribal entity that represents a politically, socially, and geographically distinct Indian community whose members have verifiable Ojibwa ancestry. The Tribe is not a splinter group of any other tribe, although a minority of its members were enrolled in the Saginaw Chippewa Indian Tribe of Michigan (hereinafter referred to as "Saginaw Chippewa") under circumstances I will describe later.

Swan Creek Black River is also a successor in interest to tribal entities that were federally recognized previously. The historical record shows that for most of the period of Government interaction with the Chippewa or Ojibwa tribes in Michigan, the United States recognized the Swan Creek and Black River bands (who were actually one people who lived between these two bodies of water) to be distinct and cohesive political and cultural entities. They were recognized as such by the Federal Government through a series of treaties in the 19th century, the latest of which was the Treaty of Saginaw of 1864. The existing evidence indicates that members of the Swan Creek Black River bands continued to be recognized as Indians by the United States and to receive Federal services as the successors in interest to their treaties well into the 20th century.

C. *BIA Administrative Action Effectively Ended Active and Ongoing Federal Recognition of SCBR.*

Only Congress can legally terminate a tribe's Federal relationship and it never took such action with Swan Creek Black River. The Tribe's lack of present-day recognition originates from a 1936 action by the BIA permitting the Saginaw Chippewa to reorganize its government and limit tribal membership to residents of the Isabella Reservation.[1] This inappropriate unilateral action effectively ended active and ongoing Federal recognition for the vast majority of the Swan Creek Black River people, who were not included in this reorganization because they did not reside on the reservation.

Congress has the plenary authority to reaffirm Swan Creek Black River's treaty rights, jurisdiction, and sovereignty. Indeed, Congress has exercised it's authority in the recent past to reaffirm, recognize, or restore the Federal relationship to many worthy tribes, including four tribes in Michigan similarly situated to Swan Creek Black River. Congress has demonstrated its competence to weigh the merits of these cases, even though the BIA simultaneously administers an acknowledgment process established in Federal regulations.

D. *SCBR Is Eligible for the FAP.*

Swan Creek Black River is eligible for the BIA's administrative process. A great strength of the Swan Creek Black River people in this regard is that have they retained more "Indianess" than most tribal groups that have been acknowledged through the administrative process and many that have been recognized through legislation. What I mean by Indianess is that: (1) they have a relatively high degree of Indian blood quantum; (2) they have had a comparatively high rate of intermarriage with Ojibwas and other Indians; and (3) they have retained many aspects of traditional culture, including language, ceremonies, arts and crafts, subsistence economic activities, etc. It is highly unusual, for example, for an unrecognized tribe to maintain a memberhip requirement of having at least

[1]See Exhibit No. 28.

1/4 Indian blood. Some Acknowledgment petitioners would consider themselves fortunate to have more than a handful of members who have an Indian blood quantum of more than a quarter. Yet, the Tribe's Enrollment Ordinance specifically requires a blood quantum of at least 25 percent Swan Creek Black River Ojibwa.

Both Congress and the BIA have recently recognized that many native groups in Michigan have retained a similarly high degree of Indianess as well as the measurable characteristics of a tribal entity. In fact, every Michigan tribal group that has gone all the way through the Acknowledgment process, and most that have sought legislative recognition have been successful in regaining Federal status. While I am aware of worthy groups spread throughout the country that appear to have good *prima facie* cases, Michigan is one of the few states that had a cluster of such cases.

While Swan Creek Black River has a comparatively high degree of Indianess, success in the Acknowledgment process is based on demonstrating more tangible characteristics of a tribe, such as the maintenance of a distinct and cohesive social community over which political influence or authority has been exercised throughout the period of contact with Euro-Americans. It is my view, as an experienced evaluator of such issues, that Swan Creek Black River would very likely be successful in the Acknowledgment process, indeed qualifying for expedited consideration based on previous unambiguous Federal acknowledgment. However, it is also my view that compelling, extenuating circumstances make Congress the most appropriate venue for the demonstration of this case.

II. IT IS HIGHLY LIKELY THAT SWAN CREEK BLACK RIVER MEETS THE MANDATORY CRITERIA FOR FEDERAL ACKNOWLEDGMENT UNDER 25 CFR 83.

The seven mandatory criteria established in Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR 83) have become the universal standard for Federal recognition of Indian tribal entities. Contrary to statements made by critics of H.R. 2822, Swan Creek Black River has done much more than merely file a "letter of intent" to seek

Federal Acknowledgment under these regulations. The Tribe has spent many years gathering the historical evidence that both the BIA and Congressional evaluations require. Cultural anthropologists Crisca Bierwert and Deborah Jackson of the University of Michigan have conducted community studies of the Tribe based on oral history interviews with tribal members. Extensive historical documentation has also been collected by Mark Keller, a resident expert on the history of Michigan Indians, and by Guy Fringer, another former BIA historian in Washington, D.C. In addition, numerous tribal members have collected evidence from sources ranging from their family records to university libraries.

Based on my review of this evidence, I think that a Swan Creek Black River's petition would have a very favorable chance of ultimate success. However, it would be presumptuous for me to guarantee the result and I refuse, out of respect for my former colleagues at the BAR, to predict the final discretionary recommendation that only they can make to the Assistant Secretary-Indian Affairs, the executive who would make the final administrative determination of the case.

A. *SCBR Can Qualify For "Fast-Track" Consideration.*

I am also of the fervent opinion that Swan Creek Black River could qualify for expedited consideration under the provisions of Part 83.8 of the Acknowledgment regulations. This part provides that petitioners with previous unambiguous Federal acknowledgment only need to provide a reduced amount of evidence for criteria 83.7 (a) - (c) since the last date of Federal acknowledgment, although they still must fully demonstrate that they meet criteria 83.7(d) - (g).

Swan Creek Black River qualifies for this "fast track" consideration because: (1) it had treaty relations and (2) it had collective rights in Federal annuity payments and land allotments. It was also recognized as a tribal entity by the U.S. Indian Claims Commission (ICC) in 1973 when it was awarded damages for land losses[2]. Swan Creek Black River

[2]See Exhibit No. 104.

was similarly treated as having collective rights in tribal funds when Chippewa judgment awards were subsequently distributed by the BIA. The 1982 distribution of a U.S. Court of Claims award may in fact mark the last date of "unambiguous previous Federal acknowledgment" for Swan Creek Black River. This means that in a documented Acknowledgment petition the Tribe might only need to present evidence for meeting some of the criteria since 1982.

The date of last previous acknowledgment is ultimately decided by the Assistant Secretary-Indian Affairs when he or she issues a proposed finding on a specific case. Swan Creek Black River can provide evidence of a number of instances of previous acknowledgment, so it is just a matter of which will be the latest date for which the Assistant Secretary agrees that there is sufficient evidence. If the 1982 date were found to be unacceptable to the Assistant Secretary, I am certain that Swan Creek Black River would be able to demonstrate 'Unambiguous previous acknowledgment" going back no further than the late 1930s, when its Federal relationship was unilaterally withdrawn. Failing that, Swan Creek Black River could fall back to earlier examples of recognition such as the 1910 jurisdictional act by which Congress authorized the Swan Creek and Black River Bands to sue the United States.[3] As the foundation of its case, the Tribe can rely on its many 19th century treaties as examples of previous acknowledgment.

B. *Acknowledgment Criteria 83.7 (a) - (c).*

For criteria 83.7(a), identification as a distinct tribal entity, the Tribe, in accordance with § 83.8(d)(1) of the regulations, would need only to meet criterion (a) since the last point of Federal acknowledgment and to prove that it has been identified by the sources used "as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity." Critics of H.R. 2822 have argued erroneously that Swan Creek Black River cannot meet this criterion because they have only addressed Federal

[3]See Exhibit No. 10.

Swan Creek Black River would have little difficulty meeting criteria 83.7 (d) and (g) respectively because it has an acceptable Constitution and Enrollment Ordinance (criterion d) and its Federal relationship was never forbidden or terminated by Congress (criterion g). As for criterion 83.7(e), evidence of descent from a historical tribe, both the Tribe's Constitution and Enrollment Ordinance establish a blood quantum requirement of 1/4 Swan Creek and Black River Ojibwa and proof of descendancy from ancestors whose names appeared on at least one of thirty-five Federal Indian annuity payment rolls or censuses compiled between 1818 and 1867. I am convinced by my sampling of genealogical documents for the primary family lines that the Tribe's present membership would have no problem linking to the historical Swan Creek and Black River Ojibwa bands.

Opponents of H.R. 2822 maintain that Swan Creek Black River cannot meet criterion 83.7(f) regarding tribal membership because its membership is composed primarily, if not entirely, of people enrolled with the Saginaw Chippewa. As noted earlier, the evidence shows that the Swan Creek Black River membership is not "composed principally" of members of any other federally recognized tribe. Eighty percent of its members are enrolled only with Swan Creek Black River. Neither has its membership proactively separated from the "main body of a currently acknowledged tribe." Therefore, the Tribe is not barred from acknowledgment under the provisions of either Part 83.7(f) of the Acknowledgment regulations or Part 83.3(d), which precludes splinter groups and factions of existing recognized tribes.

If Swan Creek Black River decided to submit a documented petition for acknowledgment, the BIA would be able to evaluate the petition, once it was placed under active consideration, and make a final determination in far less time than the usual case. This is because of the quality of the Swan Creek Black River evidence and its previous unambiguous acknowledgment. However, for reasons I will explain further, it is my view

Swan Creek Black River would have little difficulty meeting criteria 83.7 (d) and (g) respectively because it has an acceptable Constitution and Enrollment Ordinance (criterion d) and its Federal relationship was never forbidden or terminated by Congress (criterion g). As for criterion 83.7(e), evidence of descent from a historical tribe, both the Tribe's Constitution and Enrollment Ordinance establish a blood quantum requirement of 1/4 Swan Creek and Black River Ojibwa and proof of descendancy from ancestors whose names appeared on at least one of thirty-five Federal Indian annuity payment rolls or censuses compiled between 1818 and 1867. I am convinced by my sampling of genealogical documents for the primary family lines that the Tribe's present membership would have no problem linking to the historical Swan Creek and Black River Ojibwa bands.

Opponents of H.R. 2822 maintain that Swan Creek Black River cannot meet criterion 83.7(f) regarding tribal membership because its membership is composed primarily, if not entirely, of people enrolled with the Saginaw Chippewa. As noted earlier, the evidence shows that the Swan Creek Black River membership is not "composed principally" of members of any other federally recognized tribe. Eighty percent of its members are enrolled only with Swan Creek Black River. Neither has its membership proactively separated from the "main body of a currently acknowledged tribe." Therefore, the Tribe is not barred from acknowledgment under the provisions of either Part 83.7(f) of the Acknowledgment regulations or Part 83.3(d), which precludes splinter groups and factions of existing recognized tribes.

If Swan Creek Black River decided to submit a documented petition for acknowledgment, the BIA would be able to evaluate the petition, once it was placed under active consideration, and make a final determination in far less time than the usual case. This is because of the quality of the Swan Creek Black River evidence and its previous unambiguous acknowledgment. However, for reasons I will explain further, it is my view

that the administrative process is neither appropriate nor fair for a case like Swan Creek Black River where the Government has so recently acknowledged a Federal relationship.

III. LEGISLATION IS THE MOST APPROPRIATE METHOD FOR SWAN CREEK BLACK RIVER TO REGAIN FEDERAL RECOGNITION.

Many critics of legislative recognition maintain that the BIA's administrative process is the only legitimate and worthy process for recognition of the government-to government relationship between Indian tribes and the United States. This view was expressed, for example, by Governor John Engler of Michigan in a December 15, 1995 letter to Chairman Donald Young of your Committee regarding proposed legislation to recognize the Burt Lake Band of Ottawa and Chippewa Indians. The Governor's letter is very similar to letters and position statements that I helped draft for the BIA and to letters that I continue to write to some of my clients and potential clients, especially those who think they can overcome their lack of good evidence by going through the legislative process because they feel that it involves less scrutiny. The reality is that legislative recognition is not carried out in ignorance, as its critics imply. A tribe is still required to document its case and such documentation is measured against the standards set forth in 25 CFR 83. Furthermore, legislative hearings elicit sworn testimony from private and government experts who ensure accuracy in factual and legal matters. While Congress has seen fit in the past to recognize tribes over the vigorous opposition of the Interior Department, it is unlikely that Congress has in modern times ever recognized an Indian group that was not legitimately a tribe.

A Position Paper stating Saginaw Chippewa's opposition to H.R. 2822, dated May 11, 1998, goes further in proclaiming that Congress is neither well-equipped nor adequate to the task of making decisions regarding tribal recognition. This position both insults and ignores the plenary authority that Congress, pursuant to the Constitution,

maintains over Indian affairs, including the power to recognize, terminate, and reaffirm the government-to-government relationship. Congress has never mandated that the Department of the Interior should possess or exercise the sole authority to grant tribal recognition. In fact, the current Acknowledgment regulations have not been promulgated pursuant to specific legislation. Rather, they are a product of administrative fiat. Arguments for the preeminence of the administrative process also ignore the fact that Congress has acted in the past, and will continue in the future, to recognize tribes for which it determines the administrative process is not appropriate because of compelling, extenuating historical circumstances. Furthermore, many Members of Congress share the view expressed in 1994 by Representative Dale Kildee of Michigan that the BIA's administrative process is "designed to address recognition of tribes which had never had a treaty relationship with the United States," and thus is inappropriate for treaty tribes such as Swan Creek Black River.[5]

A. *FAP Is Neither Timely Nor Efficient.*

The untimeliness of the Acknowledgment process has often been a key consideration of Congress when weighing the merits of legislative recognition in a specific case. What opponents of legislative recognition characterize as "circumvention" of the administrative process, has most often been a recognition by Congress that the FAP is notoriously slow and that deserving tribes that have a high likelihood of obtaining Federal acknowledgment should not have to wait for untold years to have their status clarified.

The BIA has never provided sufficient resources to evaluate Acknowledgment petitions in a timely manner. For example, the BAR presently has only two full teams of anthropologists, genealogists, and historians to evaluate petitions. Since 1978, the year in which the Acknowledgment regulations were established, 200 petitioners have submitted at least a letter of intent to petition. However, only 52 have submitted sufficient

[5]See Exhibit No. 9.

documentation to be declared ready for active consideration and allowed to advance further through the process. During this 20-year period the BIA has managed to resolve only 25 cases, a historical average of 1.25 cases per year. Lacking adequate resources, the BIA now faces an overwhelming backlog of 28 fully documented but yet unresolved cases.

B. *SCBR Might Have To Wait For A Generation.*

At the BIA's present rate of resolution, a petition from Swan Creek Black River might have to wait for over two decades for a final determination, even if it were declared ready for active consideration today. This would mean that a generation of Swan Creek Black River elders would pass on without ever having the benefit of their right to continuous Federal recognition. If the process remains the same, it will also take the BIA considerably more than a century to resolve the cases of all the present petitioners and the list of petitioners increases each year. Therefore, it is neither appropriate nor fair that Swan Creek Black River, a tribe that may only have to demonstrate that it meets the Acknowledgment criteria for a period of 16 years (since 1982), should have to wait for 20 years or more for the opportunity to have its evidence evaluated by the BIA.

Opponents of legislative recognition cannot deny that the Acknowledgment process is inefficient. Instead, they recommend that Congress "rectify the process." This suggestion is hardly a solution to the bureaucratic quagmire that a tribe seeking Federal Acknowledgment must face. Even if H.R. 1154 or other reform legislation were enacted, it could take years before the new procedures are promulgated and fully implemented and even more years before the backlog of fully documented petitions are reviewed and resolved. While legislative proposals to revamp the Acknowledgment process are being discussed, unrecognized tribes will continue to remain hostage to bureaucratic stagnation.

C. *SCBR Is Situated Similarly To Other Restored Michigan Tribes.*

Opponents of H.R. 2822 maintain that Swan Creek Black River is not similarly situated as other tribes in Michigan that have received legislative recognition. They attempt to distinguish Swan Creek Black River from the Pokagon Band of Potawatomi Indians of Michigan and Indiana, the Little Traverse Band of Odawa Indians, and the Little River Band of Ottawa Indians of Michigan, all of which secured legislative recognition in 1994, and from the Burt Lake Band of Ottawa andChippewa Indians, who presently have a recognition bill before this Congress. My review of the evidence in all of these cases convinces me that Swan Creek Black River is situated the same as these other tribes in Michigan and throughout the Nation that have gained legislative recognition or Federal acknowledgment on the basis of documenting previous Federal acknowledgment and maintenance of a continuous and distinct social and political community.

Of the Michigan tribes recognized legislatively, only two proceeded very far in the BIA's Acknowledgment process. The Pokagon Band of Potawatomi pursued legislative recognition in 1994, growing impatient with the slowness of the FAP after 13 years. The Lac Vieux Desert Band of Chippewa Indians of Michigan gained legislative recognition in 1988, having waited over 17 years for its petition to move through the BIA. Are those tribes to be commended for committing themselves to the egregious inefficiencies of the Acknowledgment process or is Swan Creek Black River to be commended for comprehending the reality of the FAP and proceeding to expedite its long ovrdue reaffirmation?

In contrast, the Little Traverse Band and the Little River Band made only a token pursuit of the Federal Acknowledgment process and then sought and secured legislative recognition. These tribes never submitted a documented petition to the BIA. This fact was confirmed by Ms. Debra Maddox, Acting Director of the BIA's Office of Tribal Services, in her February 10, 1994 testimony before the Senate Indian Affairs Committee's hearing on the Pokagon, Little Traverse, and Little River bills. It is interesting to note that the Saginaw Chippewa Position Paper of May 15, 1998, based on a research report by cultural

anthropologist Dr. James M. McClurken of Michigan State University, chides Swan Creek Black River for not submitting a documented petition to the BIA. Yet, Professor McClurken also worked with the Little Traverse and Little River Bands in their recognition efforts and vigorously supported the legislative recognition bill authored by Congressman Kildee without a documented Acknowledgment petition.[6] Dr. McClurken's justification was (1) these tribes had worthy cases based on their previous acknowledgment; and (2) the Acknowledgment process is too slow. The exact same facts justify enactment of H.R. 2822, Swan Creek Black River's bill for legislative restoration.

As indicated elsewhere in my testimony, 20 percent of Swan Creek Black River members are enrolled with Saginaw Chippewa. However, it is not unusual for members of unrecognized tribes also to be enrolled in other tribes prior to recognition. When the Lac Vieux Desert Band was legislatively recognized in 1988, for example, all of its members were enrolled in other federally recognized tribes, including the Keweenaw Bay Indian Community of L'Anse and Ontonoagon Bands of Chippewa Indians of the L'Anse Reservation in Michigan. Similarly, 95 percent of the members of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan (formerly known as the Gun Lake Village Band of Grand River Ottawa), which the BIA has proposed to acknowledge, were until 1992 enrolled in the Huron Potawatomi Tribe, which was acknowledged by the BIA in 1996.

Naysayers would have Swan Creek Black River endure the same frustration as Pokagon, Lac Vieux Desert, and other unrecognized tribes in Michigan before its case can be considered to have sufficient merit. Many of the petitioners ahead of Swan Creek Black River in the Acknowledgment process are recently organized groups that will be hard pressed even to demonstrate their Indian ancestry. Is it fair for a strong case to wait for eons until the BIA can resolve weaker cases that happen to have earlier submission dates? The Swan Creek Black River leaders do not think so, and I entirely agree with them.

---

[6]See Exhibit No. 101.

Congress has continuously expressed a similar attitude since 1982 by enacting legislation granting recognition to eight worthy tribes, including four in Michigan, that were also Acknowledgment petitioners. Congress has also recognized or restored the Federal status of dozens of other tribal groups that were never Acknowledgment petitioners, including the Pascua Yaqui Tribe of Arizona and the Houlton Band of Maliseet Indians of Maine. Swan Creek Black River's case for reaffirmation is compelling and no different historically or legally from the other Michigan tribes legislatively restored or whose legislative recognition is currently pending.

In sum, I believe in the Acknowledgment process and its mandatory criteria. I think it is the best method of evaluating probably 95 percent of the unrecognized tribes that are still out there, and I have strong hope that the Federal Government will keep the existing process in place while finding ways to make it more timely and efficient. However, I am convinced that because of the extenuating circumstances I have described the appropriate and fair process is Congressional reafffirmation for Swan Creek Black River. It is my hope, therefore, that Congress will be persuaded by the extraordinary merits of this case to take prompt action on H.R. 2822.

IV. SAGINAW CHIPPEWA SHOULD NOT PREJUDGE THIS CASE.

Based on my knowledge of the history and issues involved, it appears that the Saginaw Chippewa Position Paper of May 15, 1998 distorted the facts and badly mischaracterized the Swan Creek Black River people and their history. First, the Saginaw Chippewa reflect confusion as to the status of Swan Creek Black River's case. The Position Paper not only asserts that Swan Creek Black River cannot meet the FAP criteria, but also that the BIA has closed the Tribe's Acknowledgment file due to inactivity. Nothing could be further from the truth. The BIA has neither discarded nor deactivated any files related to Swan Creek Black River. It still considers Swan Creek Black River to be a

Congress has continuously expressed a similar attitude since 1982 by enacting legislation granting recognition to eight worthy tribes, including four in Michigan, that were also Acknowledgment petitioners. Congress has also recognized or restored the Federal status of dozens of other tribal groups that were never Acknowledgment petitioners, including the Pascua Yaqui Tribe of Arizona and the Houlton Band of Malisee Indians of Maine. Swan Creek Black River's case for reaffirmation is compelling and no different historically or legally from the other Michigan tribes legislatively restored or whose legislative recognition is currently pending.

In sum, I believe in the Acknowledgment process and its mandatory criteria. I think it is the best method of evaluating probably 95 percent of the unrecognized tribes tha are still out there, and I have strong hope that the Federal Government will keep the existing process in place while finding ways to make it more timely and efficient. However, I am convinced that because of the extenuating circumstances I have described the appropriate and fair process is Congressional reafffirmation for Swan Creek Black River. It is my hope, therefore, that Congress will be persuaded by the extraordinary merits of this case to take prompt action on H.R. 2822.

IV. SAGINAW CHIPPEWA SHOULD NOT PREJUDGE THIS CASE.

Based on my knowledge of the history and issues involved, it appears that the Saginaw Chippewa Position Paper of May 15, 1998 distorted the facts and badly mischaracterized the Swan Creek Black River people and their history. First, the Saginaw Chippewa reflect confusion as to the status of Swan Creek Black River's case. The Position Paper not only asserts that Swan Creek Black River cannot meet the FAP criteria, but also that the BIA has closed the Tribe's Acknowledgment file due to inactivity. Nothing could be further from the truth. The BIA has neither discarded nor deactivated an files related to Swan Creek Black River. It still considers Swan Creek Black River to be a

right, as an autonomous tribal entity. The document asserts that from historical times unti 1855, Swan Creek Black River was a constituent part of the Missasauga Chippewas. However, according to Michigan Indian historians, the Missasauga is merely a theoretical construct; there is little historical evidence that this large body of Chippewas was really a tribe. Of far greater importance is that in 1836 Swan Creek Black River entered separatel into the Treaty of Washington (7 Stat. 503)[7]. In that treaty, the United States clearly acknowledged Swan Creek Black River as a distinct tribal entity and referenced no other tribes. If the Saginaw Chippewa Position Paper were correct in its account of the treaty era, then there would certainly have been a reference to the Missasauga Chippewa or the Saginaw Chippewa as signatories or interested parties to this treaty.

The Saginaw Chippewa Position Paper argues further that Swan Creek Black Riv was "affirmatively combined" with the Saginaw Chippewa in the 1855 Treaty of Detroit (11 Stat. 633)[8] to form "the one Saginaw Chippewa Tribe" and has not been distinct from Saginaw Chippewa since that time. If this were true, there would have been no further reference to Swan Creek Black River in subsequent treaties, administrative documents, an Congressional acts. Yet Swan Creek Black River is referenced again in an 1864 Treaty (1 Stat. 657),[9] and the Position Paper confirms this by noting that the "1864 treaty mentions three tribes in its title and preamble."

C. *SCBR Was Not Dissolved by the 1855 Treaty of Detroit.*

The Saginaw Chippewa contend that the 1855 Treaty of Detroit combined their Band with Swan Creek Black River. Yet curiously the Position Paper does not address a all the dissolution clause of Article 6 of the 1855 Treaty. Article 6 preserved the sovereig status of Swan Creek Black River and had no impact on the government-to-government

[7]See Exhibit No. 3.
[8]See Exhibit No. 7.
[9]See Exhibit No. 8.

structure of these separate Bands.[10] In recent litigation against the State of Michigan, the U.S. Department of Justice took the position, on behalf of the Saginaw Chippewa Band, that Article 6 did not dissolve the tribe. Likewise, Article 6 did not dissolve Federal recognition of Swan Creek Black River.

D. *SCBR Is Not A Constituent Entity Of Saginaw Chippewa.*

The Saginaw Chippewa Position Paper's argues that Swan Creek Black River was a confederated entity that delegated its external relations to the corporate nation in exchange for an equal role as a constituent part of Saginaw Chippewa after 1855. Even if this argument were correct, Swan Creek Black River can demonstrate that this bilateral relationship and bipartite entity, and thus Federal recognition, terminated in the 1930s. If Swan Creek Black River was a constituent part of Saginaw Chippewa prior to reorganization of the Saginaw Chippewa government in 1936, as the Position Paper claims, it was not so after 1936 because most of its members were excluded from representation by and participation in Saginaw Chippewa's government by its constitution, enrollment procedures, and other overt actions. Thus, for purposes of meeting the Acknowledgment criteria, Swan Creek Black River would still be considered a separate, autonomous tribe since that time, even if the Saginaw Chippewa argument were correct. In a case similar to this, the BIA recently acknowledged the Snoqualmie Tribe of Washington State, a treaty-based group of off-reservation people who were, in the 20th century, excluded from membership and participation in the federally recognized Tulalip Tribe.

The autonomy of Swan Creek Black River is demonstrated as well by other historical documents. For example, Swan Creek Black River in 1912 pursued a separate

[10] For example, see Exhibit No. 99, *U.S. v. Michigan*, 471 F. Supp. 192, 264 (W.D. MI. 1979), wherein the court interpreted Article 5 of another 1855 Treaty (nearly identical to Article 6 of the 1855 Saginaw Treaty). The court held that, while Article 5 was inserted for the convenience of the United States in its future dealings with the tribes, the provision "had no impact on the government-to-government structure of the bands." Id.

effort to recover outstanding annuity payments from the Government. BIA correspondenc confirms that Swan Creek Black River and Saginaw Chippewa retained separate legal counsel for these claims and specifically states that the two tribal entities were separate and distinct. Similarly, there is evidence during the period following enactment of the Indian Reorganization Act (IRA) in 1934[11] that Swan Creek Black River pursued efforts to reorganize as a separate tribe under an IRA charter.[12]

The Saginaw Chippewa Position Paper also argues that Swan Creek Black River was never an autonomous tribal entity, relying on a distorted interpretation of the 1855 an 1864 treaties and the proceedings of the Indian Claims Commission. Swan Creek Black River, however, has collected substantial evidence of specific tribal leaders who represented distinct and cohesive Swan Creek Black River settlement areas throughout history and up to the present day.

E. *ICC Grouping for Litigation Is Irrelevant to Federal Recognition.*

The Saginaw Chippewa Position Paper cites case law from the Indian Claims Commission (ICC) to support its assertion that Swan Creek Black River was not identifie historically as an autonomous tribe. The Paper argues that the ICC only identified Swan Creek Black River as a subset of the Saginaw Chippewa. This argument fails to acknowledge the distinction between recognition for the purpose of bringing suit before th ICC, and Congressional or Executive recognition. Congress created the ICC for the purpose of adjudicating Indian claims, even by groups not considered by the Government to be tribes for other purposes. Thus, the grouping of Swan Creek and Black River with Saginaw Chippewa for the purpose of evaluating their ICC claim did not constitute a legal determination that they were, or had to be, grouped together for Federal recognition.

The ICC opinions refer to the parties of the Chippewa treaties in several different ways, sometimes referring only to Saginaw Chippewa broadly, sometimes referring to

[11]See Exhibit No. 11.
[12]See Exhibit No. 25.

three distinct bands of Saginaw, Swan Creek, and Black River, and other times referencing the Saginaw Chippewa by noting the inclusion of Swan Creek and Black River under that title. The Position Paper only makes reference to this latter type of phrasing in order to support its argument that Swan Creek and Black River were not separate entities. However, the ICC appears to have taken no clear stance regarding the autonomy of Swan Creek and Black River, as indicated by its inconsistent use of different descriptions. The only holding that it made clear was that all three Bands were successors to the treaties at issue. Thus, the grouping of the Bands for the purpose of ICC litigation was and is totally irrelevant to any determination of tribal status.

F. *The BIA Improperly Withdrew from the Federal Relationship with SCBR.*

As stated previously, Swan Creek Black River's present lack of recognition originates from a 1936 action by the BIA when it unilaterally withdrew separate recognition of Swan Creek Black River by permitting the Saginaw Chippewa to reorganize its government and limit tribal membership to residents of the Isabella Reservation. This administrative action effectively ended the Federal government's active and ongoing recognition of a separate SCBR tribe.

The facts are that in 1935 Swan Creek Black River Chief Elliott Collins requested inclusion of his tribal government as a distinct entity under the provisions of the IRA.[13] Receiving no response from the BIA, Swan Creek Black River submitted a draft constitution on behalf of the "adult members of the Saginaw, Swan Creek, and Black River bands" in 1936, which included representation by the off-reservation Swan Creek Black River members.[14] However, the Commissioner of Indian Affairs rejected this separate acknowledgment of the tribes. He decided to limit initial membership to residents of the Isabella Reservation based on his erroneous interpretation that Article 6 of the 1855 Treaty

[13]See Exhibit No. 25.
[14]See Exhibit No. 27.

of Detroit had dissolved the Saginaw, Swan Creek, and Black River tribal entities.[15] He therefore permitted them to organize under Section 16 of the IRA only as "Indians residing on a reservation." As noted before, with this administrative action, the Commissioner withdrew from the existing Federal relationship with SCBR, resulting in the greatest adverse impact on those tribal members who did not reside on the reservation -- including the vast majority of the Swan Creek Black River people.

The few Swan Creek Black River who did reside on the Isabella Reservation over the last sixty years became Saginaw Chippewa members by virtue of residency or adoption into membership for reasons that were advantageous to the Saginaw Chippewa. For example, some Swan Creek Black River were required to join the Saginaw Chippewa in order to receive payment from a 1986 judgment award of the U.S. Claims Court. The Distribution Act of 1986 is the most recent of several Congressional statutes acknowledging Swan Creek Black River's existence.[16] It also recognized the Tribe's collective rights in funds. As part of this statute, Congress compelled the Saginaw Chippewa to open its membership roll to some Swan Creek Black River people and to establish an at-large seat on its tribal council for an off-reservation Swan Creek Black River representative before it would permit distribution of the funds. These anti-discriminatory provisions sought to protect the interests of Swan Creek Black River's rights to the judgment funds. In fact, Chief Gerry Gould of the Swan Creek Black River became a Saginaw Chippewa member solely to assert the rights of the disenfranchised Swan Creek Black River people off the reservation and to serve as their sole council representative.

Only about 20 percent of Swan Creek Black River membership presently are enrolled in Saginaw Chippewa and they remain distinct from the other tribal backgrounds represented at the Isabella Reservation, including Chippewa, Ottawa, and Potawatomi. This small group retains their enrollment primarily because it grants them eligibility for

---

[15]See Exhibit No. 28.
[16]See Exhibit No. 13.

Federal programs and services, although most have great difficulty persuading Saginaw Chippewa service providers to make these services available to Swan Creek Black River members. In my judgment, most of these people would relinquish their Saginaw Chippewa membership if Swan Creek Black River's Federal recognition is reaffirmed.

G. *Swan Creek Black River is Also Geographically Distinct from Saginaw Chippewa.*

Swan Creek Black River is not only socially and politically distinct from Saginaw Chippewa, it is also geographically distinct. While Saginaw Chippewa membership is concentrated in Isabella County, most Swan Creek Black River members reside in counties to the east and southeast, including Bay, Saginaw, Tuscola, Shiawassee, Genesee, and Lapeer. There are, however, some communities, including the Isabella Reservation itself, where the memberships of the two tribes overlap.

The Position Paper asserts that since 1807 the Swan Creek Black River people lived in the Saginaw Basin and became inseparable from the Saginaw Chippewa. This statement is belied by the fact that many if not most of the Swan Creek Black River membership historically have been located a significant distance from the Saginaw Basin. The Position Paper is also inaccurate in describing Swan Creek Black River's migration patterns after the 1836 Treaty of Washington. Land and census records confirm that many Swan Creek Black River members moved back to lands further south that were unoccupied by white settlers.

H. *SCBR is a Successor in Interest to the Historic Swan Creek and Black River Bands.*

Most of the descendants of the historic Swan Creek and Black River Bands (whose headmen signed twelve treaties with the United States between 1785 and 1864) are represented by Swan Creek Black River and **not** by the Saginaw Chippewa. Therefore, the Saginaw Chippewa cannot legitimately claim to be the sole "successor in interest to the Saginaw, the Swan Creek and the Black River Bands of Chippewa Indians." The Saginaw

Position Paper maintains that the Federal Government has continually recognized Saginaw Chippewa as the sole successor in interest. This position is contradicted by Congressional action as recently as 1982. At that time, first the BIA and then Congress determined who really were the successors in interest to the historic Saginaw, Swan Creek, and Black River Bands for the purpose of distributing a judgment award of the U.S. Claims Court. They decided to distribute the claims money not only to the federally recognized Saginaw Chippewa members but also to the off-reservation and non-federally recognized Swan Creek Black River members who were not represented by Saginaw Chippewa. In 1986 Congress also recognized and protected the collective rights of Swan Creek Black River in the distribution of another judgment award shared with Saginaw Chippewa.

I. *SCBR Has Its Own Treaty Rights, Jurisdiction, and Sovereignty.*

Perhaps Saginaw Chippewa's characterization of Swan Creek Black River as a "splinter group" is an effort to justify its claim that H.R. 2822 would convey to Swan Creek Black River "treaty-preserved rights, political jurisdiction and sovereignty currently held by the Saginaw Chippewa Tribe." The truth is that Swan Creek Black River has its own distinct treaty rights, political jurisdiction, and sovereignty that it seeks through legislation to have the Federal Government reaffirm. Besides the potential of reducing the Saginaw Chippewa's constituent membership by a small percentage, this legislation would not otherwise diminish the existing rights, powers, or immunities of the Saginaw Chippewa. Indeed, H.R. 2822 does not contain any language that could possibly alter the Saginaw Chippewa's political and sovereign authority to govern its own tribe.

V. CONCLUSION

In summary, my review of the evidence convinces me that Swan Creek Black River has historically been politically, socially, and geographically distinct and has only been lumped together by the Federal Government with Saginaw Chippewa for limited

administrative purposes, such as treaty making and claim settlements. The BIA effectively ceased active and ongoing Federal recognition of Swan Creek Black River in 1936 without Congressional consent. Since that time, only a limited number of Swan Creek Black River tribal members have been able to obtain Federal services by enrolling with Saginaw Chippewa. Many, if not most, of these people were enrolled solely because Congress required by law that they not be discriminated against in the distribution of claims awards. Even then, Saginaw Chippewa managed to keep Swan Creek Black River enrollment to a minimum. This enrollment of Swan Creek Black River members by Saginaw Chippewa neither constituted a bilateral political relationship nor diminished the political autonomy of Swan Creek Black River.

Swan Creek Black River is a successor in interest to previously recognized tribal entities and seeks only to have its treaty rights, jurisdiction, and sovereignty reaffirmed by Congress. Congress has the plenary authority to take this action and has exercised that authority in the recent past to reaffirm, recognize, or restore the Federal relationship to many worthy tribes, including four tribes in Michigan similarly situated to Swan Creek Black River. Congress has demonstrated its competence to weigh the merits of these cases, even though the BIA simultaneously administers an acknowledgment process established in Federal regulations, which Saginaw Chippewa claims is the only appropriate method of recognition.

It appears obvious that Saginaw Chippewa is attempting to prejudge the Swan Creek Black River case for ulterior motives. Its Position Paper first demands that Swan Creek Black River submit a documented petition to the BIA, knowing full well that the Acknowledgment process is neither timely nor efficient at present, and then declares that Swan Creek Black River could never meet the mandatory criteria. It is my view, as an experienced evaluator of such issues, that Swan Creek Black River would very likely be successful in the Acknowledgment process, indeed qualifying for expedited consideration based on previous unambiguous Federal acknowledgment. However, it is also my view

that compelling, extenuating circumstances make Congress the most appropriate venue for the demonstration of this case, and, above all, that Swan Creek Black River deserves to have its treaty rights, jurisdiction, and sovereignty reaffirmed by this legislation.

○