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FEDERAL ACKNOWLEDGMENT PROCESS REFORM ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 297

TO PROVIDE REFORMS AND RESOURCES TO THE BUREAU OF INDIAN AFFAIRS TO IMPROVE THE FEDERAL ACKNOWLEDGMENT PROCESS

APRIL 21, 2004
WASHINGTON, DC

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FEDERAL ACKNOWLEDGMENT PROCESS REFORM ACT

WEDNESDAY, APRIL 21, 2004

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:34 a.m. in room 106, Dirksen Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Akaka, Inouye, and Thomas.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The meeting is called on S. 297, a bill I introduced in February 2003 to reform the Federal acknowledgment process. That is the process by which the United States formally recognizes an Indian group to be an Indian tribe.

Over the past 8 years I have introduced several reform bills. In fact, I have had a great deal of input not only from tribes, but from the Administration, too, on the complicated system that we now have and the inequities of it, too. We have had numerous oversight and legislative hearings in an effort to fix what most people admit is badly broken.

The bill before us does not liberalize the criteria that Indian petitioners must meet. The bill creates an independent review and advisory board to advise the Assistant Secretary in his consideration of a petition for recognition. Second, it creates a Federal acknowledgment research pilot project to bring badly needed research resources to the backlog of petitions and stops the "document-churning" by making the Freedom of Information Act inapplicable until a fully documented petition has been submitted by the petitioner.

Before we start, I would like to say that I find the Department's testimony on this bill unhelpful and not very responsive to the main initiatives that were contained in it, but we will be hearing from them shortly.

I introduced S. 297 to try to find new and creative ways to help the BAR and the Department do what we all agree is a very, very difficult task. We have heard that from a number of Secretaries and Assistant Secretaries, too, over the years. In fact, it has always put them in a very difficult position, too. The Department has not responded very well so far, and I find that somewhat disappointing.

Senator Thomas, did you have any comments on this?
Senator THOMAS. I do not have comments, Mr. Chairman.
[Text of S. 297 follows:]

II

108TH CONGRESS
1ST SESSION

S. 297

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Acknowledgment Process Reform Act of 2003''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Indian tribes were sovereign governmental entities before the establishment of the United States;

(2) the United States has entered into and ratified treaties with many Indian tribes for the purpose of establishing government-to-government relationships between the United States and the Indian tribes;

(3) Federal court decisions have recognized the constitutional power of Congress to establish government-to-government relationships with Indian tribes;

(4) in 1970, President Nixon ended the termination policy and inaugurated the policy of Indian self-determination;

(5) in 1978—

(A) the Secretary of the Interior delegated authority to the Assistant Secretary for Indian Affairs to establish a formal process by which the United States acknowledges an Indian tribe; and

(B) the Bureau of Indian Affairs established the Branch of Acknowledgment and Research to carry out the Federal acknowledgment process; and

(6) the Federal acknowledgment process was intended to provide the Assistant Secretary with an informed and well-researched basis for making any decision to acknowledge an Indian tribe.

(b) PURPOSES.—The purposes of this Act are—

(1) to ensure that, in any case in which the United States acknowledges an Indian tribe, it does so with a consistent legal, factual, and historical basis;

(2) to provide clear and consistent standards to review documented petitions for acknowledgment; and

(3) to clarify evidentiary standards and expedite the administrative review process for petitions by—

(A) establishing deadlines for decisions; and

(B) providing adequate resources to process petitions.

SEC. 3. DEFINITIONS.

In this Act:

(1) ACKNOWLEDGMENT.—The term ''acknowledgment'', with respect to a determination by the Assistant Secretary, means acknowledgment by the United States that—

(A) an Indian group is an Indian tribe having a government-to-government relationship with the United States; and

(B) the members of the Indian group are eligible for the programs and services provided

by the United States to members of Indian tribes because of the status of those members as Indians.

(2) ASSISTANT SECRETARY.—The term ''Assistant Secretary'' means the Assistant Secretary for Indian Affairs of the Department.

(3) AUTONOMOUS.—The term ''autonomous'', with respect to an Indian group and in the context of the history, geography, culture, and social organization of the Indian group, means an Indian group that exercises the political influence or authority of the Indian group independently of the control of any other Indian group.

(4) BOARD.—The term ''Board'' means the Independent Review and Advisory Board established under section 6(a).

(5) BUREAU.—The term ''Bureau'' means the Bureau of Indian Affairs.

(6) COMMUNITY.—The term ''community'' means any group of people living within a particular area that, in the context of the history, culture, and social organization of the group, and taking into account the geography of the region in which the group is located, is able to demonstrate that—

(A) consistent interactions and significant social relationships exist within the membership; and

(B) the members of the group are differentiated from and identified as distinct from nonmembers.

(7) CONTINUOUS.—With respect to the history of a group, the term ''continuous'' means the period beginning with calendar year 1900 and continuing to the present time substantially without interruption.

(8) DEPARTMENT.—The term ''Department'' means the Department of the Interior.

(9) DOCUMENTED PETITION.—The term ''documented petition'' means a petition for acknowledgment consisting of a detailed, factual exposition and arguments, and related documentary evidence, that specifically address requirements for acknowledgment established by the Assistant Secretary under section 4(b).

(10) HISTORICAL PERIOD.—The term ''historical period'' means the period beginning with 1900 and continuing through the date of submission of a petition for acknowledgment under this Act.

(11) HISTORY.—The term ''history'', with respect to an Indian group or Indian tribe, means the

existence of the Indian group or Indian tribe during the historical period.

(12) INDEPENDENT RESEARCH INSTITUTION.—The term ''independent research institution'' means an academic or museum institution that—

(A) employs significant resources toward the study of anthropology and other human sciences that are commonly used in reviewing petitions for acknowledgment; and

(B) could readily detail those resources to assist the Assistant Secretary in reviewing those petitions.

(13) INDIAN GROUP.—The term ''Indian group'' means any Indian band, pueblo, village, or community that is not acknowledged.

(14) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(15) INTERESTED PARTY.—

(A) IN GENERAL.—The term ''interested party'' means any person, organization, or other entity that—

(i) establishes a legal, factual, or property interest in a determination of acknowledgment; and

(ii) requests an opportunity to submit comments or evidence, or to be kept informed of general actions, regarding a specific petition.

(B) INCLUSIONS.—The term ''interested party'' includes—

(i) the Governor of any State;

(ii) the Attorney General of any State;

(iii) any unit of local government; and

(iv) any Indian tribe, or Indian group, that may be directly affected by a determination of acknowledgment.

(16) LETTER OF INTENT.—The term ''letter of intent'' means an undocumented letter or resolution that—

(A) indicates the intent of an Indian group to submit a documented petition for Federal acknowledgment;

(B) is dated and signed by the governing body of the Indian group; and

(C) is submitted to the Department.

(17) PETITIONER.—The term ''petitioner'' means any Indian group that submits a letter of intent to the Assistant Secretary.

(18) PILOT PROJECT.—The term ''pilot project'' means the Federal acknowledgment research pilot project established under section 6(c).

(19) POLITICAL INFLUENCE OR AUTHORITY.—The term ''political influence or authority'', with respect to the exercise or maintenance by an Indian group, means the use by the Indian group of a tribal council, leadership, internal process, or other mechanism, in the context of the history, culture, and social organization of the Indian group, as a means of—

(A) influencing or controlling the behavior of members of the Indian group in a significant manner;

(B) making decisions for the Indian group that substantially affect members of the Indian group; or

(C) representing the Indian group in dealing with nonmembers in matters of consequence to the Indian group.

(20) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(21) TREATY.—The term ''treaty'' means any treaty—

(A) negotiated and ratified by the United States on or before March 3, 1871, with, or on behalf of, any Indian group or Indian tribe;

(B) made by any government with, or on behalf of, any Indian group or Indian tribe, as a result of which the Federal Government or the colonial government that was the predecessor to the Federal Government subsequently acquired territory by purchase, conquest, annexation, or cession; or

(C) negotiated by the United States with, or on behalf of, any Indian group in California, regardless of whether the treaty was subsequently ratified.

(22) TRIBAL ROLL.—The term ''tribal roll'' means a list exclusively of individuals who—

(A)(i) have been determined by an Indian tribe to meet the membership requirements of the Indian tribe, as described in the governing document of the Indian tribe; or

(ii) in the absence of a governing document that describes those requirements, have been

recognized as members of the Indian tribe by the governing body of the Indian tribe; and

(B) have affirmatively demonstrated consent to being listed as members of the Indian tribe.

SEC. 4. ACKNOWLEDGMENT PROCESS.

(a) LETTER OF INTENT.—

(1) IN GENERAL.—An Indian group that desires to initiate with the Department a petition for acknowledgment shall submit to the Assistant Secretary a letter of intent that provides to the Assistant Secretary relevant information concerning the Indian group that may be used to provide notice to interested parties.

(2) CONTENTS.—The Indian group shall include in the letter of intent, to the maximum extent practicable—

(A) the current name of the Indian group and any name by which the Indian group may have been identified throughout the history of the Indian group;

(B) the 1 or more names of the governing body of the Indian group;

(C) the current address of the governing body of the Indian group; and

(D) a brief narrative of the history of the Indian group describing—

(i) the geographic areas in which the Indian group may have been located during that history; and

(ii) any relationships of the Indian group with other Indian tribes or Indian groups.

(3) NOTICE.—Not later than 90 days after the date of receipt of a letter of intent from an Indian group, the Assistant Secretary shall notify the Indian group and interested parties whether the letter of intent reasonably identifies the Indian group.

(b) REQUIREMENTS FOR PETITIONS.—

(1) EVIDENCE.—

(A) IN GENERAL.—Except as provided in paragraph (2), on or after filing a letter of intent, an Indian group that seeks acknowledgment shall submit to the Assistant Secretary a petition accompanied by evidence that demonstrates the existence of the Indian group during the historical period.

(B) EVIDENCE RELATING TO HISTORICAL EXISTENCE.—To establish the existence of an Indian group during the historical period, a pe-

tition shall include evidence that demonstrates with reasonable likelihood that each factor described in section 5 with respect to the petition has been achieved by the petitioner.

(C) ACCESS TO LIBRARY OF CONGRESS AND NATIONAL ARCHIVES.—On request by a petitioner, the appropriate officials of the Library of Congress and the National Archives shall permit access by the petitioner to the resources, records, and documents relating to the petitioner for the purposes of conducting research and preparing evidence concerning the status of the petitioner.

(2) INELIGIBLE GROUPS AND ENTITIES.—The following groups and entities shall not be eligible to submit to the Assistant Secretary a petition for acknowledgment under this Act:

(A) Any Indian tribe, organized band, pueblo, community, or Alaska Native entity that, as of the date of enactment of this Act, is acknowledged.

(B) Any Indian group, political faction, or community that separates from the main population of an Indian tribe, unless the Indian group, faction, or community establishes to the

1 satisfaction of the Assistant Secretary that the
2 Indian group, political faction, or community
3 has functioned as an autonomous Indian group
4 throughout the historical period.
5 (C) Any Indian group, or successor in in-
6 terest of an Indian group (other than an Indian
7 tribe, organized band, pueblo, community, or
8 Alaska native entity described in subparagraph
9 (A)), that, before the date of enactment of this
10 Act, in accordance with regulations promul-
11 gated by the Secretary, petitioned for, and was
12 denied or refused, acknowledgment based on
13 the merits of the petition (except that nothing
14 in this subparagraph excludes any group that
15 Congress has identified as an Indian group but
16 has not identified as an Indian tribe).
17 (D) Any Indian group the relationship of
18 which with the Federal Government was ex-
19 pressly terminated by an Act of Congress.
20 (c) NOTICE OF RECEIPT OF A PETITION; SCHED-
21 ULE.—
22 (1) PUBLICATION.—
23 (A) IN GENERAL.—Not later than 30 days
24 after the date on which the Assistant Secretary
25 receives a documented petition under subsection

(b), the Assistant Secretary shall publish in the Federal Register a notice of receipt of the petition.

(B) INCLUSIONS.—The notice shall include—

(i) the name and location of the petitioner;

(ii) such other information as the Assistant Secretary determines will identify the petitioner;

(iii) the date of receipt of the petition;

(iv) information describing 1 or more locations at which a copy of the petition and related submissions may be examined by the public; and

(v) a description of the procedure by which an interested party may submit—

(I) evidence in support of or in opposition to the request of the petitioner for acknowledgment; or

(II) a request to be kept informed of all actions affecting the petition.

(2) SCHEDULE.—Not later than 60 days after the date of publication of a notice under paragraph

(1)(A), the Assistant Secretary shall establish a schedule for—

(A) the submission of evidence and arguments relating to the petition; and

(B) the publication of proposed findings of the Assistant Secretary with respect to the petition.

(d) REVIEW OF PETITIONS.—

(1) IN GENERAL.—On receipt of a documented petition, the Assistant Secretary, in accordance with the schedule established under subsection (c)(2), shall—

(A) conduct a review to determine whether the petitioner is entitled to acknowledgment; and

(B) publish in the Federal Register the proposed findings of the Assistant Secretary with respect to that determination.

(2) CONTENT OF REVIEW.—The review conducted under paragraph (1) shall include consideration of—

(A) the petition;

(B) any supporting evidence; and

(C) any factual statements contained in the petition relating to other submissions, in-

cluding oral accounts of the history of the petitioner submitted by the petitioner.

(3) CONSIDERATION OF EVIDENCE.—Evidence received from interested parties under subsection (c)(1)(B)(v)(I) shall be—

(A) considered by the Assistant Secretary; and

(B) noted in any final determination regarding a petition.

(4) OTHER RESEARCH.—In conducting a review under this subsection, the Assistant Secretary may—

(A) initiate other research for any purpose relating to—

(i) analysis of the petition; or

(ii) the acquisition of additional information concerning the status of the petitioner;

(B) initiate research through the pilot project or the Board; and

(C) consider evidence submitted by interested parties, including oral accounts of the history of the petitioner submitted by other Indian tribes.

(5) EXCEPTION FOR LACK OF CERTAIN EVIDENCE.—If the Assistant Secretary determines that, for any period of time, evidence necessary to carry out this subsection is lacking, the lack of evidence shall not be the basis for a determination of the Assistant Secretary not to acknowledge a petitioner if the Assistant Secretary determines that the lack of evidence may be attributed to—

(A) any applicable official act of the Federal Government or a State government; or

(B) any applicable unofficial act of an officer or agent of the Federal Government or a State government.

(e) FINAL DETERMINATION.—

(1) IN GENERAL.—On review of all evidence submitted under section 5 and this section and the results of research conducted under section 5 and this section by the Assistant Secretary (including through the pilot project or the Board), and after providing a petitioner an opportunity to respond to proposed findings of the Assistant Secretary against acknowledgment, the Assistant Secretary shall make a final determination in writing whether the petitioner is entitled to acknowledgment.

(2) FACTS AND CONCLUSIONS.—A final determination under paragraph (1) shall include all facts and conclusions of law in accordance with which the final determination was made.

(3) NOTIFICATION OF ACKNOWLEDGMENT.—If the Assistant Secretary determines under paragraph (1) that a petitioner is entitled to acknowledgment, the Assistant Secretary shall—

(A) acknowledge the petitioner;

(B) notify the petitioner and any interested parties of the final determination to acknowledge the petitioner;

(C) provide to the petitioner and any interested parties a copy of the final determination; and

(D) not later than 7 days after notifying the petitioner and any interested parties under subparagraph (B), publish in the Federal Register a notice of the final determination of acknowledgment.

(f) JUDICIAL REVIEW.—

(1) IN GENERAL.—Not later than 60 days after the date of publication of the notice of a final determination described in subsection (e)(3)(D), a petitioner may seek judicial review of the final deter-

mination by the United States District Court for the District of Columbia.

(2) STATEMENT OF INTENT.—It is the intent of Congress that, in accordance with Federal law relating to interpretations of treaties and Acts of Congress affecting the rights, powers, privileges, and immunities of Indian tribes, any ambiguity in this Act be liberally construed in favor of an Indian group or Indian tribe.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $5,000,000 for each of fiscal years 2004 through 2013.

SEC. 5. DOCUMENTED PETITIONS.

(a) FACTORS FOR CONSIDERATION.—A petition for acknowledgment submitted by an Indian group shall be in any readable form that—

(1) clearly indicates that the petition is a documented petition requesting acknowledgment of the Indian group; and

(2) contains detailed, specific evidence as described in subsections (b) through (g).

(b) STATEMENT OF FACTS RELATING TO IDENTITY.—

(1) IN GENERAL.—A petition described in subsection (a) shall contain a statement of facts and an

analysis of those facts establishing that the petitioner has been identified as an Indian group in the United States on a substantially continuous basis.

(2) PREVIOUS DENIALS OF STATUS.—The Assistant Secretary shall not consider any evidence that the status of the petitioner as an Indian group has previously been denied to be conclusive evidence that the factor described in paragraph (1) has not been met.

(3) EVIDENCE RELATING TO IDENTITY.—In determining the Indian identity of a group, the Assistant Secretary may use as evidence 1 or more of the following:

(A) An identification of the petitioner as an Indian entity by any department, agency, or instrumentality of the Federal Government.

(B) A relationship between the petitioner and any State government, based on an identification of the petitioner by the State as an Indian entity.

(C) Any dealings of the petitioner with a county or political subdivision of a State in a relationship based on an identification of the petitioner as an Indian group.

(D) An identification of the petitioner as an Indian group by records in a private or public archive, courthouse, church, or school.

(E) An identification of the petitioner as an Indian group by an anthropologist, historian, or other scholar.

(F) An identification of the petitioner as an Indian group in a newspaper, book, or similar medium.

(G) An identification of the petitioner as an Indian group by an Indian tribe or by a national, regional, or State Indian organization.

(H) An identification of the petitioner as an Indian group by a foreign government or an international organization.

(I) Such other evidence of identification as may be provided by a person or entity other than the petitioner or a member of the membership of the petitioner.

(c) STATEMENT OF FACTS RELATING TO EVIDENCE OF COMMUNITY.—

(1) IN GENERAL.—A petition described in subsection (a) shall include a statement of facts and an analysis of those facts establishing that a predominant portion of the membership of the petitioner—

(A) comprises a community distinct from the communities surrounding that community; and

(B) has existed as a community throughout the historical period.

(2) EVIDENCE RELATING TO COMMUNITY.—In determining whether the membership of the petitioner meets the requirements of paragraph (1), the Assistant Secretary may use as evidence 1 or more of the following:

(A) Significant rates of marriage within the membership of the petitioner, or, as may be culturally required, patterned out-marriages with other Indian populations.

(B) Significant social relationships connecting individual members of the petitioner.

(C) Significant rates of informal social interaction that exist broadly among the members of the petitioner.

(D) A significant degree of shared or cooperative labor or other economic activity among the membership of the petitioner.

(E) Evidence of strong patterns of discrimination or other social distinctions against members of the petitioner by nonmembers.

(F) Shared sacred or secular ritual activity encompassing a majority of members of the petitioner.

(G) Cultural patterns that—

(i) are shared among a significant portion of the members of the petitioner;

(ii) are different from the cultural patterns of the non-Indian populations with whom the membership of the petitioner interacts;

(iii) function as more than a symbolic identification of the petitioner as Indian; and

(iv) may include language, kinship, or religious organizations, or religious beliefs and practices.

(H) The persistence of a named, collective Indian identity during a continuous period of at least 50 years, notwithstanding any change in name.

(I) A demonstration of historical political influence or authority of the petitioner.

(J) A demonstration that not less than 50 percent of the members of the petitioner exhibit

collateral kinship ties through generations to the third degree.

(3) CRITERIA FOR SUFFICIENT EVIDENCE.—The Assistant Secretary shall consider a petitioner to have provided sufficient evidence of community under this subparagraph if the petitioner has provided to the Assistant Secretary evidence demonstrating that, throughout the historical period—

(A)(i) more than 50 percent of the members of the petitioner reside in a particular geographical area exclusively, or almost exclusively, composed of members of the group; and

(ii) the balance of the membership maintains consistent social interaction with other members of the petitioner;

(B) not less than ⅓ of the marriages of the petitioner are between members of the petitioner;

(C) not less than 50 percent of the members of the petitioner maintain distinct cultural patterns, including language, kinship, and religious organizations, or religious beliefs or practices;

(D) distinct community social institutions (such as kinship organizations, formal or infor-

mal economic cooperation, and religious organizations) encompass at least 50 percent of the members of the petitioner; or

(E) the petitioner has met the requirement under subsection (d)(1) using evidence described in subsection (d)(2).

(d) STATEMENT OF FACTS RELATING TO AUTONOMOUS NATURE OF PETITIONER.—

(1) IN GENERAL.—A petition described in subsection (a) shall include a statement of facts and an analysis of those facts establishing that the petitioner has maintained political influence or authority over members of the petitioner throughout the historical period.

(2) EVIDENCE RELATING TO AUTONOMOUS NATURE.—In determining whether a petitioner is an autonomous entity under paragraph (1), the Assistant Secretary may use as evidence 1 or more of the following:

(A) A demonstration that the petitioner is capable of mobilizing significant numbers of members and significant member resource for purposes relating to the petitioner.

(B) Evidence that most of the members of the petitioner consider actions taken by leaders

or governing bodies of the petitioner to be of personal importance.

(C) Evidence that there is widespread knowledge, communication, and involvement in political processes of the petitioner by a majority of the members of the petitioner.

(D) Evidence that the petitioner meets the requirement of subsection (c)(1) at more than a minimal level.

(E) A demonstration by the petitioner that there are conflicts within the membership that demonstrate controversy over valued goals, properties, policies, processes, or decisions of the petitioner.

(F) A demonstration or description by the petitioner of—

(i) a continuous line of leaders of the petitioner; and

(ii) the means by which a majority of the members of the petitioner selected, or approved the selection of, those leaders.

(3) EVIDENCE OF EXERCISE OF POLITICAL INFLUENCE OR AUTHORITY.—The Assistant Secretary shall consider a petitioner to have provided sufficient evidence to demonstrate the exercise of political in-

fluence or authority if the petitioner demonstrates that decisions by leaders of the petitioner (or decisions made through another decisionmaking process) have been made throughout the historical period with respect to—

(A) the allocation of group resources such as land, residence rights, or similar resources on a consistent basis;

(B) the settlement on a regular basis, by mediation or other means, of disputes between members or subgroups of members of the petitioner (such as clans or lineages);

(C) the exertion of strong influence on the behavior of individual members of the petitioner, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior; or

(D) the organization or influencing of economic subsistence activities among the members of the petitioner, including shared or cooperative labor.

(e) GOVERNING DOCUMENT.—

(1) IN GENERAL.—A petition described in subsection (a) shall include a copy of the governing document of the petitioner in effect as of the date of

submission of the petition that includes a description of the membership criteria of the petitioner.

(2) ALTERNATIVE STATEMENT.—If no written governing document described in paragraph (1) exists, a petitioner shall include with a petition described in subsection (a) a detailed statement that describes—

(A) the membership criteria of the petitioner; and

(B) the governing procedures of the petitioner in effect as of the date of submission of the petition.

(f) LIST OF MEMBERS.—

(1) IN GENERAL.—A petition described in subsection (a) shall include—

(A) a list of all members of the petitioner as of the date of submission of the petition that includes for each member—

(i) a full name (and maiden name, if any);

(ii) a date and place of birth; and

(iii) a current residential address;

(B) a copy of each available former list of members of the petitioner; and

(C) a statement describing the methods used in preparing those lists.

(2) REQUIREMENTS FOR MEMBERSHIP.—In determining whether to consider the members of a petitioner to be members of an Indian group for the purpose of a petition described in subparagraph (A), the Assistant Secretary shall require that the membership consist of descendants of—

(A) an Indian group that existed during the historical period; or

(B) 1 or more Indian groups that, at any time during the historical period, combined and functioned as a single autonomous entity.

(3) EVIDENCE OF TRIBAL MEMBERSHIP.—In making the determination under paragraph (2), the Assistant Secretary may use as evidence 1 or more of the following:

(A) Tribal rolls prepared by the Secretary for the petitioner for the purpose of distributing claims money or providing allotments, or for other any other purpose.

(B) Any Federal, State, or other official record or evidence identifying members of the petitioner as of the date of submission of the petition, or ancestors of those members, as

being descendants of an Indian group described in subparagraph (A) or (B) of paragraph (2).

(C) Any church, school, or other similar enrollment record identifying members of the petitioner as of the date of submission of the petition, or ancestors of those members, as being descendants of an Indian group described in subparagraph (A) or (B) of paragraph (2).

(D) An affidavit of recognition by tribal elders, tribal leaders, or a tribal governing body identifying members of the petitioner as of the date of submission of the petition, or ancestors of those members, as being descendants of an Indian group described in subparagraph (A) or (B) of paragraph (2).

(E) Any other record or evidence based on firsthand experience of a historian, anthropologist, or genealogist with established expertise on the petitioner or Indian entities in general, identifying members of the petitioner as of the date of submission of the petition, or ancestors of those members, as being descendants of an Indian group described in subparagraph (A) or (B) of paragraph (2).

(g) EXCEPTIONS.—

(1) IN GENERAL.—An Indian group described in paragraph (2) shall be required to provide evidence for a petition for acknowledgment submitted under this section only with respect to the period—

(A) beginning on the date on which the Department first notifies the Indian group that the Indian group is not eligible for Federal services or programs because of a lack of status as an Indian tribe; and

(B) ending on the date of submission of the petition.

(2) INDIAN GROUP.—An Indian group referred to in this paragraph is an Indian group that demonstrates by a reasonable likelihood of the validity of the evidence that the Indian group was, or is a successor in interest to—

(A) a party to 1 or more treaties;

(B) a group acknowledged by any agency of the Federal Government as eligible to participate in a project or activity under the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act'') (25 U.S.C. 461 et seq.);

(C) a group—

(i) for the benefit of which the United States took land into trust; or

(ii) that has been treated by the Federal Government as having collective rights in tribal land or funds; or

(D) a group that has been designated as an Indian tribe by an Act of Congress or Executive order.

SEC. 6. ADDITIONAL RESOURCES.

(a) INDEPENDENT REVIEW AND ADVISORY BOARD.—

(1) IN GENERAL.—The Assistant Secretary shall establish the Independent Review and Advisory Board—

(A) to assist the Assistant Secretary in addressing unique evidentiary questions relating to the acknowledgment process;

(B) to provide secondary peer review of acknowledgment determinations by the Assistant Secretary; and

(C) to enhance the credibility of the acknowledgment process as perceived by Congress, petitioners, interested parties, and the public.

(2) NUMBER AND QUALIFICATIONS.—

(A) IN GENERAL.—The Board shall be composed of 9 individuals appointed by the Assistant Secretary, of whom—

(i) at least 3 individuals shall have a doctoral degree in anthropology;

(ii) at least 3 individuals shall have a doctoral degree in genealogy;

(iii) at least 2 individuals shall have a doctor of jurisprudence degree; and

(iv) at least 1 individual shall be qualified as a historian, as determined by the Assistant Secretary.

(B) PREFERENCE.—In making appointments under subparagraph (A), the Assistant Secretary shall give preference to individuals having an academic background or professional experience in Federal Indian policy or American Indian history.

(C) CONFLICTS OF INTEREST.—No member of the Board shall, at the time of appointment or during the 1-year period preceding the date of appointment, have represented, or conducted research for, any Indian group or interested party with respect to a petition for ac-

knowledgment filed, or intended to be filed, with the Assistant Secretary.

(D) STATUS AS EMPLOYEES.—A member of the Board shall not be considered to be an employee of the Department.

(3) TENURE; REIMBURSEMENT.—

(A) TENURE.—A member of the Board—

(i) shall be appointed for an initial term of 2 years; and

(ii) may be reappointed for such additional terms as the Assistant Secretary determines to be appropriate.

(B) REIMBURSEMENT.—A member of the Board shall be reimbursed for reasonable expenses incurred in assisting the Assistant Secretary under this section, in accordance with Department policy regarding reimbursement of expenses for individuals serving as advisory board or committee members.

(4) REVIEW AND ADVICE.—

(A) BEFORE ISSUANCE OF PROPOSED FINDINGS.—At any time before the date of issuance of proposed findings under section 4(d)(1)(B) with respect to a petition for acknowledgment under review by the Assistant

Secretary, the Assistant Secretary may request an opinion from the Board with respect to the petition if the Assistant Secretary determines that—

(i) the petition contains 1 or more evidentiary submissions that raise unique issues or matters of first impression relating to 1 or more requirements described in section 5; or

(ii) the Assistant Secretary is unable to determine the sufficiency of evidence for 1 or more of those requirements.

(B) AFTER ISSUANCE OF PROPOSED FINDINGS.—After issuance by the Assistant Secretary of proposed findings under section 4(d)(1)(B), but before issuance of the final determination, with respect to a petition, the Assistant Secretary shall request a review by the Board of the proposed findings.

(C) LEVEL OF REVIEW.—

(i) IN GENERAL.—The Board shall conduct a review requested under subparagraph (B) to determine whether an evidentiary question or deficiency exists with

respect to 1 or more requirements relating to a petition.

(ii) LIMITATION BY ASSISTANT SECRETARY OF SCOPE OF REVIEW.—In requesting a review under subparagraph (B), the Assistant Secretary may restrict the scope of the review to address fewer than all matters with respect to a petition.

(iii) LIMITATION BY BOARD OF SCOPE OF REVIEW.—In carrying out a review under subparagraph (B), the Board, in accordance with all applicable professional standards of the members of the Board, may—

(I) confine the review to—

(aa) the evidence submitted; or

(bb) the proposed findings issued under section 4(d)(1)(B);

(II) extend the review to the evidence submitted by petitioners and interested parties;

(III) request that the Assistant Secretary request additional submis-

sions by petitioners or interested parties; and

(IV) recommend that the Assistant Secretary hold a formal or informal administrative proceeding at which the Board may present questions to, and seek additional information from, petitioners and interested parties.

(b) ASSISTANCE TO PETITIONERS AND INTERESTED PARTIES.—

(1) GRANTS.—

(A) IN GENERAL.—Subject to paragraph (2), the Assistant Secretary may provide to a petitioner or interested party a grant to offset costs incurred in submitting—

(i) a petition (including related evidence or documents); or

(ii) a legal argument in support of or in opposition to a petition.

(B) LIMITATION.—In making grants under subparagraph (A), the Assistant Secretary shall ensure that not less than 50 percent of the amounts made available for the grants are reserved for petitioners.

(2) ELIGIBILITY.—The Assistant Secretary shall provide a grant under paragraph (1) based on a demonstration of need of a petitioner or an interested party that is evaluated using such objective criteria as the Secretary may promulgate by regulation.

(3) OTHER ASSISTANCE.—A grant made to an Indian group under paragraph (1) shall be in addition to any other assistance received by the Indian group under any other provision of law.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2004 through 2014.

(c) FEDERAL ACKNOWLEDGMENT RESEARCH PILOT PROJECT.—

(1) ESTABLISHMENT.—The Assistant Secretary shall establish a Federal acknowledgment research pilot project to make available additional research resources for researching, reviewing, and analyzing petitions for acknowledgment received by the Assistant Secretary.

(2) COMPOSITION.—

(A) IN GENERAL.—The Assistant Secretary, in consultation with the Secretary of the

Smithsonian Institution, shall identify a variety of independent research institutions that have the academic and research facilities capable of assisting in the review of petitions described in paragraph (1).

(B) PROPOSALS.—The Assistant Secretary shall—

(i) invite each institution identified under subparagraph (A) to submit to the Assistant Secretary a proposal for participation in the pilot project; and

(ii) approve not more than 3 proposals submitted under clause (i).

(C) GRANTS.—The Assistant Secretary may provide a grant to each institution the proposal of which is approved under subparagraph (B)(ii) to assist the institution in participating in the pilot project.

(3) DUTIES.—Each institution approved to participate in the pilot project shall assemble and provide a research team that, under the direction of the Assistant Secretary, shall—

(A) review submissions described in paragraph (1); and

(B) submit to the Assistant Secretary conclusions and recommendations of the research team that are based on the submissions reviewed.

(4) USE OF CONCLUSIONS.—The Assistant Secretary may take into consideration any conclusions and recommendations of a research team in making a determination of acknowledgment under this Act.

(5) REPORT.—Not later than 3 years after the date of enactment of this Act, the Assistant Secretary shall submit to Congress a report that describes the effectiveness of the pilot project.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $3,000,000 for each of fiscal years 2004 through 2006.

SEC. 7. INAPPLICABILITY OF FOIA.

(a) IN GENERAL.—Section 552 of title 5, United States Code (commonly known as the ''Freedom of Information Act''), shall not apply to any action of the Assistant Secretary with respect to a petition for acknowledgment under this Act, and the Assistant Secretary shall have no obligation to provide all or any portion of a petition, or to provide information regarding the contents of a petition, to any person or entity, until such time as—

(1) the petition has been fully documented; and

(2) the Assistant Secretary has published a notice in accordance with section 4(c)(1)(A).

(b) EXCEPTION.—The restriction under subsection (a) on the provision of information contained in or relating to a petition shall not apply to any formal or informal request made or subpoena issued by a law enforcement agency of the United States.

(c) ASSISTANCE FROM ATTORNEY GENERAL.—

(1) IN GENERAL.—The Secretary may request assistance from the Attorney General in responding to requests for information relating to a petition made in accordance with section 552 of title 5, United States Code.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Attorney General to provide assistance requested under this subsection $1,000,000 for each of fiscal years 2004 through 2008.

SEC. 8. EFFECT AND IMPLEMENTATION OF DECISIONS.

(a) IN GENERAL.—The acknowledgment of any petitioner under this Act shall not reduce or eliminate—

(1) the right of any other Indian tribe to govern the reservation of that other tribe (as the reservation

exists before, on, or after the date of acknowledgment of the petitioner);

(2) any property right held in trust or recognized by the United States for the other Indian tribe (as that property right existed before the date of acknowledgment of the petitioner); or

(3) any previously or independently existing claim by a petitioner to any property right described in paragraph (2) held in trust by the United States for the other Indian tribe before the date of acknowledgment of the petitioner.

(b) ELIGIBILITY FOR SERVICES AND BENEFITS.—

(1) IN GENERAL.—Subject to paragraph (2), on acknowledgment by the Assistant Secretary of a petitioner under this Act, the newly-acknowledged Indian tribe shall—

(A) have a government-to-government relationship with the United States;

(B) be eligible for the programs and services provided by the United States to members of other Indian tribes because of the status of those members as Indians; and

(C) have the responsibilities, obligations, privileges, and immunities of those other Indian tribes.

(2) PROGRAMS OF THE BUREAU.—

(A) IN GENERAL.—The acknowledgment by the Assistant Secretary of an Indian group under this Act shall not establish any immediate entitlement to participation in any program of the Bureau in existence as of the date of acknowledgment.

(B) AVAILABILITY OF PROGRAMS.—

(i) IN GENERAL.—Participation in a program described in subparagraph (A) shall be available to an Indian tribe described in paragraph (1) at such time as funds are made available for that purpose.

(ii) REQUESTS FOR APPROPRIATIONS.—The Secretary and the Secretary of Health and Human Services shall submit budget requests for funding for increased participation in a program described in subparagraph (A) in accordance with subsection (c).

(c) NEEDS DETERMINATION AND BUDGET REQUEST.—

(1) IN GENERAL.—Not later than 180 days after a petitioner is acknowledged under this Act, the appropriate officials of the Bureau and the In-

dian Health Service of the Department of Health and Human Services shall consult with the newly-acknowledged Indian tribe concerning, develop in cooperation with the newly-acknowledged Indian tribe, and forward to the Secretary or the Secretary of Health and Human Services, as appropriate—

(A) a determination of the needs of the Indian tribe; and

(B) a recommended budget required to serve the Indian tribe.

(2) SUBMISSION OF BUDGET REQUEST.—For each fiscal year, the Secretary or the Secretary of Health and Human Services, as appropriate, shall submit to the President a recommended budget for programs and services provided by the United States to members of Indian tribes because of the status of those members as Indians (including funding recommendations for newly-acknowledged Indian tribes based on the information received under paragraph (1)) for inclusion in the annual budget submitted by the President to Congress in accordance with section 1108 of title 31, United States Code.

SEC. 9. REGULATIONS.

The Secretary may—

(1) promulgate such regulations as are necessary to carry out this Act; and

(2) maintain in effect all regulations contained in part 83 of title 25, Code of Federal Regulations (or any successor regulations), that are not inconsistent with this Act.

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The CHAIRMAN. We will begin with our witnesses: Aurene Martin, the deputy assistant secretary; Ed Roybal, chairman of the Piro Manso Tiwa Tribe of New Mexico; Neal McCaleb, board member of the Chickasaw Nation, and former assistant secretary; and Kevin Gover, professor of law at Arizona State University, who also is a former assistant secretary.

I am sure with this panel we will have a very enlightened dialog.

We will go ahead and start with Ms. Martin. You may abbreviate, if you want. Your complete written testimony will be included in the record.

STATEMENT OF AURENE MARTIN, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LEE FLEMING, DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT, BIA

Ms. MARTIN. Thank you, Mr. Chairman.

Good morning, sir, and members of the committee. I would like to thank you for the opportunity to appear before you today and present the Administration's views on S. 297, the Federal Acknowledgment Process Reform Act of 2003.

While the Department agrees with the stated purposes of S. 297, we believe there are a number of issues that merit some discussion regarding the practical ramifications of the legislation if it were enacted. Unfortunately, we cannot support the bill as drafted.

I would like to provide some general comments this morning regarding the practical effects of the bill and some of the concerns that I have with that. I would also like to state that the purpose of the current regulations and the stated purposes of S. 297 are to provide a framework for recognizing sovereign entities who have functioned from historical times until the present. This recognition is not a grant of powers, but simply an acknowledgment that the sovereign has existed from historical times until now.

There have been numerous statements that the process is broken, but we at the Department do not believe that is true, although we do recognize that improvements can and should be made to the process.

One of the main concerns I had in going over the legislation was the lack of definite timelines for the completion of different steps in the process. For instance, there is no requirement that a petitioner document its petition within a specific time period. Not the only reason, but one of the main reasons that it takes so long for the recognition process to be completed is the length of time between the submission of a letter of intent, that is the letter that the group sends us stating that they are going to seek acknowledgment, and the full documentation of its petition.

I recognize that historically, groups have been too financially strapped to complete the petition in a more timely manner, but there is another innovation in the bill which I think will greatly assist groups in being able to document their petitions and could provide us some assistance which would help them get the petitions done more timely.

Also, section 4(c)(2) requires the Assistant Secretary to establish a schedule for the review of a documented petition and publication of the proposed finding within 60 days of its receipt of that docu-

mented petition, but it does not provide any guidance as to the appropriate timelines to guide the process. This leaves the Assistant Secretary with total discretion to set the timeline for the review of a petition and presentation of the proposed finding, and this could be an extremely lengthy period of time.

Finally, with respect to the independent review and advisory board, there are no timelines established, although the board must review every final determination and may review proposed findings. This could add a significant amount of time to the review process.

S. 297 provides that petitioners also document their activities from 1900 to the present. Establishing 1900 as a baseline presents a problem as it is set out in the legislation. One of the areas of S. 297 that caused some concern for me was the requirement that the membership only be defined during the historical period, that is from 1900 to the present. Our current regulations require that the petitioner's membership document that they are descended from a historical tribe that has existed from first contact until the present. I am not exactly sure what the reasoning was for the date of 1900 in S. 297. There is also some language that seems to not require that they are descended from one tribe, but maybe from different tribes, which may be meant to address the California situation. I think that section needs a little bit of clarification.

I also believe that the purpose for using 1900 baseline was meant to assist petitioners who would otherwise have difficulty documenting their petition. But the main problem as I have seen it is not the ability to document events in the 19th century, but to fill gaps which occur throughout the petitioner's existence.

One of the most common types of problems that we see in petitions is a gap in information for a 10- or 20-year period. A group might have information regarding its political continuity, its political autonomy up to a period like 1910, and then they will have a gap for 10 to 20 years, and then it will start showing activity again. That is usually where these petitioners run into problems. That can occur in any time period: The 19th century, the turn of the century especially seems to be a problem time period, and even in the 1940's and 1950's. It is addressing those gaps which might be more helpful to petitioners.

There are a number of other issues we would like to discuss with the committee, but there are also a number of positive innovations that we see included in the bill. One of those is the ability to have an evidentiary hearing to be able to question witnesses and have a back-and-forth dialog between the decisionmaker, the petitioners, and other interested parties. Petitioners have requested this in the past, but we currently do not have any mechanism to conduct hearings. It seems like a very good idea to allow the decisionmaker to be able to gauge evidence, especially that of an elder or a person who is giving evidence on a petition, and to be able to assess that. But providing a hearing, again, will or could lengthen the process it would take to review a petition.

Also, the assistance program outlined in the bill for petitioners and interested parties is an excellent idea. As I said earlier, one of the problems that petitioners face is the lengthy period it takes them to document a petition because they do not have the re-

sources to hire historians, to go out and do all of the reviews and the travel needed to collect documents. This assistance program could be a great help to them, help us fund those kind of activities, and document their petition more quickly.

Additionally, the pilot project does sound promising. The use of academic institutions has been discussed in the past at the Department, but we have always had practical considerations that have hindered implementation. One of those is the amount of time it takes someone to get up to speed on the history of a particular group or a particular area. It has been difficult for us to guarantee funding for more than 1 year to provide to an academic institution to begin that kind of research and amass that kind of information.

Finally, the limitation on the use of FOIA to the period after the issuance of the proposed finding is a good idea. FOIA continues to remain a significant part of the Office of Federal Acknowledgment staff time. It was at one time reported to be at least 40 percent of the work time for staff members there. It is somewhat less, but it is still considerable. It is still considerable even when you would limit it to occur past the proposed finding time, but the limitation is very helpful.

While we are not able to support S. 297 at this time, we are always willing to work with the committee and its staff to discuss our concerns, work out any issues that we might have, clarify our position, and come up with an agreed upon resolution.

I appreciate the ability to discuss S. 297 with you and I am able to answer any questions you might have.

[Prepared statement of Ms. Martin appears in appendix.]

The CHAIRMAN. Thank you, Ms. Martin. I do have a bunch of questions. I am going to go ahead and finish the testimony before I ask them. But I would ask you now, where is Assistant Secretary Anderson? We have invited him over here a number of times to testify, by the way, and I believe he has not appeared more than he has appeared.

Ms. MARTIN. Mr. Anderson is in Oklahoma visiting Sequoyah High School today.

The CHAIRMAN. What high school?

Ms. MARTIN. Sequoyah. It is a BIA high school operated by the Cherokee Nation, under contract. Mr. Anderson has recused himself from all acknowledgment matters and the Secretary has delegated those authorities to me. That is why I appear before you today.

The CHAIRMAN. What was his reason for recusing himself?

Ms. MARTIN. He has recused himself from all matters related to gaming, and gaming fee to trust applications. The perception that acknowledgment has a connection to gaming also gave him cause for concern. Because of his previous activities with gaming, he did not want that to confuse that issue.

The CHAIRMAN. So he has recused himself from gaming, those questions dealing with trust, and what else?

Ms. MARTIN. Gaming, gaming related fee to trust applications, and acknowledgment.

The CHAIRMAN. All right. Thank you. It looks to me like he has recused himself from about one-half of the responsibilities he was appointed to do. I have to tell you, I have said this before in com-

mittee, too, I am a little disappointed in him. I went to bat for him, as a lot of the members of the committee did, and he seems to have taken a hike on us. He is just not around most of the time when he should be. I do not know why he wanted the job, frankly, if he was going to recuse himself from so many of the things that I think his responsibility is to do. You might pass that one for me, if you would.

We will now go to Ed Roybal. Mr. Chairman, go ahead.

STATEMENT OF EDWARD ROYBAL, CHAIRMAN, PIRO MANSO TIWA TRIBE OF NEW MEXICO

Mr. ROYBAL. Good morning, Chairman Campbell, Senator Thomas and other distinguished members of the Senate Committee on Indian Affairs. My name is Edward Roybal II and I am Governor of Piro Manso Tiwa Indian Tribe, Pueblo San Juan de Guadalupe, Las Cruces, NM. My father is Edward Roybal. My grandfather is Victor Roybal. My uncle is former Governor Louis Roybal.

First, our people say hello to you and wish you all well and hope that all your families are doing well. It is a great honor to represent my tribe here today and submit this testimony on S. 297, the Federal Acknowledgment Process Reform Act of 2003.

I want to touch on a few points in my brief time here today. First is where the recognition process has slowed us down and bogged down for us. Since January 1997, our tribe has been in the ready and waiting for active consideration queue, that is waiting for BAR staff to complete their reviews of other petitions and begin review of our petition.

If I may offer just one comment which sums up our tribe's experience in the recognition process, it would be this. When my uncle, Governor Louis Roybal, testified before this committee in May 2000, Piro Manso Tiwa was seventh on the ready and waiting for active consideration list maintained by the Bureau of Acknowledgment Research. Today, nearly four years to the day later, we are still seventh on ready and waiting.

The other issue I want to touch upon is tribal traditions. I am the only non-secretary or past secretary up here. I want to enlighten the committee about the effects that——

The CHAIRMAN. There is still a future, by the way. [Laughter.]

Mr. ROYBAL. Thank you, Senator Campbell.

The effects that this has on a tribe like my tribe. While it is difficult to talk about and disclose some of our tribal traditions, my people have authorized me to illustrate who we are. We are a traditional Indian pueblo. We are blue corn clan. As my uncle Victor has told us in our oral history, we were put in the Las Cruces area by the Creator. We are from there. Our oral history tells us that we are the people who came from under the ice. Our oral history further tells us that we hunted buffalo in the area.

Present-day anthropologists call us Mogollan or other names. In fact, archaeologists found human remains at the nearby Oro Grande site that are thousands of years old. They also found buffalo bones in our area. Again, oral history passed those facts down to us long before scientists came to southern New Mexico. We also have ancestral burial grounds at present-day White Sands National

Monument, where we hold our autumn ceremonies to honor ancestors and pray for their journey.

While our tribe has an administrative form of government, the tribe interacts with its members through our traditional Cacique structure. My father Edward Roybal, our Cacique, has been traced to earlier Roybal caciques for the past 300 years. Our ceremonies, songs and dances coincide with the seasons, with the seasonal equinox, solstices in the summer, fall, winter and spring. In fact, each time that you note on your calendars the day the seasons begin, know that we are dancing and praying around that time.

To shed some light into what I have mentioned about tribal traditions, again it is difficult to discuss here. For example, at winter we journey up to the Tortugas Mountain, one of our sacred mountains, and spend the night in prayer and sharing our oral history. The next day, we sing our traditional songs and dance our dances. Each season we do something similar to thank the Creator and pray for health and prosperity for our people and all people.

We seek restoration and recognition of our government-to-government relationship so we can have a secure place to call home and perform our ceremonies. Presently, we must have our dances in tribal members' front and back yards, while bewildered onlookers query our ceremonies. Our songs, drum, dances, prayers, and traditions are sacred. Federal recognition and restoration would afford us ways to protect and maintain everything that is sacred to our people.

I come before you today as an example of your world. I am wearing this suit. I am an attorney. I practice law and proudly work on an Indian reservation for the Fort McDowell Yavapai Nation of Phoenix, AZ for the last 9 years. First and foremost, however, I am an indigenous person. I am a member of the Piro Manso Tiwa Indian Tribe, Pueblo of San Juan Guadalupe in Las Cruces, NM. As a native person, I cherish, live and maintain my tribal culture. Through my father, uncles and elders and their elders, I am an active participant in our tribal culture and ceremonies. I sing our tribal songs, dance our dances and pray our tribal prayers.

Mr. Chairman and other distinguished members of the committee, I come before you today in order to save my tribe's traditions, culture and people from extinction.

Thank you very much for this opportunity.

[Prepared statement of Mr. Roybal appears in appendix.]

The CHAIRMAN. Thank you. We will now go to Neal McCaleb next. We are just doing that because that is the way it is listed on the witness sheet, Kevin. We will get to you.

STATEMENT OF NEAL MCCALEB, BOARD MEMBER, CHICKASAW NATION INDUSTRIES

Mr. MCCALEB. Thank you very much, Mr. Chairman and members of the committee. I very much appreciate your providing me this opportunity to testify on the Federal acknowledgment process for the recognition of Indian tribes.

During the time that I served as assistant secretary of Indian Affairs, I had occasion to render determinations on petitions of several tribal applicants for recognition as tribal governments. During that process, I was impressed by three circumstances.

These were, first, the length of time and the level of research required to ascertain the compliance of the petitioner with the criteria established for recognition. Second, the almost exclusive reliance by the Assistant Secretary on the finding and conclusions reached by the professional staff of the BIA's Board of Acknowledgment and Research, or BAR. Third, the extent and frequency of requests to the BIA for copies of all research, information and documentation submitted or accumulated by the BIA pursuant to a petition for recognition under the Freedom of Information Act.

I believe that the above factors operate to marginalize the credibility and timeliness of the federal recognition process as it now exists. The provisions of this bill will operate to improve these circumstances. The required scheduling provisions of section five should help create the time discipline and allocation of resources to reduce the delay and result in timely determinations.

One of the most intractable problems associated with timely determination is the lack of adequate professional resources within the BIA to provide the extensive and scholarly research and documentation necessary for credible determination. The additional resources provided by the Independent Review and Advisory Board in section 6 should aid not only in expediting the process, but more importantly provide the Assistant Secretary with a peer review or second opinion on controversial matters of opinion interpretation.

While I believe the technical and professional staff of the BAR are highly qualified, there is the perception that their opinions and perhaps predisposition resulting from other research may influence their findings. The introduction of a peer review will enhance the credibility of the final determination.

The creation and funding of a pilot project provided for in section 6 can help with the timeliness issue and demonstrate the effectiveness of outsourcing research functions to respond to the backlog of petitions now pending before the BIA.

I also observed during my tenure that there was a substantial diversion of BAR staff time in responding to the extensive and repetitious requests of all manner of research, documentation and administrative materials. These requests for information were almost always mandatory under the Freedom of Information Act, and took precedence over the productive work of the staff on the petitions. The cumulative effect of these repetitious FOIA requests was to delay the determination and to diffuse the focus of the technical and professional staff.

The provisions of section 7 will certainly operate to make more effective use of the limited staff time and resources and operate to expedite the completion of the petition evaluation.

In addition to my comments on the contents of the bill above, I offer my suggestion that this legislation contain a provision for an end to future petitions for recognition after some reasonable period of time to provide ample notice to any potential applicant considering a petition for recognition. The BIA has spent more than a quarter of a century receiving and researching petitions for recognition from groups alleging their tribal government status. There is little doubt in my mind that all indigenous peoples of this Nation who can legitimately claim tribal status under the criteria established

for federal recognition are now aware of the acknowledgment process, the consequences of recognition, or lack of it.

To continue indefinitely with receiving and researching new petitions will only further diminish the effectiveness of the limited congressional appropriations in the discharge of the federal trust responsibility.

I want to thank you for the privilege of making this statement. I will be happy to try to answer any questions.

[Prepared statement of Mr. McCaleb appears in appendix.]

The CHAIRMAN. Thank you.

We will finish with Professor Gover, who even in my tenure here, 6 or 7 years ago brought that to our attention that we had a real problem with recognition, and even recommended we have a moratorium on it for a while until we get it straightened out. It is nice of you to come back, Kevin, but as you recognize we are still muddling around trying to get the thing streamlined with some coherency to it and have not gotten there yet. Thank you for being here.

STATEMENT OF KEVIN GOVER, PROFESSOR OF LAW, ARIZONA STATE UNIVERSITY COLLEGE OF LAW

Mr. GOVER. Yes, sir; Mr. Chairman. I am very pleased to be here, and honored both to be before the committee and to be part of such a distinguished panel. I hope you will not think it presumptuous, Mr. Chairman, that I thank you as well for your service to Indian country and to the Nation, and for our friendship over the years and your many kindnesses.

First of all, let me say I agree completely with former Assistant Secretary McCaleb and the points that he made. Those were problems that plagued the program when I was in office as well. I am pleased that the new Administration has found some means to begin to deal with this, I believe, by contracting so that some of these FOIA requests can be met more quickly and not detract from the work of the BAR. That is certainly a step in the right direction.

What I find in observing what has gone on both while I was in office and after is that there is a mythology that has grown around BAR and about the Federal recognition process. The first myth is that it seems to be understood that the process is about gaming, when of course we know that it is not. The process was established before any of us had thought of casinos, and yet because of the importance of the decision and the fact that a newly recognized tribe becomes eligible under the Indian Gaming Regulatory Act to conduct gaming in accordance with that act, it is understood to be about gaming. It really is not, and we have to work very hard in making policy to make that point and distinguish this process from gaming.

There are several other approvals that have to take place before a newly recognized tribe can engage in gaming, and at every one of those points—the process of compacting, the process of taking land into—trust, both the local community and the affected State are deeply involved and their concerns weigh very heavily in that process in the Department.

The second, and it is closely related to the gaming idea, is the myth that some group of very powerful lobbyists have an extraordinary amount of influence over the program. I can only speak for

myself, of course, but I suspect it is also, true of both Principal Deputy Assistant Secretary Martin and former Assistant Secretary McCaleb, The truth is that I rarely if ever saw a lobbyist on these issues. If I did, it was also in the presence of tribal leadership from the petitioning tribes where it would be expected. What we do not get is any sort of backroom, underhanded, undue influence by anybody in the lobbying business.

The third is again related, and that is the idea that somehow the Branch of Acknowledgment and Research, or now the Office of Federal Acknowledgment, possesses some sort of superior and unassailable expertise about these matters. I do not want to be understood to be putting them down in any way. They are expert. They are professional. They are very good at what they do. But so are the police officers that an assistant secretary works with; so are the educators; so are the social workers; so are the many hundreds of other experts and professionals that are in the BIA, and yet no one suggests that an assistant secretary should not override a decision by any of those other experts and professionals. And yet for some reason, it seems that BAR's work is understood to be entitled to some sort of special deference.

Well, it is not. Assistant secretaries are also experts in Indian affairs, and we are asked to bring our expertise and our broader policy vision to bear on these petitions. That is why we are nominated by Presidents. That is why we are confirmed by the Senate. So it should come as no surprise that from time to time we find ourselves deciding to not follow the recommendations of the BAR.

The true problems in the program really are structural. That is what S. 297 goes to. As former Assistant Secretary McCaleb pointed out, the Assistant Secretary for Indian Affairs really has few staff resources of his or her own to go through and really review the work that BAR has done. S. 297 would help to solve that problem.

Similarly, the pilot project would bring additional resources to bear, not so much for the petitions immediately before the Assistant Secretary, but for the petitions in the queue, like Chairman Roybal's, which could begin to receive some attention immediately, rather than remaining seventh on the ready and waiting list for 4 years now, and I suspect for some years to come.

So both of those are good ideas that really begin to speed up the process and most importantly give the Assistant Secretary the needed resources to apply his or her own judgment to the evidence and to make the decisions that have been assigned by the regulations to the Assistant Secretary.

So in those respects, Mr. Chairman, I do support this bill. As you know, we talked both about a moratorium and a commission when I was in office. I have since concluded that the moratorium was a terrible idea, so I take full credit for it. I believe that what would have happened is that the moratorium would have been put in place and never lifted. So the committee's judgment on that matter was much wiser than my own, and I would not at this point support a moratorium.

Finally, I do believe a commission is probably the best approach if it were fully funded and up and running as soon as possible. But I understand the difficulty of such a major change in the BAR proc-

ess, so I do commend the Chairman for introducing S. 297 and offer my support.

Thank you.

[Prepared statement of Mr. Gover appears in appendix.]

The CHAIRMAN. Thank you.

With time running out, it is 50/50 if we will be able to get this passed this year. Since this is my last year as chairman and Senator Inouye's last year, too, it will be somebody else's problem next year, but it will go on, that is for sure, if we do not do something.

Let me start with a few questions of each of you. We will start with Ms. Martin first. Your testimony is that you oppose the bill because it lowers the standards for acknowledgment and thereby creates a process that is not open, transparent, timely or equitable, as I understand it. But transparency and timeliness relate to the actions of the BAR staff, not the acknowledgment criteria. Can you inform the committee what effect lowering or raising the standards, for that matter, has on the transparency and timeliness of the process?

Ms. MARTIN. First of all, I would just like to clarify that we are not supporting S. 297 as it is written, and we are willing to work with you on language so that we might be able to change that, but we are not opposing the bill.

The CHAIRMAN. I appreciate that.

Ms. MARTIN. With regard to the standards that are included in the bill, actually the criteria that are laid out are very similar to the standards that we use now under the current regulations. The concern we have, and I talked a little bit about this during my testimony, is that the bill itself states that the documentation need to be made from 1900 until the present. And then there are some exceptions where there has been some recognition of the tribe by federal agencies during that time period.

The issue, as I have encountered it, is not so much the period from 1900 to the present, and there is a lack of information from before that. It is actually the gaps in 1820 to 1830, 1910 to 1920, those are where the issues are and that is what we need to look at addressing. I think that Mr. Gover addressed the 10-year rule in his testimony. Those are some of the areas where I think that we really need to look and seek some clarification, not so much from the 1900 period to the present.

The CHAIRMAN. Okay. Thank you.

Would you tell the committee the average length of time it now takes for a petitioner that is on the ready and waiting for active status, to have their petition considered? We talk about timeliness. What does that mean?

Ms. MARTIN. I am not sure what the average amount of time is. We do have petitions where the letters of intent were submitted in 1978 when the regulations were established

The CHAIRMAN. I understand the Tiwas had a letter even in 1971. Is that correct? Maybe I should have asked Mr. Roybal there, 1971, even before the establishment of the process.

As I understand your testimony, too, it criticizes the lowering of standards set out in S. 297, particularly those provisions regarding evidence of a community, the autonomous nature of a petitioner

since 1900. But don't the current regulations also require identification as a group from 1900?

Ms. MARTIN. They do. However, they require the showing that the petitioners show their political autonomy from historical times to the present; their community from historical times to the presence; their connection to a historical tribe through the present, but only identification as an American Indian entity since 1900. It is just one of the criteria.

The CHAIRMAN. What is the magic number about 1900? Why do the current regulations require identification as an entity since 1900?

Ms. MARTIN. That I am not sure of. I was not part of the original drafting of the 1978 regulations.

The CHAIRMAN. Do you have someone there who would like to speak? If you would like to just identify yourself for the record.

Mr. FLEMING. My name is Lee Fleming. I am the Director of the Office of Federal Acknowledgment.

In 1994, the regulations went through some revisions and there is language that can be provided to the committee as to the explanation for 1900 to the present. Basically, it is to prevent a group that just suddenly pops up and claims whatever they are claiming. Whereas, in 83.7(b) and (c), the group has to demonstrate from historical times to the present.

The CHAIRMAN. I see. In that case, let me go back to Ms. Martin. Which criteria do you believe to be more important in establishing a continuing political existence for a tribe: identification by outside political entities, which I assume is part of the regulations that we are talking about going back to 1900; or the internal decisions made by the Indian community themselves?

Ms. MARTIN. For purposes of recognition and the basis for our recognition regulations and the reason we do recognition, we are recognizing a sovereign that has existed from the time prior to contacts with non-Indians to the present. In order to do that, we require documentation over that period of time that they have existed as a political entity. So with regard to recognition, I think that that is probably the most important factor.

The CHAIRMAN. Okay. I am sorry that I am somewhat confused on this. When you hear from Indian groups like Mr. Roybal's group, which traces their ancestry and participates in the same ceremonies that they have for hundreds of years, literally, it is confusing to me to say that someone else has to recognize them as a political entity from any time. It would seem to me that the internal group should have a stronger voice in determining how long they have been an entity in their own tribal government. That is a political entity, too. It might not have been in the form we think of the Federal Government, but they had a political entity.

Let me ask another question. We have a problem now, it seems, with the Freedom of Information Act. Literally every step of the way, somebody can ask for all kinds of documentation. That is what we call the churning of the paper. In this particular bill, basically what we tried to do was have it go through, finish all the research, and then be open to the Freedom of Information Act so people could look at it in its entirety, rather than just every little step of the way, which simply holds things up and confuses things. Can

you explain to the committee, is that process used by the Department now? How do you determine who is an interested party and who is an informed party? And what rights to participate in the process do each have when they are using the Freedom of Information Act to get information?

Ms. MARTIN. I think that for purposes of the Freedom of Information Act, any citizen of the United States can gain access to that documentation, subject to our review of the information for privacy information and other information that might not be appropriate to send out to the public. We identify interested parties as the local communities and around where a petitioner is located; other tribes that might be affected by their recognition; the State in which they are located.

The CHAIRMAN. Who is an "informed" party?

Ms. MARTIN. That is anybody else, basically.

The CHAIRMAN. That is anybody else. Okay. So basically you are saying anybody can file. Well, if I understand, S. 297 basically, it says what we need to do to stop this every step of the way of being nitpicked when we are going through the recognition process, that we ought to finish the whole thing and then open it to the Freedom of Information Act so they can see it in its entirety. But the Department has a problem with that?

Ms. MARTIN. No; That that is one of the excellent innovations that is included in S. 297. We also see a significant amount of FOIA activity after the petition has been documented. I would just use an example of some of the Northeastern cases. We see constant FOIA requests even after a petition is documented and maybe a party has already received some FOIA information, there are continuing requests for more and more information after that point as well. As it is written in the bill now, I believe that is a good innovation.

The CHAIRMAN. This bill also proposes the creation of an independent review and advisory board to assist the Assistant Secretary in making the recognition decisions. In your capacity as an Assistant Secretary, you have been called on to make recognition decisions. Would you have found the involvement and existence of an independent review and advisory board to be helpful to you when you made those decisions?

Ms. MARTIN. I think that might be helpful. One of the challenges that I experienced first as counselor for Mr. McCaleb and then as acting Assistant Secretary was the lack of time to get my arms around all of the documentation with regard to a petition and to have a third party be able to look those things over, conducting a type of peer review as would have been helpful. My only concern with the independent review board is the length of time that such a board might take to review a petition, but overall it is a good idea.

The CHAIRMAN. Okay. Well, we will look forward to having staff work with you a little further to see if we cannot get this bill right that would get support from the Administration. Thank you for being here. I have several other questions. I will submit those in writing. If you will answer those in writing for the benefit of the complete committee, I would appreciate it.

Ms. MARTIN. Thank you.

The CHAIRMAN. Governor Roybal, why is it that your Pueblo is not recognized? As I see your testimony, your tribe received a land grant from the Federal Government in the 1800's. It also appears that children from your community were sent to Indian boarding schools. You mentioned you participated in many tribal ceremonies, from literally time immemorial. You have no land base, though, is that correct?

Mr. ROYBAL. Correct.

The CHAIRMAN. You have no land base now. Why is it that you are not recognized through all these years?

Mr. ROYBAL. This was just an issue where over the period of populating Southern New Mexico, it was mostly the tribes.

The CHAIRMAN. Did you tribe move back and forth across what is now the border of Mexico and the United States in the olden times?

Mr. ROYBAL. Before there was a border, right, tribes historically moved. But after the Pueblo revolt of 1680, our tribe moved back up to the Messilla Valley.

The CHAIRMAN. Why don't you go ahead and finish why you are not recognized.

Mr. ROYBAL. Historically, what happened was you just had Indian groups and Mexican or Spanish or Hispanic groups down there. When the United States came in at the beginning of the 1900's, pressure started to build for some sort of tribal autonomy. It was really just an issue where we were left alone and did some interaction and that was fine for decades. But as more and more people came into Southern New Mexico, our tribe was squeezed and pushed out and marginalized. That is kind of what happened along the way.

The CHAIRMAN. Where do most of your tribal members live now?

Mr. ROYBAL. Almost three-quarters live within a 6-mile radius of our old Pueblo in downtown Las Cruces.

The CHAIRMAN. Las Cruces.

Mr. ROYBAL. Right.

The CHAIRMAN. And what is the number of tribal members?

Mr. ROYBAL. Approximately 225.

The CHAIRMAN. In your testimony, you mentioned the tribe originally filed a petition in 1976, but apparently there was a letter as early as 1971 seeking recognition. Is that correct?

Mr. ROYBAL. Correct.

The CHAIRMAN. Over the years since you have been trying to get your tribe recognized, can you give the committee an estimate on how many documents you have had to file or the volume required since that 1971 letter your wrote, and perhaps also the expense you have gone to to try to get recognized.

Mr. ROYBAL. Sure, Senator Campbell, other members of the committee, we first started out with letters, and then we would go through the process in the late 1980's, and then the regulations changed again in the 1990's. Every time there was a change, we had to change and file more documentation. I think to date we have filed 15 boxes or more than that of historical and present information.

In terms of costs, I know a lot of people have said that the process could take millions of dollars. We have operated with grants of

approximately $400,000 in the last 16 years. Most of our work has been by pro bono efforts and donations of time and money.

The CHAIRMAN. That has been the estimated cost to try to get recognized?

Mr. ROYBAL. That is what I have heard, a few million dollars, from other people.

The CHAIRMAN. I also understand that there is some difference tension created by the BAR's need for documentation and its sensitivity to your traditions and ceremonies. Is that true or not?

Mr. ROYBAL. It has been a major problem, Senator. It is hard enough to disclose who we are and what we do to prove who we are. The major problem has been several years ago in FOIA reviews other people have tried to hijack our petition. When they have to disclose where our ancestral burial sites are, where our sacred ceremonies are, that causes our people real consternation.

The CHAIRMAN. I understand that. Yes. I am a member of the Northern Cheyenne, and I know from a tribal perspective they feel the same way. There are some things they just do not want to reveal. They just feel it is somewhat risky to let those things get out into the public domain.

Mr. ROYBAL. Right.

The CHAIRMAN. Including where some of their sacred sites are, and some where their burial grounds are, too. We have been through, as all tribal groups have, a period in history when there were raids on those things, and we found a lot of things ended up in museums when they should have been where they were put by people.

Mr. ROYBAL. It was our fear that that raid would continue and could continue.

The CHAIRMAN. But you have not been able to reach any mutual agreement or satisfactory agreement with the BAR staff concerning those things?

Mr. ROYBAL. No; we have. Thankfully, we did meet with Mr. Fleming and BAR staff and went over our concerns, and reached a resolution on those issues.

The CHAIRMAN. I commend you for having the determination for having to spend all that money and all those years in trying to get recognized. If you were given a choice of resources, do you think the tribe would choose to obtain the assistance of a university or other institution? Or would they rather sign up with a developer or somebody of that nature?

Mr. ROYBAL. Could you clarify "developer"? You mean it is some type of promoter?

The CHAIRMAN. Yes.

Mr. ROYBAL. We have assistance now with the University of Texas-El Paso. We have tried to work with New Mexico State University, which is in our backyard. For whatever reason over time, they have not been as responsive as you would think.

The CHAIRMAN. The university has not?

Mr. ROYBAL. They have not, no. So we have had to rely on others.

The CHAIRMAN. Did they give you help pro bono, whatever help you did get from them?

The CHAIRMAN. New Mexico State? No.

The CHAIRMAN. You had to pay for that?

Mr. ROYBAL. Correct. No; we have not received any assistance from New Mexico State.

The CHAIRMAN. I see. Thank you.

Former Assistant Secretary McCaleb, let's just go on down the line with you, please. Nice to have you here visiting again.

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

The CHAIRMAN. I know that you are doing good work back in the private sector again, and I do not get to see you as much as I used to, but I certainly enjoyed our personal friendship while you were here. I am sure the Chickasaws are happy to have you home and working for them again, and that is great.

During your tenure with the BIA, you oversaw a major review and restructuring of the BAR process. Keeping in mind the changes that Mr. Gover made before you were there, former Assistant Secretary Gover, in the format of BAR recommendations, were there any additional changes in the format of the recommendations that you thought would be helpful while you were in your tenure, or even now as you look back on it?

Mr. MCCALEB. One of the events that occurred while I was there is the General Accounting Office made an assessment of the operation of the federal acknowledgment process as it was conducted, and had some criticisms in some specific areas. We did some reorganization to try to deal specifically with those criticisms that were contained in the GAO report. Most had to do with the transparency of the process and the timeliness of the process. I do not think that we have achieved a lot of progress in expediting the timeliness of the process.

The CHAIRMAN. Looking back on your tenure, do you think there is more that the Department or the staff or even our committee could have done to address the concerns of those years?

Mr. MCCALEB. One of the weaknesses——

The CHAIRMAN. It is okay. We can take it. [Laughter.]

Mr. MCCALEB [continuing]. One of the weaknesses, of course, is what is I think kind of like the elephant in the front room, is the lack of money to fully operate and staff and provide the resources to deal with this gigantic backlog of petitions that, as Governor Roybal tribe has experienced, is just lying there with nothing happening on it. That is not a matter of indifference on the part of the BAR staff. I think it is part of the limited amount of resources that they have.

I was severely criticized and chastised in the House committee about why didn't the Administration come and ask for more money?

The CHAIRMAN. Because we probably would not have given it to you anyway.

Mr. MCCALEB. Well, the reality is that we have inadequate finances, at least as it is viewed by the tribal board assisting the BIA on the needs versus the resources that are available. We have a kind of a fixed-sum pie to deal with, with very small incremental increases. So the additional money for recognition has historically come at the expense of the other functional programs operated by the BIA for their already-federally recognized tribes. That is a real tension.

So that is one of the reasons that I make the recommendation that we need to put an end on this sometime in the future by saying, well, there is going to be a cutoff date on petitions, because let's just assume that there was a significant increase in the appropriations for the BAR staff and the recognition process. I think the perception in Indian country was that that would come at the expense of these other functional programs.

The CHAIRMAN. In S. 297, we have a 10-year limitation on appropriations, which would trigger discussion then about the need for continuing funding. That is a sunset provision of sorts. Do you consider that would be a wise alternative?

Mr. MCCALEB. Indeed, I do.

The CHAIRMAN. And one last question, S. 297 provides an opportunity for outside peer review into the process. Of course, there is also a cost to that, too, but it would perhaps lend additional credibility to the process. Do you believe that access to outside experts would have been helpful to your deliberations when you were in office?

Mr. MCCALEB. Yes; it would have. I think it would have given me a better comfort level. I am sure, I know in my own experience, there are times that I would have liked to have had resources outside of the Bureau to assist me in making a determination or evaluating some specific task, not because I lacked confidence in the BAR staff, but because there are so few of them and their processes are developed over a fairly long period of time.

Most of those people are long-time employees. It is my experience in any professional process you develop a mindset or a limitation on your scope that may be detrimental to more objective consideration. I am trying to say, I would have liked a second opinion in some areas, in some instances.

The CHAIRMAN. You would think that was helpful.

Let me go to Professor Gover. Your testimony is that while you were at the Bureau, you saw no evidence of improper influence exerted on the BAR process. That corroborates the findings of both the GAO and the Interior Inspector General, as I understand it, yet we still get opponents of the process saying that it has been manipulated, or maybe sometimes they have vested interest in it. But in your opinion, having worked both in the Bureau and outside of the BIA, do you think a professional lobbyist can have more influence over the BIA staff or the legislative recognition process and their internal workings?

Mr. GOVER. That is a tough question because I have never given lobbyists all of the credit that they seem to take for the progress of matters in Washington.

The CHAIRMAN. We sometimes give them more than they want. [Laughter.]

Mr. GOVER. I say that as a lobbyist myself, so I do not want to be too hard on the profession.

I believe that clearly the process of congressional recognition is by definition more political than the process that is undertaken at the BIA. So it should be. Congress is perfectly entitled to make its judgments on those grounds. The problem is that the BIA is not. Because the BIA has really in essence borrowed some authority from the Congress and from the courts in order to conduct this rec-

ognition program, it is extremely important that the process not be affected by what we would think of as partisan or unseemly political influence. In my experience, it was not. Neither the BAR staff nor the Assistant Secretary's office was really troubled by lobbyists and certainly not influenced by them.

The CHAIRMAN. You heard Governor Roybal talk about what they think might have been the cost they have gone through, maybe $400,000 so far. It could be very expensive getting through the recognition process. Sometimes I think groups have had to turn to outside investors because they simply do not have the money to hire the research that is needed done.

With more and more requests from the Freedom of Information Act and the litigation by states, local communities and others that might not want to see the petition go through, it seems to me that some tribes are being forced more and more to rely on outside resources whether they like it or not. To me, that is a form of mortgaging their future.

In your opinion, would it assist the process for the petitioners to bring in outside resources from universities or other groups, and perhaps stay away from the ones that they have to hire so much?

Mr. GOVER. Absolutely, if for no other reason than it gives these tribes a meaningful choice. You are right. Quite often they find themselves in a position where they have to accept the resources of a developer. Of course, those resources come with strings attached, and as you say, they do mortgage their future, at least in the short term.

Were such expertise and resources available from universities, that would, as I say, give the tribes a meaningful choice and allow them to maintain their distance from developers and pursue the petition on their own, and then when they are done if they want to deal with developers, they deal with them from a position of strength, rather than weakness.

The CHAIRMAN. While you were at the Bureau, you hired some outside contractors to assist you in reviewing petitions. Can you give us some background on how that worked, how you picked the outside contractors, and if you believe that the portion of S. 297, which I call the independent review and advisory committee, would that address the concerns that you had in having to hire outside assistance?

Mr. GOVER. It would indeed. As I recall, we hired a single outside consultant, an attorney who had worked on other petitions on behalf of petitioning tribes. I have to say, it did not work well at all. First of all, the relationship between the consultant and the BAR staff was not particularly good. I do not assign blame there. It just did not work out.

Second, it did not solve the primary problem, which is that you need a lot of people, a lot of different kinds of expertise, to review the work of the BAR if it is to have any effect. So we made what ultimately was a failed effort to try to bring in that outside expertise.

I do think that the resources available under S. 297 could make a serious impact and have the desired effect of giving the Assistant Secretary the staff capabilities to conduct a meaningful review of BAR's work. That is why I support the bill.

The CHAIRMAN. Thank you.

You mentioned the standard of review for petitions and the concern that the BAR has over a period of time developed "de facto rules" that are not in regulations. If petitioners are required to meet rules that are not in the regulations or in statute, should the petitioners be able to challenge those rules in court?

Mr. GOVER. I believe that they should. I gave a couple of examples, but the one that troubled me the most was the idea that, if BAR were unable to find convincing evidence within each 10-year period of the tribe's historical existence, that represented a break in continuity. And yet if you look at the regulations, it says nothing of the sort. I was willing to say that if, for example, and this is not a real example, but if we had evidence that the tribe was there in 1889, and we found evidence the tribe was there in 1905, I was willing to assume that between 1889 and 1905, they were still there. They were there the whole time.

Again, I think that BAR's analysis is driven by their professional training. I do not object to what they say, that a historian would be troubled by that gap and by the absence of conclusive evidence, and so would an anthropologist. Again, bringing a broader perspective to it, and frankly the perspective of an Indian person, it is very easy for me to see how evidence sort of falls off the table. Let's face it, we ran an agency that had a great deal of difficulty with recordkeeping in the best of times, and so it is unsurprising that records would be absent for these tribes for varying periods, as Principal Deputy Assistant Secretary Martin pointed out.

The CHAIRMAN. You noted the single most consistent complaint about the process was the inability of parties to receive reasonably prompt decisions. What do you think is perhaps the single greatest obstacle preventing the agency from acting with reasonable promptness? Would it be that they needed that absolute proof between the analogy you just gave, between 1890 and modern times? Is that the thing that holds it up the most, not finding that absolute link-to-link chain?

Mr. GOVER. I think there were two things. The first was the absence of resources, that the program simply needed more resources. Former Assistant Secretary McCaleb is right that when the tribal advisory committees that consult with the Bureau on the budget are making their recommendations, needless to say the recognition program is low priority for them, and that makes it very difficult for the Bureau to divert resources from those critical programs to this one.

The second was, yes, I believe that BAR got into far too much depth in its research. They treated each petition as ultimately a research project, and it seemed that they were in search for some historical truth, which may well be elusive. I do not believe that is what the regulations call for. I believe they call for an evaluation of the petition, the application of a standard of proof that is included in the regulations, and then move on.

The CHAIRMAN. One of the problems from a broader sense I have always had with this business about recognition is that tribes are being told that they have to document certain things, and yet you know as well as I do, being an Indian person, the history has been there was a time in this country when you were not too sure you

wanted to document anything or you might be gathered up and moved by force somewhere you did not want to be moved to.

So we had people hiding out in the woods for years and years and years, and hiding their identity and doing different things simply because they were afraid of what might happen to them if they did come forward. And now we have a federal agency saying, well, you did not document where you have been for the last 50 years, therefore you must not be Indian.

There is something wrong with that thinking, in my view.

Mr. GOVER. Mr. Chairman.

The CHAIRMAN. Yes, go ahead.

Mr. GOVER. In mine as well. I think that the primary conflict that I had with the BAR staff was that in that period, I mark it from 1870 to 1930, there was no reason for an Indian group to want to come to the attention of the United States. The fact that they did not meant that their strategy worked, or it may have meant that their strategy worked. That is certainly a reasonable interpretation of the phenomenon.

I felt, as you did, Mr. Chairman, that the absence of a lot of proof during that time really did not tell us very much about whether that tribe was there or not.

The CHAIRMAN. Certainly not.

I appreciate the testimony from all of the witnesses this morning. I think there might be some additional questions from other members who had to leave or did not attend today, but thank you so much for all of your views.

With that, this hearing is adjourned.

[Whereupon, at 10:50 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF NEAL MCCALEB, BOARD MEMBER, CHICKASAW NATION INDUSTRIES

Mr. Chairman, I want to thank you and the members of this committee for providing me with this opportunity to testify on the "Federal Acknowledgment Process" for the recognition of Indian Tribes.

During the time I served as the Assistant Secretary of Indian Affairs I had the occasion to render "Determinations" on the petitions of several tribal applicants for recognition as tribal governments. During this process I was impressed by three circumstances. These were:

No. 1. The length of time and level of research required to ascertain the compliance of the petitioner with the criteria established for "Recognition".

No. 2. The almost exclusive reliance of the Assistant Secretary on the findings and conclusions reached by the professional staff of the BIA's "Board of Acknowledgement and Research".

No. 3. The extent and frequency of requests to the BIA for copies of all research, information and documentation submitted or accumulated by the BIA pursuant to a petition for recognition under the "Freedom of Information Act".

I believe that the above factors operate to marginalize the credibility and timeliness of the Federal Recognition Process as it now exists.

The provisions of this bill will operate to improve these circumstances. The required scheduling provisions of section 5 should help create the time discipline and allocation of resources to reduce delay result in timely determinations.

One of the most intractable problems associated with the timely determination is the lack of adequate professional resources within the BIA to provide the extensive and scholarly research and documentation necessary for credible determination. The "Additional Resources" provided by the "Independent Review and Advisory Board"in section 6 should aid not only in expediting the process but more importantly provide the Assistant Secretary with a peer review or "second opinion" on controversial matters of opinion and interpretation. While I believe the technical and professional staff of the BAR is highly qualified there is the perception that their opinions and perhaps predisposition resulting from other research may influence their findings. The introduction of a peer review will enhance the credibility of the final determination.

The creation and funding of "Pilot Project" provided for in section 6 can help with the timeliness issue and demonstrate the effectiveness of outsourcing research functions to respond to the backlog of petitions now pending before the BIA.

I observed during my tenure that there was a substantial diversion of BAR staff time in responding to the extensive and repetitious requests for all manner of research documentation and administrative materials. These requests for information were almost always mandatory under the "Freedom of information Act" and took precedence over the productive work of the staff on the petitions. The cumulative effect of these repetitious FOIA requests was to delay the final determination and diffuse the focus of the technical and professional staff.

The provisions of section 7 will certainly operate to make more effective use of limited staff time and resources and operate to expedite the completion of the petition evaluation.

In addition to my comments on the contents of this bill I would also offer my suggestion that this legislation contain a provision for an end to future petitions for recognition after some reasonable period of time to provide ample notice to any potential applicant considering a petition for recognition. The BIA has spent more than a quarter of a century receiving and researching petitions for recognition from groups alleging their tribal governmental status. There is little doubt in my mind that all indigenous peoples of this Nation who can legitimately claim tribal status under the criteria established for Federal recognition are now aware of the acknowledgement process and the consequences of recognition or lack of it. To continue indefinitely with receiving and researching new petitions will only further diminish the effectiveness of the limited congressional appropriations in the discharge of the Federal trust responsibility.

Thank you for the privilege of making this statement. I will be happy to try and answer any questions you may have of me.

PREPARED STATEMENT OF KEVIN GOVER, PROFESSOR OF LAW, ARIZONA STATE UNIVERSITY COLLEGE OF LAW

Mr. Chairman and members of the committee, my name is Kevin Gover. I am a Professor of Law at the Arizona State University College of Law in Tempe, AZ. I appear before you as an individual, and my testimony does not necessarily represent the views of Arizona State University or the College of Law. I am honored to appear before the Committee today, and I thank the chairman for his introduction of S. 297 and for calling this hearing today.

The Federal Recognition Process as you know, I served as the Assistant Secretary for Indian Affairs at the Department of the Interior from November 1997 until January 2001. The Department and the Bureau of Indian Affairs face a number of vexing problems in their administration of the laws of the United States concerning Indian tribes. Aside from trust reform, perhaps the most visible of these problems is the administration of the process for determining whether an Indian group qualifies as an Indian tribe deserving of a government-to-government relationship with the United States.

The committee's attention to this matter is extremely important. For too long, the program has relied entirely on the administrative authorities of the Department for both its process and substance. while I believe the Department has, in general, established the correct criteria for Federal recognition and afforded due process in their application, clearly these are subjects that require the attention and authority of the Congress if the program is to have the legal and political credibility that we desire.

Moreover, the program's recent notoriety in the eastern press requires that the Congress set the record straight. Far too much of the reporting on the matter is ill informed and just plain wrong. The New York Times, for example, recently reported that investigations of the program revealed that decisionmaking is politically influenced. That is simply untrue. Neither the General Accounting Office nor the Inspector General of the Interior Department found that decisions were influenced by political pressure, partisan or otherwise.

Contrary to the thrust of these reports, the Federal recognition program is not about gaming. Most of the currently noteworthy petitions were filed well before the Indian Gaming Regulatory Act was passed. I have come to view the program as being primarily about justice.

Those of us who are or have been in positions of authority in Indian affairs have few real opportunities to correct historic wrongs and make lasting improvements in the quality of life for tribal communities. The Federal recognition program is one of the few undertakings in which the United States can definitively correct grievous historic wrongs and begin in an immediate way to undo the legacy of the genocidal policies of the past.

I must admit that when I entered government service in 1997, reform of the Federal recognition process was not among my priorities. The Federal recognition program is, after all, a minor undertaking of the Bureau of Indian Affairs in terms of the budget and personnel assigned to it. However, it soon became clear to me that the Assistant Secretary's decisions on these petitions are a crucial aspect of the overall responsibility of the Department for the execution of Federal relations with Indian tribes. Moreover, because of the impact a newly recognized tribe can have in its home region-that is to say, the impact that casinos can have on communities

near the tribes-the Federal recognition program had grown into one the most controversial activities of the Bureau.

From the petitioning tribes' perspective, the program is deeply troubled. It is a dense program, requiring an extraordinary amount of research, paperwork, and expense. It is an intrusive program, with its inquiry into, quite literally, the parentage and family backgrounds of hundreds or thousands of members of the petitioning tribes. And above all, it is a very, very slow program. Too many tribes have had petitions pending for more than 20 years. While accuracy and thoroughness are qualities that we all want in government work, I soon concluded that the pace of decisionmaking in the program was indefensible and unacceptable. For petitioners qualifying as tribes, the program's delays deprive them of services and benefits that improve the lives of Indian people. Moreover, even petitioners that do not qualify for recognition deserve as much promptness as possible.

From the perspective of communities potentially affected by the recognition of a tribe in their region, the process allegedly offered too little opportunity for their concerns to be heard. I believe this concern to be somewhat overstated, because those non-Indians who seek to participate in the process and can demonstrate that the decision would affect them are allowed to participate. They are able to meet with staff, both formally and informally; they receive from the Department large amounts of information concerning the petitions; they are perfectly free to file their submissions and present their views; they are given extensions for the preparation of their submissions in opposition to recognition; they can appeal the Assistant Secretary's decisions to the Interior Board of Indian Appeals and the Secretary; and they are able to appeal the Department's final decision to Federal court. They receive far more than due process demands.

Still, I believe that some of these non-Indian communities, like the tribal petitioners, have a valid point when they object to the expense of pursuing all of these procedural rights. There is no question that the phenomenon of developers funding tribal petitioners for recognition provides the tribes with resources that the creators of the Federal recognition process never anticipated. I wish to be clear that I do not subscribe to the idea that gaming money has led to the recognition of undeserving petitioners. As to the allegations that expensive lobbyists exercise undue influence in the process, my experience was that lobbyists play no meaningful role in the process of acknowledgment. However, there is little question that the resources that a small minority of petitioning tribes can now devote to the process can seem overwhelming to members of the public who are affected by the recognition process.

These factors led me to take a much deeper interest in the recognition process than I thought that I would when I assumed office. What I found was a deeply problematic and fundamentally flawed program. It was distrusted by its constituent petitioners. It was underfunded and overwhelmed by the broad research tasks it had undertaken and by the need to respond to Freedom of Information Act requests. It was under fire, in several Federal courts for the delays in the process. It was missing one regulatory deadline after another and making little progress in reducing the large backlog of pending petitions.

On the other hand, I found that some of the accusations against the Branch of Acknowledgment and Research (now the Office of Federal Acknowledgment) were untrue. As mentioned above, I saw no evidence of improper lobbyist influence in BAR or in the office of the Assistant Secretary in the processing of petitions. Further, I saw nothing to indicate that BAR staff harbored any particular hostility or prejudice toward or in favor of any of the petitioners that came before me. And never, not once, did I hear BAR staff express concern about the budget implications for the BIA of recognizing additional tribes. I do not doubt that the work performed by BAR represented the staff's best efforts and honest judgments about the petitions.

As has been well documented, I did not always agree with the judgments and opinions of BAR researchers and the attorneys from the Solicitor's office who advised the BAR. I came to believe that the BAR and its attorneys had been essentially unsupervised for many years and that the Assistant Secretary's office had become little more than a rubber stamp for their recommendations. It is easy to see why this had happened. The length and complexity of the research that BAR conducted can easily overwhelm an Assistant Secretary, who inevitably has many other issues with which he or she must contend. When I first asked to see the technical reports supporting a proposed determination that came before me, BAR supplied nearly 1,000 pages of research that it had produced. These "summaries" of the petition were alone overwhelming. There was simply no chance that an Assistant Secretary or his/her staff could or would actually review the several boxes of primary research materials accumulated by BAR to prepare those summaries.

By creating an avalanche of paper, the BAR effectively overwhelmed the office of the Assistant Secretary, and in so doing assumed an inappropriate degree of control over the program. The scholarly literature in Administrative Law refers to this phenomenon as "staff capture," meaning that agency staff essentially defies supervision by political appointees by overwhelming policymakers with information, while the public's access to the policymaker is severely limited. In this respect, the rule in 25 C.F.R. Part 83 that limits access to the Assistant Secretary for agency outsiders during final consideration of the petition gives OFA staff extraordinary power to control the outcome. The Assistant Secretary and his or her staff, personally unable to plow through thousands of pages of research materials, has no one to turn to for help in discerning which are the key policy and factual issues in any given petition. That being the case, the urge is strong simply to sign off on the OFA recommendation. I grew well acquainted with this problem as proposed and final decisions on petitions were brought to me. To address this problem, I revised the part 83 regulations to require BAR to present its review of the petition in a format that is more helpful to the Assistant Secretary. While I believe that was a worthwhile effort, more needs to be done.

Another troubling aspect of the program was the phenomenon of analytical tools employed by BAR hardening into rules of law. Two examples make the point. First, when applying the requirement that a tribe demonstrate the "continuous" existence of political influence of tribal leadership over the members, OFA looks to see that such influence existed in each 10-year increment of the tribe's existence. This is unobjectionable as an analytical approach, but it is in my opinion wrong and illegal to apply the "10-year" approach as a rule of law. BAR maintained that if conclusive proof of political influence was absent during any 10-year period, continuity was broken and the petition had to be denied. I believe that, while the absence of such proof during any given decade might be some evidence of a break in continuity, it is not conclusive and it cannot fairly give rise to a presumption of a break in continuity. It may, for example, only reflect a gap in effective news reporting, recordkeeping, or record retention, not any actual gap in tribal existence. In my view, for the "10-year" approach to be hardened into a rule of law, or even permitted to establish a presumption, it must go through notice-and comment rulemaking under the Administrative Procedures Act, which it did not.

Similarly, BAR had developed a specific approach to evaluating whether the petitioner's membership consists of individuals who descend from a historical Indian tribe." BAR essentially asked whether 85 percent of a petitioning tribe's membership could prove descendancy. This 85 percent rule cannot be found in the regulations. While it may be a reasonable means of analysis, it cannot be administered as a rule of law without being subjected to notice-and-comment rulemaking.

Finally, the role of the office of the Solicitor presents difficulty. Certain individuals in the Solicitor's office were drafters of the part 83 rules; participate in OFA's consideration of the petition; participate in OFA's drafting of recommendations to the Assistant Secretary, compile the administrative record behind each decision; advise the Assistant Secretary directly during his or her review of the petition; help to draft the decisions of the Assistant Secretary; litigate before the IBIA concerning the decision; advise the Secretary during reconsideration of decisions of the Assistant Secretary; and assist in the litigation in Federal court that results from the Department's final actions. These individuals have an inappropriate degree of control, direction, and influence in the process. I believe that the work of these attorneys is essentially unsupervised in the Solicitor's office for the same reason that work of the BAR is essentially unsupervised by the Assistant Secretary: The Solicitor and his or her immediate advisers simply do not have the time to master the intricacies of the evidence because of its volume.

S. 297 recognizes the problems I describe and contains a number of good ideas to address these problems. I strongly endorse S. 297 and the committee's ongoing efforts to improve the Federal recognition process. I believe that the ultimate weighing of the evidence is the job of the Assistant Secretary, not the OFA. The OFA, to be sure, has a critical role in the process, but it does not have the role of decisionmaker. Nor is the subject matter of the OFA's work so conceptually difficult that it cannot be questioned by an Assistant Secretary, even one whose primary expertise is outside the social sciences. Indeed, I argue that an Assistant Secretary who happens to be an attorney is better qualified than the OFA to apply the law in part 83 to the evidence submitted by the petitioner. I believe it is no coincidence that the only Assistant Secretaries who have disagreed with and overruled a BAR/OFA recommendation have all been attorneys.

Moreover, the job of the Assistant Secretary is to bring a broader policy perspective to all of the agency's decisionmaking. Those of us who have served in the office may fairly be called experts in Indian affairs, and most of us had devoted many

years of study and professional work to Indian history, Indian culture, Indian politics, and Indian law before assuming office. Thus, there is absolutely no reason why the work of the historians and anthropologists in the OFA should receive any more deference from the Assistant Secretary than does the work of the educators, social workers, peace officers, et cetera who advise the Assistant Secretary on other important policy matters.

To be sure that the Assistant Secretary has the resources necessary to review OFA's work, S. 297 would establish an Independent Review and Advisory Board. I believe this to be an excellent solution to the problem of "staff capture" that I described. This independent expertise will go far in helping the Assistant Secretary identify the key factual, legal, and policy issues raised by any given petition and ensure that, with the advice provided by the Board and by comparing the Board's analysis to that of the OFA, the Assistant Secretary will be personally engaged in making those key decisions in each case.

My primary disagreement with BAR staff related specifically to the assignment of weight to specific evidence, the inferences that could fairly be drawn from the evidence, and the degree of certainty about historical facts required by the regulations. I believe that BAR staff, being trained as historians, anthropologists, and genealogists, applied too difficult a standard. I believe they sought near certainty of the facts asserted by petitioners. They dismissed relevant evidence as inconclusive, even though conclusive proof is not required by the regulations. Moreover, BAR staff seemed thoroughly unwilling to give evidence any cumulative effect. While any given piece of evidence might be characterized as weak, for example, many pieces of weak evidence, when considered cumulatively, can make a sound case. I do not believe that the BAR staff were dishonest in their analysis. I do believe that, in accordance with their training, they applied a burden of proof far beyond what is appropriate and far beyond what is permitted by the regulations. The creation of the Board will improve the process by permitting the Assistant Secretary to review the evidence effectively and apply the appropriate standard of review.

The authorization for grants to petitioning tribes and affected communities also will address important problems. Tribes often turn to developers for resources to pursue their petitions because they have little choice. If a tribe declines help from developers, it runs the risk that its resources in pursuing the petition will be inadequate. My experience indicates that the quality of technical assistance and representation provided to petitioning tribes by their consultants and lawyers is uneven. With the additional resources that would become available under this grant program, perhaps the quality of that assistance will improve. Moreover, the grant program will provide a petitioning tribe with a meaningful choice as to whether to seek the assistance of a developer. [I note that such grants are conditioned on a showing of need, and I assume from this that a tribe supported by a developer would be unable to make a showing of need.] While the grant program will not eliminate entirely the influence of developer resources on the process, it will help.

As for grants to affected communities, my support is more reluctant. I understand the need for fairness in the process, and I realize the need for political compromise on legislation of this sort, but I am troubled by the precedent of permitting scarce funds appropriated to the BIA, generally for Indian purposes, to be awarded to non-Indian communities. To the tribes, such a "raid" on BIA funding might be seen as yet another non-Indian misappropriation of resources intended for Indians—the essence of the colonialism that this Congress has decried. However, given that the grants are conditioned on a demonstration of need by the affected community, I believe that the grants may help the process to be more accessible to communities potentially affected by the recognition of tribes.

Another important idea in S. 297 is the definition of the "historical period" for determining the continuity of tribal existence as running from 1900 to the filing of the petition. My experience in evaluating petitions revealed that tribes very often could not provide the kind of documentary evidence BAR wanted for the period from roughly 1870 to 1930. As an Indian person and a scholar of Indian history, I found this unsurprising. As the chairman well knows, this period was a bleak one for Indians. The United States sought a final solution for the "Indian problem," and that solution was assimilation, a deliberate assault on Indian tribalism. The United States sought to withdraw from its responsibilities to Indian tribes in many circumstances; other tribes suffered from benign neglect or were simply left for the States to deal with. Still other tribes, I believe, adopted a strategy of anonymity, believing it better not to be noticed than to come to the attention of Federal and State authorities. Small wonder, then, that documentary evidence of some tribes in this period is sparse.

I believe that the date of 1934 well may be a better starting point. As you know, Federal policy shifted radically at that point, and a number of tribal groups re-

emerged at that time. Their re-emergence cannot fairly be described as the re-constitution of a community once scattered to the wind. Rather, communities that had long been underground were willing once more to reveal themselves to the light when Federal policy toward tribalism became friendlier. BAR's interpretation of evidence in this period was consistently rigid and formalistic, taking little or no account of the larger historical context. I took a more generous approach, refusing to give new life and effect to the policies of an era that can only be called unenlightened.

As I have indicated, I would support the enactment of S. 297 in its current form. I would like to propose, however, three possible amendments that would further improve the process.

First, I strongly believe that certain petitioners, which already have been denied recognition, should be permitted another opportunity under the revised process established by this bill. I adopted a policy when I was Assistant Secretary that I would not revisit final determinations of my predecessors in office. While I believe that this was the right policy, I remain troubled to this day that justice was denied to certain tribes, particularly the Miami Tribe. Even some of the petitions I personally acted upon leave me wishing that this revised process had been in effect when I was in office. Into this category I would place the Mowa Choctaw. Finally, I remain convinced that the Chinook Tribe is deserving of Federal recognition, and I believe that, if Assistant Secretary McCaleb had the resources provided by this bill available to him when he addressed the Chinook petition, the outcome well may have been different. There may be other tribes, such as the Duwamish and the Muwekma who should be eligible for reconsideration as well.

Second, I believe that fairness in the process will be enhanced by limiting the role of the Division of Indian Affairs in the Office of the Solicitor. I described above the pervasive influence of that division. I believe that such pervasive influence is pernicious to the process. I note that the Independent Review and Advisory Board will have two attorney members, and I believe that is wise. I urge that the Congress go a step further, however, and provide that, when a matter is assigned by the Assistant Secretary to the Board, no attorney from the Division of Indian Affairs be permitted to communicate with the Board. Further, to the extent the Board requires legal assistance from the Department, as it well may, that assistance should come from another division of the Solicitor's office. I suggest that the Division of General Law have this responsibility. Similarly, after the OFA has made its recommendation to the Assistant Secretary on the final determination of a petition, neither OFA nor the Division of Indian Affairs should have any further contact with the Assistant Secretary regarding the petition. In the alternative, Congress should provide that a petitioner must receive notice of the OFA's recommendation to the Assistant Secretary and have one last opportunity to appear before the Assistant Secretary and offer any rebuttal evidence it might wish. These suggestions are offered in order to further reduce the historic inappropriate influence that BAR and the Division of Indian Affairs have asserted over the process.

Third and finally, I suggest that the committee more broadly address the issue of the significan6e of continuous state recognition of Indian tribes. While the existing regulations and the bill before the Committee indicate the significance of state recognition as evidence of historic identification of the tribe, I agree wholeheartedly with the Department's position that such continuous State recognition is also evidence of continuity of political influence. In its recent decision on the petition of the Schaghticoke Tribal Nation, the Department held that "the historically continuous existence of a community recognized throughout its history as a political community by the state and occupying a distinct territory set aside by the State, provides sufficient evidence for continuity of political influence within the community." The proposition is unremarkable; indeed, it is obvious. When a State has maintained a relationship with an Indian group throughout the State's history, and when the group has occupied a state-recognized reservation throughout that time, these facts are evidence of ongoing political organization in the tribe. I support this holding concerning the evidentiary value of State recognition. Indeed, I believe it is the only sensible interpretation of the fact of continuous State recognition.

Mr. Chairman, thank you again for this opportunity to appear before you. I would be pleased to answer any questions the committee might have.

PREPARED STATEMENT OF AURENE MARTIN, PRINCIPAL DEPUTY ASSISTANT SECRETARY—INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the committee. My name is Aurene Martin, principal deputy assistant secretary—Indian affairs at the Department of

the Interior. I am here today to provide the Administration's testimony on S. 297, the "Federal Acknowledgment Process Reform Act of 2003." The stated purposes of S. 297 include ensuring that when the United States acknowledges a group as an Indian tribe, that it does so with a consistent legal, factual and historical basis, using clear and consistent standards. Another purpose is to provide clear and consistent standards for the review of documented petitions for acknowledgment. Finally it attempts to clarify evidentiary standards and expedite the administrative review process for petitions through establishing deadlines for decisions and providing adequate resources to process petitions.

While we agree with these goals, we do not believe S. 297 achieves them. The Department therefore, does not support S. 297. We are concerned that S. 297 would lower the standards for acknowledgment and not allow interested entities the opportunity to be involved in the process. We recognize the interest of the Congress in the acknowledgment process, and are willing to work with the Congress on legislative approaches to the Federal acknowledgment process. We believe that any legislation created should have standards at least as high as those currently in effect so that the process is open, transparent, timely, and equitable.

The Federal acknowledgment regulations, known as "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," 25 C.F.R. Part 83, govern the Department's administrative process for determining which groups are "Indian tribes" within the meaning of Federal law. We believe these regulations provide a rigorous and thorough process.

The Department's regulations are intended to apply to groups that can establish a substantially continuous tribal existence and, which have functioned as autonomous entities throughout history until the present. See 25 C.F.R. Sections 83.3(a) and 83.7. When the Department acknowledges an Indian tribe, it is acknowledging that an inherent sovereign continues to exist. The Department is not "granting" sovereign status or powers to the group, nor creating a tribe made up of Indian descendants. We believe this standard as provided in 25 C.F.R. Part 83.3(a) needs to be maintained.

Under the Department's regulations, in order to meet this standard petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

(1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900; (2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present; (3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present; (4) provide a copy of the group's present governing document including its membership criteria; (5) demonstrate that its membership consists of individuals who descend from the historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list; (6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and (7) demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

A criterion is considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.

S. 297 would reduce the standards for acknowledgment by requiring a showing of continued tribal existence only from 1900 to the present, rather than from first sustained contact with Europeans as provided for in 83.7(b) and (c). Other changes from the current regulatory standards would reduce the standard for demonstrating tribal existence even after 1900. This reduction in the standard deviates significantly from the position of the Department, as stated in the regulations, that the legal basis of Indian sovereignty is continuous political and social existence pre-dating European settlement of the territory that now constitutes the U.S. and extends without break to the present. The standard set out in S. 297 makes it more likely that groups without demonstrated tribal ancestry or historical tribal connection may be acknowledged.

The bill also reduces the burden of producing evidence to demonstrate continuous existence by creating an extensive list of exceptions delineated in section 5(g) of S. 297. Section 5(g) would provide that if an Indian group demonstrates by a reasonable likelihood that the group was, or is a successor in interest to a party to one or more treaties, that group would only have to show their continual existence from when the government expressly denied them services, even if this notification occurred only in the recent past. Under the Department's regulations, the burden rests with the petitioning group to show continuous existence; the bill shifts that

burden to the Department. For example, if a group requested services from the government in 2000 and was denied those services, under this scheme, the group would only have to submit documentation from 2000 to the present. The Department would then have to demonstrate the group did not exist as a tribe prior to 2000.

The Department supports a more timely decisionmaking process, but does not believe that the factual basis of the decisions should be sacrificed to issue more decisions. The bill seeks to speed the process by narrowing the role of interested parties in the administrative process and by permitting only the petitioner to respond to proposed findings. These limits on outside party involvement, however, lessen the evidentiary basis of the decisions by not allowing interested parties the opportunity to submit arguments and evidence to rebut or support the proposed finding. Interested parties that believe that their views and concerns are not being given due consideration in the administrative process will likely challenge the decisions in court, which makes the process more costly and time consuming. The bill, however, appears to limit these challenges by permitting only petitioners to sue over the decisions. Specifically, the bill would provide for an appeal of the final determination by the petitioner within 60 days in the U.S. District Court for DC; however, it is unclear if this bill precludes an appeal by interested parties under the Administrative Procedure Act. Since Federal acknowledgment decisions impact the groups seeking tribal status, the local communities, States, and federally recognized tribes, the process must be equitable.

With respect to deadlines and time lines, the Department is interested in exploring some type of sunset provision. In fact, in response to a November 2001, General Accounting Office [GAO] report on the "effectiveness and consistency of the tribal recognition process", the Department stated that we would support a legislative sunset rule that would establish a clear timeframe in which petitioners must submit final documented petitions and supporting evidence.

The September 30, 2002, strategic plan and needs assessment of the Assistant Secretary in response to the GAO report outlined a number of changes that the Department is implementing, and changes that Congress can implement, to speed the process and to make it more equitable and transparent—without changing the standard of continuous tribal existence. The Secretary in April 2004 requested from the Assistant Secretary—Indian Affairs a report outlining the progress on the implementation of the strategic plan.

A number of changes have been made at the Department to implement the strategies identified in the Department's response to the GAO. First, previous acknowledgment decisions have been scanned on CD-ROM and are available to the public. Second, the use of Federal Acknowledgment Information Resource, or FAIR, has expanded. FAIR is a data base system linking images of the documents in the record with the Department researchers' comments. It includes a chronology of events from the documents submitted and data extracts, and allows the tracking of persons involved in the group and their activities. FAIR has been praised by petitioners and interested parties alike for providing timely access to the record and researchers' analysis. The fact that this Administration has issued 14 decisions further documents the success of these efforts. The bill does not address the improvements that the Department has made.

The Department believes that the acknowledgment of the existence of an Indian tribe is a serious decision for the Federal Government. It is of the utmost importance that thorough and deliberate evaluations occur before the Department acknowledges a group's tribal status, which carries significant immunities and privileges, or denies a group Federal acknowledgment as an Indian tribe.

When the Department acknowledges an Indian tribe, it recognizes an inherent sovereign that has existed continuously from historic times to the present. These decisions have significant impacts on the petitioning group as well as on the surrounding community. Therefore, these decisions must be based on a thorough evaluation of the evidence using standards generally accepted by the professional disciplines involved with the process. The process must be open, transparent, timely, and equitable.

Thank you for the opportunity to testify on S. 297 and the Federal acknowledgment process. I will be happy to answer any questions you may have.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 1 6 2004

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510-6450

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Indian Affairs to questions you submitted following the April 21, 2004, hearing on S. 297, the "Federal Acknowledgment Process Reform Act of 2003."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Jane Lyder

Jane M. Lyder
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: Honorable Daniel K. Inouye
Vice Chairman
Committee on Indian Affairs

1. I am glad to hear that the Department believes the acknowledgment process should be "open, transparent, timely and equitable" yet your testimony is that you oppose this bill because "it lowers the standards for acknowledgment and thereby creates a process that is not open, transparent, timely or equitable." That is a little confusing to me because openness, transparency and timeliness relate to the actions of BAR staff, not the acknowledgment criteria.

QUESTION 1a: Can you inform the Committee what effect lowering, or raising the standards for that matter, has on the transparency and timeliness of the process?

ANSWER: Within the Department's testimony, we stated that we are "concerned that S. 297 would lower the standards for acknowledgment and not allow interested entities the opportunity to be involved in the process." This would affect the transparency and equity of the process. S. 297 would also limit the ability of local communities to comment on petitions for acknowledgement, making the process less transparent. Additionally, provisions relating to the commission do not establish deadlines for their review of petitions, which adds a new step to the process the length of time for which we cannot estimate. This could add a significant amount of time to the acknowledgment process.

QUESTION 1b: Following the internal "restructuring" highlighted in your testimony, can you tell the Committee the average length of time it will take for a petitioner on "Ready, Waiting for Active Status" to have [its] petition considered? Do you consider such period of time to be "timely"?

ANSWER: The regulations allow the Department to place first priority on processing petitions that are under active consideration. Currently, there are nine petitions on active consideration under various regulatory phases and have first priority. Of these nine, the Department will likely issue three final determinations this summer, leaving the remaining six petitions to be completed within the next several years under current staffing and available resources. Once these petitions have completed active consideration, the Department will be able to address those petitions that are "Ready, Waiting for Active Consideration."

In response to the GAO report, the Department provided a strategic plan and needs assessment dated September 30, 2002, to GAO, OMB, and the pertinent Senate and House Committees. This response provided an analysis of the current workload. The Department outlined several configurations for eliminating the current professional workload within various time frames. Our response to the GAO stated that:

> "At current staff levels, it will take six years to eliminate the existing known workload. If the expectation is to eliminate the current professional workload in three years, then six research teams will need to be established. Training of additional teams and middle management will require additional time, resulting in a projection of over four years to eliminate the current professional workload."

A number of changes have been made at the Department to implement the strategies identified in the Department's response to the GAO to make the decision making process more timely. In fact, since January 2001, the Office of Federal Acknowledgment was able to assist the Department in completing 14 major decisions regarding Federal acknowledgment: six proposed findings, six final determinations, and two reconsidered final determinations. In addition, we anticipate completing three more final determinations within June 2003.

QUESTION 1c: You mentioned that a "sunset" provision could assist with deadlines and time lines. Can you explain how a sunset provision will assist the Department in avoiding missed deadlines and time lines?

ANSWER: The goal of a "sunset" provision would be to establish a deadline for a petitioner to submit a letter of intent for federal recognition. This would define the workload the Department will face by creating a finite number of petitioning groups. This "sunset" provision might also include a deadline concerning when a petitioner should submit their full documentation. With this knowledge, the Department will be better able to manage and coordinate its limited resources.

2. Your testimony criticizes the standards set out in S. 297, particularly those provisions regarding evidence of the community and the autonomous nature of a petitioner since 1900.

QUESTION 2a: Do the current acknowledgment regulations require identification of a group as an Indian entity from 1900?

ANSWER: Yes. Under 83.7(a), the regulations require that the petitioning group demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900. This time period applies only to criterion 83.7(a). Under 83.7(b) and 83.7(c), the petitioner is required to demonstrate that the group is a distinct community and has maintained political influence or authority over its members as an autonomous entity from historical times until the present. "Historically, historical or history" is defined under the regulations (83.1) as "dating from first sustained contact with non-Indians."

QUESTION 2b: Why do the current regulations only require identification as an Indian entity since 1900?

ANSWER: The original 1978 regulations required external identification as an Indian entity throughout history until the present. The 1994 revised regulations shortened this time period to 1900 to the present. The preamble to the 1994 regulations noted there were strong concerns raised, "particularly regarding historical identification of groups in the South, that racial prejudice, poverty, and isolation have resulted in either a lack of adequate records or records, which unfairly characterized Indian groups as not being Indian."

In response, the preamble further states: "the criterion for continued identification has been revised to reduce the burden of preparing petitions, as well as to address

problems in the historical record in some areas of the country. The requirement for substantially continuous external identification has been reduced to require that it only be demonstrated since 1900. This avoids some of the problems with historical records in earlier periods, while retaining the requirement for substantially continuous identification as Indian." (59 FR 9286)

QUESTION 2c: Which criteria do you believe to be more important in establishing the continuing political existence of an Indian tribe: (1) identification by outside political entities; or (2) the largely internal decisions of intra-community relationships?

ANSWER: The regulations at 25 CFR Part 83 require that all seven mandatory criteria be met in order to demonstrate that a group has descended from an historical tribe and has continuously existed socially and politically as an Indian tribe. Under the seven mandatory criteria a petitioner must:

(1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;

(2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;

(3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(4) provide a copy of the group's present governing document including its membership criteria;

(5) demonstrate that its membership consists of individuals who descend from the historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;

(6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

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

The Department supports the continued use of all seven criteria.

External identifications are frequently unreliable and not based on substantial knowledge of a group. The "political influence" of a group over its members is tested by criterion 83.7(c), which, except when modified by section 83.8, requires evidence of internal decision making, not just outside identifications. The

Department believes that this standard should be maintained for the period prior to 1900.

Neither type of evidence is more or less important than the other. What is critical is that a petitioner can show that it has existed continuously as a political entity from historical times to the present. This can be shown by one or the other types of evidence or through a mixture of both.

3. You also find problematic provisions in S. 297 to streamline the process and stop the "document churning" by limiting the impact of FOIA requests. You state that the bill does not allow interested parties to "submit arguments and evidence to rebut or support the proposed finding."

QUESTION 3a: Would you not agree that it would be more efficient for everyone if the documents stopped churning, and a complete petition could be gathered together in an orderly fashion; and when a petition is complete, interested parties were able to review the complete petition?

ANSWER: Yes. We encourage innovative solutions that would satisfy our FOIA responsibilities concurrently with processing acknowledgment decisions efficiently and in a timely manner.

QUESTION 3b: Can you explain to the Committee the process used by the Department to determine who is an "interested party" and who is an "informed party"? What rights to participate in the process do each have?

ANSWER: When the Department receives a letter requesting interested or informed party status, the Office of Federal Acknowledgment (OFA) works with the regulatory definitions and determines whether the party is interested or informed. As provided by the regulations under 83.7(1), an *informed party* is any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner; and an *interested party* is any person, organization or other entity who can establish a legal, factual, or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. "Interested party" includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes, and unrecognized Indian groups that might be affected by an acknowledgment determination.

The Department notifies the requestor and provides copies of this notification to the petitioner and other interested and informed parties. After a Proposed Finding is published and during the comment period, an interested party may request a formal, on-the-record technical assistance meeting as described under 83.10(j)(2), to inquire into the reasoning, analysis, and factual bases for the proposed finding. An informed party does not have this right. An interested party may file a request

for reconsideration of a final determination before the Interior Board of Indian Appeals. An informed party does not have this right.

QUESTION 3c: Can you describe to the Committee the Department's restructuring efforts, and how these efforts have made the process more timely and equitable?

ANSWER: The realignment now provides more direct and efficient policy guidance, which shortens the administrative time it takes to finalize decisions. The Office of Federal Acknowledgment (OFA) now reports directly to the Principal Deputy Assistant Secretary – Indian Affairs. Prior to the change, staff reported first, to the Director, Office of Tribal Services, second, to the Director, Bureau of Indian Affairs, and then to the Assistant Secretary-Indian Affairs. The change eliminates two layers of review and provides more direct and efficient policy guidance.

QUESTION 3d: I am very interested in hearing the results from the Secretary's report on the progress of the strategic plan. Can you provide us a copy?

ANSWER: Yes, we can provide the Committee with a copy as soon as it is completed.

QUESTION 3e: In your testimony you state that the Department has "made 14 decisions" since the beginning of this Administration, yet the "Status List" prepared by the OFA staff lists substantially less than that. Can you explain the discrepancy and what "decisions" have been made?

ANSWER: Because of the nature and amount of work involved, we consider proposed findings, final determinations and reconsiderations, each to be a "decision" even though they relate to the same petitioner. Since January 2001, the Office of Federal Acknowledgment was able to assist the Department in completing 14 major decisions regarding Federal acknowledgment: six proposed findings, six final determinations, and two reconsidered final determinations.

NAME	DECISION	ISSUED	FR NOTICE	FR CITATION	EFFECTIVE DATE
Muwekma	Proposed Finding	July 30, 2001	August 3, 2001	66 Fed. Reg. 40712	
Nipmuc Nation	Proposed Finding	September 25, 2001	October 1, 2001	66 Fed. Reg. 49967	
Webster/Dudley Band	Proposed Finding	September 25, 2001	October 1, 2001	66 Fed. Reg. 49970	
Duwamish	Final Determination	September 25, 2001	October 1, 2001	66 Fed. Reg. 49966	May 8, 2002
Cowlitz	Reconsidered FD	December 31, 2001	January 4, 2002	67 Fed. Reg. 607	January 4, 2002
Eastern Pequot	Final Determination	June 24, 2002	July 1, 2002	67 Fed. Reg. 44234	before IBIA
Paucatuck Eastern Pequot	Final Determination	June 24, 2002	July 1, 2002	67 Fed. Reg. 44234	before IBIA
Chinook	Reconsidered FD	July 5, 2002	July 12, 2002	67 Fed. Reg. 46204	July 12, 2002
Muwekma	Final Determination	September 9, 2002	September 17, 2002	67 Fed. Reg. 58631	December 16, 2002
Schaghticoke	Proposed Finding	December 5, 2002	December 11, 2002	67 Fed. Reg. 76184	
Golden Hill Paugussett	Proposed Finding	January 21, 2003	January 29, 2003	68 Fed. Reg. 4507	
Snohomish	Final Determination	December 1, 2003	December 10, 2003	68 Fed. Reg. 68942	March 9, 2004
Schaghticoke	Final Determination	January 29, 2004	February 5, 2004	69 Fed Reg. 5570	before IBIA
Burt Lake	Proposed Finding	March 25, 2004	April 15, 2004	69 Fed Reg. 20027	

4. I believe we must find some creative ways to bring more resources to bear on the process as well as open the process up to some fresh air and so I am really disappointed that the Department did not even comment in its written testimony on either the Independent Review and Advisory Board or the outside Research Institution Pilot Project.

QUESTION 4a: Is it the Department's position that more Federal dollars are likely to be appropriated for purposes of BAR given all the competing needs in Indian country?

ANSWER: We cannot comment on whether more appropriations are likely; however, in response to the GAO report, the Department provided a needs assessment (found within its September 2002 Strategic Report) to the pertinent Senate and House Appropriations Committees under 31 U.S.C. 720. Congressional appropriations for FY 2003 ($500,000) and FY 2004 ($250,000) did provide increased funding.

QUESTION 4b: Can you take a look at the provisions I noted above and report back the Department's views on them?

ANSWER: Section 6 makes no provisions for funding the actual Departmental employees, either current or future, and addresses only the Board and pilot project.

Independent Review and Advisory Board
Section 6(a)(1) states the purpose of a review board is to "assist the Assistant Secretary in addressing unique evidential questions," provide "secondary peer review of the acknowledgment determinations," and enhance the credibility of the acknowledgment process as perceived by some in Congress, petitioners, interested parties, and the public. As a general matter, this is somewhat akin to past proposals from the BIA to establish some kind of review board. However, the Board as structured here is given a much more extensive a role in the decisions on specific cases then previously considered necessary or appropriate.

Section 6(a)(2)(A)(ii) refers to a doctoral degree in genealogy although such degrees are not awarded. There is no university in the United States that offers a masters or doctoral degree in genealogy. The correct standard should be advanced training appropriate to this field.

Section 6(a)(2)(A)(iv) requires only one historian, who is not required to have a doctoral degree. It is recommended that there be more than one historian and the list should have doctoral degree or equivalent experience to ensure they have credentials sufficient to the credibility of the review.

Section 6(a)(2)(C) as written may support the erroneous inference that it is the sole conflict interest provision applicable to Board members. In order to avoid this inference, this provision should clearly state that other applicable ethics provisions apply.

Section 6(a)(2)(D) makes no reference to the actual employees of the Department who review the petitions. It is unclear what the relationship of our current staff would be to this Board. In addition, the employment status of these Board members is unclear. The status of the members of the Board as special government employees or as employees of some agency should be clarified in order to determine what conflict of interest restrictions will apply to the members as they make their recommendations to the Department.

Section 6(a)(4)(B) makes Board review mandatory after a proposed finding. It is not specified whether the Assistant Secretary must accept the conclusions of the Board. The bill language references "the evidence submitted" as if it were separate from "the evidence submitted by the petitioners and interested parties." The difference is unclear.

Research Institution Pilot Project
Section 6(c) requires a "pilot project" which may, in practice, threaten the consistency of acknowledgment standards. The bill makes no provision for the time required of Departmental staff to manage and allocate specific funds, to orient outside researchers and, presumably, monitor their work to ensure that it follows the precedents and requirements of the acknowledgment process. A certain amount of time must be allowed for a contractor to be oriented to the project to learn a substantial body of precedent and become acquainted with

issues that do not occur in scholarly research. We believe consistency with prior precedent, or where appropriate, a full explanation of the reasons for departing from prior precedent, is essential to the credibility of the process. This provision does not address the situation in which the research team does not submit a product within the time frames imposed on the Department, which has happened with some of our previous efforts to use outside contracts.

In addition, the role and responsibility of the "pilot project" must be clearly defined. Under Section 6(c)(4) the Assistant Secretary "may take into consideration the conclusions and recommendations of a research team" from this project, indicating that the Assistant Secretary is not required to do so. We recommend the bill provide for a mechanism to work out any potential discrepancies that might result between the pilot project's findings and that of OFA.

5. This bill proposes the creation of the "Independent Review and Advisory Board" (IRAB) to assist the Assistant Secretary in making recognition decisions.

QUESTION 5a: In your capacity as "Acting Assistant Secretary" you have been called on to make recognition decisions. Would you have found the existence and involvement of IRAB to be helpful to you in those decisions?

ANSWER: An independent review and advisory board might be helpful, however the parameters of its review should be more defined. One of the challenges experienced as an Acting Assistant Secretary has been the lack of time it takes to get a true picture of all of the documentation for a petition. Having a third party available to review the documentation and conduct a peer review as described in the legislation, might have been helpful. However, the down side of having this Board is the length of time that such a board might take to review a petition, which could add more time to what has already been termed a lengthy process.

ANSWER: **If yes, how, and if no, why not?**

The roles and responsibilities of an independent review and advisory board must be clearly defined. If not, this body may be duplicative of OFA's federal recognition process. In addition, if the independent review and advisory board disagreed with OFA's determinations, there would need to be a process to address such disagreements.

Each recommendation is presented by OFA through a research team made up of a professional cultural anthropologist, genealogist, and historian. Each recommendation is peer reviewed by one of the other two OFA teams. Hence a "second opinion" is provided through this peer review process. Each recommendation is also reviewed by the Department's Office of the Solicitor and the Counselor to the Assistant Secretary – Indian Affairs, before the Principal Deputy Assistant Secretary – Indian Affairs reviews and takes any action. Proposed findings open up comment periods for the petitioner, the interested parties, and the general public for their input. The Department considers the

comments and responses for a group's final determination. Final determinations may be subject to review by the Interior Board of Indian Appeals or challenged under the Administrative Procedures Act. To include another body of professionals would be time consuming and an unnecessary step for petitioners.

6. Some in Congress are criticizing what they claim are BIA or BAR staff leaving government service and then working for petitioners before the BAR.

QUESTION 6a: Is there any ethical prohibition, as there is for the Legislative Branch that prevents these staff from going to work immediately for BAR petitioners?

ANSWER: OFA staff are covered by the same criminal conflict of interest laws governing negotiation for future employment and for post employment as all executive branch officials. In most cases these restrictions are more extensive than those applicable to the Legislative branch. The post employment restrictions do prohibit a former official from representing private parties to the Government on matters involving parties, which would include recognition petitions, in which the former official had participated personally and substantially or which had been under his or her official responsibility. In addition, senior employees of the OFA have a one-year cooling off period from representing private parties before the BIA. While there is a statutory exemption for representing federally recognized Indian tribes, that exemption would not apply because petitioners would not have that status.

QUESTION 6b: Do you see this as a problem that this Committee needs to address in this Bill?

ANSWER: The Department does not believe former OFA staff working on petitions poses significant problems requiring Committee action. To the extent there could be a problem, existing criminal prohibition provide adequate protection to the process.

TESTIMONY
OF
CHIEF QUIET HAWK
ON BEHALF OF THE
GOLDEN HILL INDIANS OF THE PAUGUSSETT NATION
FOR THE HEARING BEFORE THE
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 297 – "FEDERAL ACKNOWLEDGMENT PROCESS REFORM ACT OF 2003"

May 5, 2004

Mr. Chairman and Members of the Committee, thank you for this opportunity to comment on the federal acknowledgment process and S. 297, the "Federal Acknowledgment Process Reform Act of 2003." On behalf of the Golden Hill Indians of the Paugussett Nation, please accept this written testimony regarding our experience with the process and comments on the proposed legislation. As a petitioner who began the federal acknowledgment process more than 20 years, we fully support your efforts to reform the process.

History of the Golden Hill Indians of the Paugussett Nation

In order to understand our perspective on the federal acknowledgment process, it is important to understand some of our history. Paugussett Indians have occupied the western portion of Connecticut from time immemorial. Historically, our Tribe was a coastal and riverine culture, wresting sustenance from the bays and estuaries of Long Island Sound and the great Housatonic River and its tributaries.

English incursion began at the time of the Pequot War in 1637. By 1639 settlement was underway from the already overcrowded plantation towns of Massachusetts Bay and the Connecticut Valley. Stratford was established near the mouth of the Housatonic and Fairfield was established eight miles to the west between the Uncoway and Sasco Rivers. Disputes arose almost immediately as to the boundaries between the two settlements and each town attempted to push the Native population towards the other.

In 1659 the English "solution" for dealing with their incursion on Paugussett territory was the creation of a reservation, which from its beginning was incapable of providing for even the minimal needs of the Paugussett population. This reservation survives today as both the oldest and smallest in America.

Paugussetts from over a dozen villages on two hundred square miles of territory - people dependant on fish and shellfish harvest and maize-based agriculture - were herded onto eighty acres of granite ledge and hopelessly thin soil. It is difficult at this point in time to estimate the enormity of this uprooting of our ancestors, but it was recorded that in its early days the reservation contained more than 100 wigwams, suggesting a population of 600 to 800 Paugussetts. This was just the beginning of what would become the Tribe's 350 year struggle to survive.

In the ensuing decades the Tribe was forced to relinquish tract after tract of land to the Europeans as new settlements extended up the Housatonic Valley to Derby and then to Newtown and New Milford. Other miniscule parcels were set aside for the tribe "in perpetuity," but these were habitually whittled away by European encroachment or sold outright by often unscrupulous Indian overseers.

By the beginning of the nineteenth century the Golden Hill reservation must have been a fascinating anachronism. On this twelve-acre riverfront parcel were our ancestors living in bark wigwams and subsisting through traditional agriculture and fish harvest in the midst of the growing New England seaport town of Bridgeport.

Shortly after the turn of the century in 1802, the reservation was sold, the proceeds turned over to the overseer for support of the Tribe and tribal members were trundled off to rural New England. However, rather than stay there, our ancestors did something most unusual in the annals of Native American history during this era - they moved back to the city where their reservation had once been located.

In the early 1820's, tribal members from the Golden Hill, Turkey Hill, Pootatuck and Lonetown Paugussett communities began to occupy a village of their own creation on a shorefront site a half-mile to the south of Bridgeport. By 1835 they had organized the Zion Church, and in 1841 they had the political savvy to petition the Connecticut General Assembly for funds to start a community school. A number of the Paugussett community residents became wealthy entrepreneurs and real estate investors. By the 1850's the village boasted a four-story hotel, which provided opportunity for service occupations, and its own free lending library.

In addition to this urban Paugussett community, there was also a tribal community in the James Farm district of North Stratford, seven miles from Bridgeport. It was here that a series of contiguous commercial farming operations involving tribal members commenced in the 1830's and '40s. Paugussetts were also taking part in a shad fishery on the adjoining Housatonic River and clamming and oystering operations, all of which contributed to the hotel, steamboats and growing urban population of Bridgeport.

Like so many Indian tribes during the dark days of the federal assimilation policies, by 1886, although the reservation had been reestablished, the Bridgeport and James Farm communities were under severe stress and new generations were losing contact with their tribal identity and roots. But the Tribe and its traditions were kept alive through these tough times by a core group of leaders who were mindful of their unique culture and place in history. As the keepers of the Tribe's heritage, their knowledge and sense of duty to our ancestors and the generations to come has allowed the Tribe to survive despite the unbelievable challenges we have faced in the 350 years since the establishment of our first reservation.

Limitations in the Existing Federal Acknowledgment Process

In 1975, Congress established the American Indian Policy Review Commission (AIPRC), in part, to investigate problems with the federal recognition process. In their 1977 report to Congress, AIPRC found that the criteria for federal recognition were unclear and concluded that the process was inconsistent. In response, the Bureau of Indian Affairs (BIA) promulgated regulations in 1978, which were a mixture of the criteria laid out by Felix Cohen in his Indian Law Handbook, federal court decisions and Congressional reports.

Although the 1978 regulations created a formal federal acknowledgment process, critics soon charged that the BIA, through the Bureau of Acknowledgment and Research (BAR), now the Office of Federal Acknowledgment (OFA), continued to selectively choose from and inconsistently apply the criteria:

> The difficulty of proving the criteria is further compounded by a shifting standard of review. The criteria contain undefined terms and the threshold of proof is obscure. Most alarming, however, is the BIA's inconsistent analysis and application of evidence to the criteria.[1]

Similarly, a federal court, in taking serious issue with the BIA and BAR in relation to the delays and procedural inconsistencies characteristic of the Federal Acknowledgment Process (FAP), stated that "the proceedings before the Bureau of Indian Affairs have been marred by both lengthy delays and a pattern of serious procedural due process violations . . . . [taking] over twenty-five years, and the Department has twice disregarded the procedures mandated by the APA, the Constitution and this Court."[2]

Unfortunately, while we understand and support the OFA's efforts to improve the federal acknowledgment process, more still needs to be done to create a fair and efficient process. As reported in the November 2001 General Accounting Office (GAO) report, *Indian Issues: Improvements Needed in Tribal Recognition Process,*[3] there are still significant problems. Specifically, the GAO reported:

> Because of weaknesses in the recognition process, the basis for BIA's tribal recognition decisions is not always clear and the length of time involved can be substantial. First, while there are set criteria that petitioners must meet to be granted recognition, there is no clear guidance that explains how to interpret key aspects of the criteria. For example, it is not always clear what level of evidence is sufficient to demonstrate a tribe's continuous existence over a period of time - one of the key aspects of the criteria. As a result, there is less certainty about the basis of recognition decisions. Second, the regulatory process is not equipped to respond in a timely manner. While workload has increased with more detailed petitions ready for evaluation and increased interest from third parties, the number of staff assigned to evaluate the petitions has decreased . . . . [Further], BIA has not maintained funding for this process in light of the increasing demands . . . Just as important, the process lacks effective procedures for promptly addressing the increased workload. In particular, the process does not impose effective timelines that create a sense of urgency, and procedures for providing information to third parties are ineffective.

Our experience with the process is consistent with these findings. Moreover, for Eastern tribes, like ours, who had first contact with non-Indians more than 350 years ago the criteria are too burdensome. There is no recognition of the extreme hardship we have faced, surrounded by urban populations, in trying to maintain and, moreover, provide evidence of, precisely what the dominate culture was trying to destroy, our community and political influence.

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[1] Paschal at 220.
[2] *Greene v. Babbitt,* 943 F.Supp. 1278, 1288 (W.D. Wash. 1996).
[3] GAO-02-49 (November 2001).

The mere fact that any portion of our community has maintained some cohesion and exercises some form of political influence is itself significant in light of the history of encroachment on our land and removal from it, state-sanctioned discrimination and fraud and theft by state-appointed overseers. Rather than rewarding this remarkable survival, the federal acknowledgement process challenges it and demands that we now demonstrate with great certainty, that which we have only desperately been able to hold onto, a functioning tribal community.

Similarly, for those tribes, again like ours, who have had continuous state recognition since the colonial times to the present, the Department of the Interior's application of the criteria failed, until recently, to acknowledge the unique evidentiary value of this state-tribal relationship. Recognizing the inherently political nature of this relationship, the Department, for the first time in their January 30, 2004, Final Determination for the Schaghticoke Tribal Nation, stated that such continuous state recognition "provides sufficient evidence . . . of political influence . . . ." We fully support and encourage a broader application of this "reevaluated position" on the evidentiary weight to be given continuous state recognition.

Comments on the Proposed Legislation

The proposed legislation, S. 297, addresses many of these limitations in the existing federal acknowledgment process. Most importantly, the bill would define "historical period" as beginning with 1900. We strongly support this reform, which alone would significantly reduce the unnecessary burden on petitioning tribes, especially for those of us who sustained first contact more than 350 years ago.

We support Section 5 of the bill, which should help to clarify the criteria, and Section 6 authorizing the independent review and advisory board. We also support the bill's efforts to streamline and establish clear timelines for the process and provide additional resources for the OFA and petitioners.

In addition to these reforms, we recommend that the bill specifically acknowledge the unique evidentiary value of continuous state recognition, much along the lines of the Department's "reevaluated position" in the Final Determination for the Schaghticoke Tribal Nation. We also recommend provisions which would authorize additional technical assistance for petitioners and guidance on preparing a documented petition. Finally, since the bill would modify the existing criteria, especially as to the definition of "historical period," we recommend that petitioners who have been previously denied acknowledgment under the existing process be allowed to repetition the Department for review under the new process.

In addition to these general comments, I also respectfully submit to the Committee, as an attachment to this testimony, more detailed comments on S. 297. On behalf of the Golden Hill Indians of the Paugussett Nation, I again thank the Chairman and Members of the Committee for this opportunity to share with you our experience with the federal acknowledgment process and comments on the proposed legislation.

COMMENTS ON S. 297
FEDERAL ACKNOWLEDGMENT PROCESS REFORM ACT OF 2003

SECTION 1. SHORT TITLE

No Comment

SECTION 2. FINDINGS AND PURPOSES

No Comment

SECTION 3. DEFINITIONS

(3) AUTONOMOUS

Add after "history" and before "geography," "including federal, state, or local laws or policies affecting the Indian group."

(6) COMMUNITY

Add after "history" and before "geography," "including federal, state, or local laws or policies affecting the Indian group."

(19) POLITICAL INFLUENCE OR AUTHORITY

Add after "history" and before "geography," "including federal, state, or local laws or policies affecting the Indian group."

(21) TREATY

Add to the end after "cession," "including treaties entered into by foreign governments, the rights and obligations of which were transferred to the Federal or colonial governments;"

SECTION 4. ACKNOWLEDGMENT PROCESS

(b) REQUIREMENTS FOR PETITIONS

(2) INELIGIBLE GROUPS AND ENTITIES

Delete subsection (C)

Add new subsection (3):

"(3) INDIAN GROUPS ELIGILBLE FOR RECONSIDERATION – Indian groups that have been denied or refused acknowledgement as an Indian tribe under the regulations

previously prescribed by the Assistant Secretary shall be entitled, at their option, to either submit a new petition or to have their previous petition reconsidered by the Assistant Secretary under this Act."

(c) NOTICE OF RECEIPT OF A PETITION; SCHEDULE

(2) SCHEDULE

Add new subsection (C):

"(C) in no event, however, shall this schedule exceed two (2) years from the date of publication of a notice under paragraph(1)(A), unless mutually agreed to by the Assistant Secretary and the petitioner and for good cause."

(d) REVIEW OF PETITIONS

Add new subsection (4) and renumber existing subsections (4) and (5) as (5) and (6) respectively:

"(4) CONSIDERATION OF SITUATIONS AND LIMITATIONS DURING HISTORICAL PERIOD -

(1) IN GENERAL - In considering a documented petition under this Act, the Assistant Secretary shall take into account -

(A) evidentiary situations and limitations (including limitations inherent in demonstrating Indian identity, existence of community, autonomous nature, and descent) during the historical period and

(B) periods during the historical period for which evidence relating to the documented petition is limited or not available.

(2) SUBSTANTIALLY CONTINUOUS - In demonstrating substantially continuous under this Act, a petitioner -

(A) shall not be required to make a demonstration with respect to each point in time during the historical period and

(B) any fluctuation in tribal activity during any period of time shall not be the sole reason for a denial of acknowledgment."

Add new subsection (7):

"(7) CONSIDERATION OF STATE RECOGNITION – The recognition of an Indian group by a state government on a substantially continuous basis during the historical period shall be conclusive evidence of the existence of an Indian group during the

historical period and the Indian group shall only be required to provide evidence of the state recognition and the evidence required in subsections (e) and (f) of Section 5 of this Act."

Add new subsection (e) and change existing subsections (e) to (f) to (f) and (g) respectively:

"(e) CONSULTATION AND TECHNICAL ADVICE -

(1) IN GENERAL - After publication of the proposed findings and at least 90 days prior to the final determination, the Assistance Secretary shall -

(A) consult with the petitioner about the proposed findings and

(B) provide technical advice concerning:

(i) the factual basis for the proposed findings;

(ii) the reasoning used in preparing the proposed findings; and

(iii) any suggestions regarding the preparation of materials in response to the proposed findings.

(2) PROVISION OF RECORDS - Within 30 days of the publication of the proposed findings, the Assistant Secretary shall make available to the petitioner any records used for the proposed findings not already held by the petitioner and to the extent allowable by Federal law."

SECTION 5. DOCUMENTED PETITIONS

(b) STATEMENT OF FACTS RELATING TO IDENTITY

(3) EVIDENCE RELATING TO IDENTITY

In subsection (I), change the clause to read:

"Such other evidence as may be provided by the petitioner of identification by a person or entity other than the petitioner or a member of the membership of the petitioner."

(c) STATEMENT OF FACTS RELATING TO EVIDENCE OF COMMUNITY

(2) EVIDENCE RELATING TO COMMUNITY

In subsection (D), add after "economic" and before "activity," "social, community development, or general welfare."

In subsection (E), add to the end after "nonmembers," "including official and nonofficial acts of the Federal and state governments."

In subsection (F), change "majority" to "significant portion" and add after "of" and before "members," "the."

In subsection (H), add to the end after "name," "or the recognition by a state government of the Indian group as a distinct community."

(d) STATEMENT OF FACTS RELATING TO AUTONOMOUS NATURE OF PETITIONER

(2) EVIDENCE RELATING TO AUTONOMOUS NATURE

In subsection (A), delete the second "significant," which comes after "and" and before "member."

In subsection (C), change "majority" to "significant portion."

In subsection (F)(ii), delete "a majority of."

In subsection (F), add new subsection (iii):

"(iii) or the recognition by a state government of the Indian group as an autonomous group."

(3) EVIDENCE OF EXERCISE OF POLITICAL INFLUENCE OT AUTHORITY

In subsection (A), add after "land," and before "residence rights," "funds."

In subsection (D), add after "subsistence" and before "activities," "social, community development, or general welfare" and add at the end after "labor," "or the provision of financial or other assistance among members."

(f) LIST OF MEMBERS

(3) EVIDENCE OF TRIBAL MEMBERSHIP

Add to the first clause after "Secretary" and before "may," "shall take into consideration the history, including federal, state, or local laws or policies affecting the Indian group, geography, culture, and social organization of the Indian group and"

(g) EXCEPTIONS

(2) INDIAN GROUP

In first clause, delete after "likelihood" and before "that," "of the validity of the evidence."

Add new subsection (E):

"(E) a group that has been recognized be a state government on a substantially continuous basis throughout the historical period."

SECTION 6. ADDITIONAL RESOURCES

No Comment

SECTION 7. INAPPLICABILITY OF FOIA

No Comment

SECTION 8. EFFECT AND IMPLEMENTATION OF DECISIONS

No Comment

SECTION 9. REGULATIONS

No Comment

Add new Section 10:

"SECTION 10. ADDITIONAL DUTIES OF THE DEPARTMENT

(a) PUBLICATION OF LIST OF INDIAN TRIBES - Not less often than every 3 years, and more frequently as determined by the Assistant Secretary, the Assistant Secretary shall publish in the Federal Register a list of all Indian tribes.

(b) GUIDELINES FOR PREPARATION OF DOCUMENTED PETITIONS -

(1) IN GENERAL - The Assistant Secretary shall make available guidelines for the preparation of documented petitions that include -

(A) an explanation of the criteria and other provision relevant to the consideration by the Assistant Secretary of a documented petition;

(B) a discussion of the types of evidence that may be used to demonstrate satisfaction of particular criteria;

(C) general suggestions and guidelines relating to the manner in which and locations at which research relating to a documented petition may be conducted; and

(D) an example of a format for a documented petition (except that the example shall not preclude the use of any other format).

(2) SUPPLEMENTATION AND REVISION - The Assistant Secretary may supplement or update the guidelines as the Assistant Secretary determines to be necessary.

(c) ASSISTANCE - The Assistant Secretary shall, on upon request by a petitioner, provide the petitioner with suggestions and advice regarding preparation of a documented petition."

TESTIMONY OF
NICHOLAS H. MULLANE, II
FIRST SELECTMAN,
TOWN OF NORTH STONINGTON
ON S.297
BEFORE THE
SENATE INDIAN AFFAIRS COMMITTEE

April 21, 2004

Introduction

Mr. Chairman and Members of the Committee, I am pleased to submit this testimony for your hearing today on the tribal acknowledgment process. I am Nicholas Mullane, First Selectman of North Stonington, Connecticut. I testify today also on behalf of Susan Mendenhall, Mayor of Ledyard, and Robert Congdon, First Selectman of Preston. Specifically, this testimony is submitted for the record on S.297, the "Federal Acknowledgment Reform Act of 2003."

As the First Selectman of North Stonington, a small town in Connecticut with a population of less than 5,000, I have experienced first-hand the problems presented by Federal Indian policy for local governments and communities. Although these problems arise under various issues, including trust land acquisition and Indian gaming, this testimony addresses only the tribal acknowledgment process.

Reform of the federal acknowledgment process must occur if valid decisions are to be made. Acknowledgment decisions that are not the result of an objective and respected process will not have the credibility required for tribal and local community interests to interact without conflict. In this regard, I want to commend Senators Dodd and Lieberman and Representatives Simmons, Shays, and Congresswoman Johnson, and our Attorney General, Richard Blumenthal, for their diligent efforts to achieve the necessary reforms. As the bipartisan nature of this political response demonstrates, the problems inherent in tribal acknowledgment and Indian gaming are serious and transcend political interests. Problems of this magnitude need to be addressed by Congress, and I ask for your Committee to support the efforts of our elected leaders from Connecticut to bring fairness, objectivity, and balance to the acknowledgment process.

Acknowledgment and Indian Gaming

Federal tribal acknowledgment, in too many cases, has become merely a front for wealthy financial backers motivated by the desire to build massive casino resorts or undertake other development in a way that would not be possible under State and local law. The New York Times featured this problem in a front-page article published on March 29, 2004. Additional articles on this subject have been published recently by The Hartford Courant and The Village Voice. See Exhibit 1.

Our town is dealing with precisely this problem. Both of the petitioning groups in North Stonington -- the Eastern Pequots and the Paucatuck Eastern Pequots -- have backers who are interested in resort gaming. One of the backers is Donald Trump. These financiers have invested millions, actually tens of millions, of dollars in the effort to get these groups acknowledged so casinos can be opened, and they will stop at nothing to succeed. In fact, they have even resorted to suing each other out of the desire to control the profits that would result from a new Indian casino.

The State of Connecticut has become fair game for Indian casinos, and the acknowledgment process has become the vehicle to advance this goal. For example, three other tribal groups (Golden Hill Paugussett, Nipmuc, Schaghticoke) with big financial backers have their eyes on Connecticut. Their petitions are under active acknowledgment review, and the Schaghticoke have joined the two Pequot groups (now merged into one by BIA) in achieving a favorable decision from BIA. As many as ten other groups are in line. While it is unfortunate that the acknowledgment process and the understandable desire of these groups to achieve acknowledgment for personal and cultural reasons has been distorted by the pursuit of gaming wealth by non-Indian financiers, the reality remains that tribal recognition now, in many cases, equates with casino development. This development, in turn, has devastating impacts on states and local communities. Thus, the stakes are raised for every one.

North Stonington has first-hand experience with the problems that result from Indian gaming. In 1983, the Mashantucket Pequot Tribe achieved recognition through an Act of Congress. This law, combined with the 1988 Indian Gaming Regulatory Act, ultimately produced the largest casino in the world. That casino has, in turn, caused serious negative impacts on our towns (loss of tax base, inconsistent land use, increased crime, deteriorating social values, overburden government services, insufficient housing, changing demographics, unfair competition with non-Indian businesses, etc), and the Tribe has not come forward to cooperate with us to address those problems.

Having experienced the many adverse casino impacts, and understanding the debate over the legitimacy of the Mashantucket Pequot Tribe under the acknowledgment criteria, our Towns wanted to assure ourselves that the recognition requests on behalf of the Eastern Pequot and Paucatuck Eastern Pequot groups were legitimate. As a result, we decided to conduct our own independent review of the petitions and participate in the acknowledgment process.

The Eastern Pequot Acknowledgment Process

The Towns of North Stonington, Ledyard, and Preston obtained interested party status in the BIA acknowledgment process. We participated in good faith to ensure that the federal requirements are adhered to. Our involvement provides lessons that should inform congressional reform initiatives.

The issue of cost for local governments needs to be addressed. Our role cost our small rural towns over $600,000 in total over a eight-year period. This is a small fraction of the tens of millions of dollars invested by the backers of these groups, but a large sum for small local governments. The amount would have been much higher if Town citizens, and our consultants and attorneys had not generously donated much of their time. It has been said that the Eastern Pequot group alone has spent millions on their recognition, and that they spent over $600,000 on one lobbyist to provide them knowledge on "how Washington, D.C. operates." This disparity in resources between interested parties and petitioners with gaming backers skews the process and must be addressed.

The fairness of the process is another problem. We discovered that achieving interested party status did nothing to ensure that we would have a legitimate role in the process. One of our biggest problems in participating was simply getting the documents from BIA. Our Freedom of Information Act requests to BIA for the information necessary to comment on the petitions were not answered for 2 1/2 years. Only through the filing of a successful federal lawsuit were we able to obtain the basic information from BIA. The other claims in that lawsuit remain pending. Thus, it was necessary for us to spend even more money just to get the Federal government to meet its clear duties. I trust you will agree with me that taxpayers should not have to pay money and go to court simply to participate in a federal process.

We experienced many other problems. A pervasive defect in the acknowledgement process has been the failure of BIA to ensure adequate public review of the evidence and BIA's findings.

During the review of the Pequot petitions, the BIA experts initially recommended negative proposed findings on both groups. One of the reasons for the negative finding was that no determination could be made regarding the groups' existence as tribes for the critical period of 1973 through the present. Under past BIA decisions, this deficiency alone should have resulted in negative findings. Despite this lack of evidence, the negative findings were simply overruled by the then BIA Assistant Secretary, Kevin Gover. Because BIA did not rule on the post-1973 period, interested parties never had an opportunity to comment. This was part of a pattern under the last Administration of reversing BIA staff to approve tribal acknowledgment petitions and shortchanging the public and interested parties. Moreover, with no notice to us, or opportunity to respond, BIA arbitrarily set a cut-off date for evidence that excluded 60% of the documents we submitted from ever being considered for the critical proposed finding. BIA never even told us about this deadline, although they did inform the petitioner groups.

This problem occurred again with the final determination. In the final ruling, BIA concluded, in effect, that neither petitioner qualified under all of the seven criteria. Our independent analysis confirmed this conclusion.

Nevertheless, after combining the two petitioners (over the Paucatuck Eastern Pequot's own objections), and improperly using State recognition to fill the gaps in the petitioners' political and social continuity, BIA decided to acknowledge a single "Historical Eastern Pequot Tribe." The Towns had no opportunity to comment on this combined petitioner; we had no opportunity to comment on the additional information provided by the petitioners; and we had no opportunity to comment on the BIA's findings for critical post-1973 period. Thus, the key assumptions and findings that were the linchpin of the BIA finding never received critical review or comment. These types of calculated actions have left it virtually impossible for the Towns to be constructively involved in these petitions, and they have caused great concern over, and distrust with, the fairness and objectivity of the process.

Another problem is bias and political interference. Throughout the acknowledgment review, we have continually found that politically-motivated judgment was being injected into fact-based decisions, past precedents were being disregarded, and rules were being instituted and retroactively applied, all without the Towns and State being properly notified and without proper opportunity for comment. A perfect example is the so-called "directive" issued by Mr. Gover on February 11, 2000, that fundamentally changed the rules of the acknowledgment process, including the rights of interested parties. BIA never even solicited public input on this important rule; it simply issued it as an edict. This action is the subject

of a lawsuit now pending in the Second Circuit. Yet another example is Mr. Gover's overruling of BIA staff to issue positive proposed findings.

With the recent actions of the BIA, it is questionable that this agency can be an advocate for Native Americans and also an impartial judge for recognition petitions. An example is the action by Secretary McCaleb in his "private meeting" with representatives of the Eastern Pequot and Paucatuck Eastern Pequot petitioners to discuss the tribal merger BIA forced upon them. This *ex parte* meeting with the petitioners is highly inappropriate at a time when the 90-day regulatory period to file a request for reconsideration was still in effect. How can BIA be expected to rule objectively on an appeal that contests the existence of a single tribe when the decisionmaker is actively promoting that very result?

Still another problem is the manner in which BIA addresses evidence and comment from interested parties. Simply put, BIA pays little attention to submissions from third parties. The Eastern Pequot findings are evidence of this. Rather than responding to comments from the State and the Towns, BIA just ruled that it disagrees, without explanation.

Another example is the BIA cut-off date for evidence. BIA set this date for the proposed finding arbitrarily and told the petitioners. It never informed the Towns or the State. As a result, we continued to submit evidence and analyses, only to have it ignored because of this unannounced deadline. BIA said it would consider all of this evidence, but it did not. The final determination makes clear that important evidence submitted by the Towns never received consideration.

Thus, rather than our Town's involvement being embraced by the federal government, we were rebuffed. The very fact of our involvement in the process, we feel, may have even prejudiced the final decision against us. The Eastern Pequots attacked us and sought to intimidate our researchers. The petitioning groups called us anti-Indian, racists, and accused us of committing genocide. The petitioners publicly accused me of "Nazism" just because our Town was playing its legally defined role as an interested party. At various times throughout the process, the tribal groups withheld documents from us or encouraged BIA to do so. Obviously, part of this strategy was that the petitioners just wanted to make it more expensive to participate, to intimidate us, and to drive the Towns out of the process. They took this approach, even though our only purpose for being involved was to ensure a fair and objective review, and to understand how a final decision was to be made.

Finally, I would like to address the substance of the BIA finding on the Eastern Pequot petitions. Based upon an incorrect understanding of Connecticut

history, BIA allowed the petitioners to fill huge gaps in evidence of tribal community and political authority, prerequisites for acknowledgment, by relying on the fact that Connecticut had set aside land for the Pequots and provided welfare services. These acts by the State of Connecticut, according to BIA, were sufficient to compensate for the major lack of evidence on community and political authority. In taking this position, BIA abandoned the fundamental principles of federalism that require the federal government to defer to a State's interpretation of its own laws. By this artifice, along with the forced combination of two petitioners, BIA transformed negative findings into positive ones, with no basis in fact or law.

Clearly, the past actions by Connecticut toward the residents of the Pequot reservation did nothing to prove the existence of internal tribal community or political authority. These actions simply demonstrated that the State preformed a welfare function. If BIA does not reject this principle now, it will give an unfair advantage not only to the Pequot petitioners but to other Connecticut petitioning groups as well.

BIA's seriously flawed decision on the two Pequot petitions is now on appeal. Hopefully, the Interior Board of Indian Appeals will lend some semblance of objectivity and credibility to BIA's acknowledgment process. Along with the State, we have provided compelling grounds to reverse the BIA final determination.

Even under the appeal, the petitioners continue to try and bend the rules. They recently wrote to the IBIA asking for expedited treatment of these appeals. They made the astonishing claim that its members were being subjected to human misery, poor education, and inadequate housing while waiting for a decision. In the height of hypocrisy, they made no mention of one of the true motivations behind the push for tribal acknowledgment: the desire to promptly open another massive casino and generate huge sums of money for the financial backers. I can tell you that members of these groups attend the same schools as other children in our town, that some members are paid salaries by financial backers, and that the standard of living they experience, by and large, is comparable to that of many other residents of our small town.

The Schaghticoke Decision

Recently, BIA issued a positive final determination for the Schaghticoke Tribal Nation petitioner group. This decision is another example of how biased and unfair the BIA acknowledgment process is. In this case, BIA even determined that the petitioner failed to meet the criteria. It issued an internal memorandum admitting this fact, which I attach to my testimony. See Exhibit 2. Despite this obvious failure, BIA

still issued a favorable result. To do so, it again invoked the same state recognition principle it used to push the two Pequot groups over the acknowledgment finish line. BIA made another flawed finding and assumption to further support the positive finding. It also misrepresented facts to interested parties and even went so far as to suggest that it could change the appeal rights of interested parties.

Simply put, the acknowledgment process is in need of more than reform. It is time to start all over again, and to put all tribal acknowledgment requests on hold in the interim.

Principles for Reform

Based upon years of experience with the acknowledgment process, our Towns have recommendations to make to Congress.

As an initial matter, it is clear that Congress needs to define BIA's role. Congress has plenary power over Indian affairs. Congress alone has the power to acknowledge tribes. That power has never been granted to BIA. The general authority BIA relies upon for this purpose is insufficient under our constitutional system. In addition, Congress has never articulated standards under which BIA can exercise acknowledgment power. Thus, BIA lacks the power to acknowledge tribes until Congress acts to delegate such authority properly and fully. Up until now, no party has had the need to challenge the constitutional underpinnings of BIA's acknowledgment process, but we may be forced to do so because of the Eastern Pequot decisions.

Second, the acknowledgment procedures are defective. They do not allow for an adequate role for interested parties, nor do they do ensure objective results. The process is inherently biased in favor of petitioners, especially those with financial backers.

Third, the acknowledgment criteria are not rigorous enough. If the Eastern Pequot, Paucatuck Eastern Pequot, and Schaghticoke petitioner groups qualify for acknowledgment, then the criteria need to be strengthened. The bar has been set too low.

Fourth, acknowledgment decisions cannot be entrusted to BIA. The agency's actions are subject to political manipulation, as demonstrated by past practice. Also, the Office of Federal Acknowledgement (OFA) itself will, favor the petitioner. The result-oriented Pequot and Schaghticoke final determinations are proof of this fact. For years we supported OFA and had faith in its integrity. Now that we have studied the Pequot and Schaghticoke decisions, we have come to see the bias inherent in

having an agency charged with advancing the interests of Indian tribes make acknowledgment decisions. OFA no longer has any credibility. Similar problems are likely to arise under an independent commission created for this purpose, unless checks and balances are imposed that ensure objectivity, fairness, full participation by interested parties, and the absence of political manipulation.

Finally, because of all of these problems, it is clear that a moratorium on the review of acknowledgment petitions is needed. It makes no sense to allow such a defective procedure to continue to operate while major reform is underway.

S. 297 Is Inadequate

Against this backdrop, the bill now pending before this Committee is a step in the wrong direction. It makes the acknowledgment process worse, not better. It fails to get to the bottom of the problem, and it makes the standards more lenient, not more rigorous. For example, allowing a group to prove its continuity only from 1900 to the present not only is too permissive, it also violates numerous court decisions that require a showing of such evidence from the point of first contact with non-Indian. S. 297 should be set aside, and a new bill must be prepared.

Recommendations for Reform

What this long history demonstrates is that serious reform of the tribal acknowledgment process is needed. Those efforts must start with this Committee.

We recommend the following reforms to the acknowledgment process:

1. Moratorium – Until the system is fixed, put a halt to ruling on petitions. This is too important an issue to allow to go forward in the face of possible corruption and incorrect decisions.

2. Congressional Delegation – BIA lacks delegated authority from Congress to acknowledge tribes. There are no standards to govern BIA's decision, as required by the U.S. Constitution. Congress needs to address this defect.

3. New Process – Because there is no delegation, and there are no standards, Congress needs to start anew. A new administrative process is needed, one that is objective, qualified and not part of BIA. Congress should create a new independent review body to make fact-findings. Those findings should then be forwarded to Congress for action, where all of the ramifications of acknowledgment a group can be addressed in

legislation. In Connecticut, for example, any new tribes – of which there should be none – would be required to abide by the State's prohibition on casino gaming.

4. Disclosure of Investors – Petitioners should be required to disclose all investors, how much they are spending, and the details of the contracts. A cap should be imposed on how much can be spent.

5. Prohibit Lobbying – Any contact, direct or indirect, between any party involved in acknowledgment and the agency involved in reviewing the petition must be prohibited. Full disclosure of every such contact, at any level, should be made. This includes the White House.

6. New Standards – The existing BIA acknowledgment standards are too lenient. They need to be tightened.

7. Funds for Local Governments – It is too expensive for States and interested parties to participate in this process. Federal funds are needed for this purpose.

Conclusion

Our Towns respectfully request that this Committee make solving the problems with the acknowledgment process one of its top priorities. A moratorium on processing petitions should be imposed while you do so. In taking this action, we urge you to solicit the views of interested parties, such as our Towns and State, and to incorporate our concerns into your reform efforts. Tribal acknowledgment affects all citizens of this country; it is not just an issue for Indian interests.

We are confident that such a dialogue ultimately will result in a constitutionally valid, procedurally fair, objective, and substantively sound system for acknowledging the existence of legitimate Indian tribes under federal law. With the stakes so high for petitioners, existing tribes, state and local governments, and non-Indian residents of surrounding communities, it is necessary for all parties with an interest in Indian policy to pursue this end result constructively. Ledyard, North Stonington, and Preston look forward to the opportunity to participate in such a process.

Thank you for considering this testimony.

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March 29, 2004

Would-Be Tribes Entice Investors

By IVER PETERSON

It has become a ritual in every part of the nation: a group of people of American Indian heritage, eyeing potential gambling profits, band together and seek federal recognition as a tribe.

But in their quest, these groups have created another tribe in search of wealth: the troop of genealogists, historians, treaty experts, lobbyists and lawyers they hire to guide them through the process. And the crucial players in this brigade are the casino investors who can pay for it all.

There are now 291 groups seeking federal recognition as tribes, and many have already signed with investors seeking a piece of the nation's $15-billion-a-year Indian gambling industry. Among the dozen or so groups awaiting final determinations from the federal Bureau of Indian Affairs, two-thirds have casino investors bankrolling them, said Eric Eberhard, a lawyer specializing in Indian law.

If their risk is huge — most would-be tribes have been turned down for recognition — so is their potential payoff. And yet there are increasing complaints, from casino investors as well as government officials and opponents of gambling, that the big money and high expenses are turning the tribal-recognition process into a costly boondoggle.

"You have all these experts and they're like an army — genealogists, historians; it's like a never-ending battle," said Tom Wilmot, a Rochester shopping mall developer who estimates he has invested "well in excess of $10 million" since 1995 to support the application and reapplication of a group called the Golden Hill Paugussett, a group in Trumbull, Conn., near Bridgeport. "It's easy to spend millions, and then when you get turned down you're basically back to submitting more briefs again."

Mr. Eberhard, a former staff member of the Senate Committee on Indian Affairs who practices in a Seattle law firm with many tribal clients, said costs had been driven up by the sheer number of groups seeking to become tribes and the scarcity of experts to back their claims.

"It has never been inexpensive, but prior to the advent of gaming it was reasonable to say it cost between $100,000 and $200,000," he said. "Now it runs in the millions of dollars because there is a finite pool of experts available to assist them, and so they go to tribes who have developers who can pay them."

But in Connecticut and elsewhere, state officials and citizens' groups that are trying to slow the spread of Indian casinos say the investors have no one to blame but themselves. The deluge of gambling money has corrupted the process, they say, so that rulings on tribal status are based less and less on merit.

"Money is driving the federal tribal recognition process," said Richard Blumenthal, Connecticut's attorney general, who is leading an effort to overturn the recent recognition of three tribes in his state.

"Each of these tribes has wealthy, powerful investors who have made a very big debt on gaining recognition, because the financial payback is potentially unending and immeasurable. We're not talking about hundreds of millions here. We're talking about billions."

Mr. Blumenthal also criticizes what he and other foes of gambling see as the casino-friendly management of the Bureau of Indian Affairs, the Interior Department office that rules on all applications for tribal recognition. He argues that senior bureau officials, many of whom are Indians, have conflicts of interest because of past associations with casino developers, or because they know they can become gambling consultants when they leave office.

The bureau was the focus of a 2001 General Accounting Office investigation after it was disclosed that a bureau official in the Clinton administration, Michael Anderson, had signed the final approval documents for a Massachusetts tribe three days after he left office. That approval was rescinded by the Bush administration, but the investigation found that the bureau's standards for recognition were so imprecise that they left the door open to undue influence by casino investors.

"The end result could be that the resolution of tribal recognition cases will have less to do with the attributes and qualities of a group as an independent political entity deserving of a government-to-government relationship with the United States," the General Accounting Office report concluded, "and more to do with the resources that petitioners and third parties can marshal to develop a successful political and legal strategy."

Undue influence is also the subject of a federal investigation begun in Sacramento last month into evidence that local Indian Affairs officials were instrumental in persuading a local tribe, the Ione Band of Miwok Indians, to drop its resistance to casino gambling and to begin developing a casino in central California.

All these issues involving money and influence are elements in Connecticut's effort to appeal the agency's recognition of the Schaghticoke Tribal Nation in January.

Dan DuBray, an Interior Department spokesman, rejected Attorney General Blumenthal's criticism. "Federal acknowledgment of an Indian tribe is a very serious and very deliberative process," he said, "and in that process all affected parties have a voice, and they have due process."

Federal recognition grants Indian tribes not only the right to build casinos, but also sovereign, tax-free status and federal help with housing, education and health care for members.

In Brooklyn, Chief Sitting Sun of the Ohatchee Cherokee tribe of New York and Alabama said getting federal help for his 130 members in New York City was his only motive for applying. "I was born in Anniston, Ala., and my mother sent me up here when I was 4," he said. "Now I'm 71, and I'm looking to establish a reservation here to get some of the benefits of it."

Mr. Blumenthal hastened to say that Connecticut's two existing Indian casinos, Foxwoods and Mohegan Sun, were "good corporate neighbors," pumping $400 million a year into state and local treasuries and providing tens of thousands of jobs. The question Connecticut has to answer, he said, is, "How much gambling is enough?"

Other states are walking the same fine line, hungry for gambling revenue but insistent on managing the number and location of new casinos. In New York, Gov. George E. Pataki is trying to arrange deals for Indian casinos in three Catskills locations and elsewhere upstate. Yet on eastern Long Island, where

local opposition to a casino is strong, he has moved to block construction by the Shinnecock Indians, who have a casino investor but do not have federal recognition. New Jersey has vowed repeatedly to block efforts by local groups to form tribes; Indian casinos, which do not pay state taxes, could compete with Atlantic City casinos, which do.

The mounting opposition is worrisome to investors in Indian casinos.

For all the millions of dollars he has already invested in the Paugussett, Mr. Wilmot stands to win back many times as much if the group wins tribal status. But so far his experience in the tribal recognition gamble has consisted of dealing with experts and lawyers coming to him with upturned palms. The Paugussett's request for tribal status was rejected in 1996, and Mr. Wilmot says he is spending millions more to underwrite the group's appeal for reconsideration.

But he knows that plenty of other developments can derail his plans for a Paugussett casino in downtown Bridgeport, where the City Council has already offered land. Tribes often splinter into factions after they hit the recognition jackpot, and an investor can end up backing the losing side. Or, once recognition is won, tribes can invoke their sovereignty and drop their original backer for one with deeper pockets, or one who will settle for a smaller share of the profits. Several major investors, including Donald Trump, have lost out in this way.

Mr. Trump signed a casino development deal with the Eastern Pequot of Connecticut before the 1,200-member tribe was officially recognized, and the tribe dropped him after recognition was won. He is suing the tribe.

"It's a very complicated experience," Mr. Trump said.

States can also add years of delays to an eventual casino payout by appealing the Bureau of Indian Affairs' decisions, as Connecticut has done.

"It can be very tricky," Mr. Wilmot said. "I guess what I learned is that it's a lot more complicated than we thought when we started."

Under the federal Indian Gaming Regulatory Act, outside investors' share of a casino may not exceed 30 percent of all profits, and their contracts must expire — but may be renewed — after seven years. Lyle Berman, whose companies developed four Indian casinos around the country under contracts that have now expired, says this arrangement favors the Indians.

"I call that a small percentage for all the risks we take and the work we do," Mr. Berman said. "Find me another business where a company puts up all the money, takes all the risks and has all the expertise and has an agreement to take about 30 percent of the profits for seven years and then go away."

(One of the founding partners in Mr. Berman's company, now called Lakes Entertainment, was David Anderson, who is now the director of the Bureau of Indian Affairs. Mr. Anderson has said he will withdraw from the bureau's reconsideration of the Nipmuc, the group whose application for recognition Mr. Berman has spent about $4 million backing.)

All but a handful of the nearly 300 groups now seeking tribal recognition have come forward since Indian gambling was legalized by Congress in 1988. Although 53 are in California, most of the rest are east of the Mississippi, where long histories of white settlement and intermarriage have blurred tribal lineages that are still fresh in the West. There are 7 in New York, 3 in New Jersey and 12 in

Connecticut, while Virginia has 13, North Carolina has 12 and South Carolina, 10.

Since the Bureau of Indian Affairs was given the authority to recognize tribes in 1978, it has approved 15 applications and denied 18, while hundreds of others are still working their way through the process. But if even a handful of the groups nearing final decision succeed, opponents of expanded Indian gambling maintain, there will be a flood of new casinos throughout the East, with the attendant frictions between local communities and their newly sovereign neighbors that are roiling the politics in New York and Connecticut.

"If just a fraction of these groups receive sovereign status, they instantly become a vessel for a casino mogul to enter a state that otherwise does not permit casino gambling," said Jeff Benedict, president of the Connecticut Alliance Against Casino Expansion. "So if you are a South African businessman or an Asian financier or a Las Vegas corporation, this is your vehicle to crack into a market that you can't otherwise get into. And does that change the landscape? Absolutely."

Mr. Benedict was referring to Sol Kerzner, a South African resort developer who financed the Connecticut Mohegan tribe's Mohegan Sun casino, and to the Malaysian family of financiers who backed the Mashantucket Pequots, operators of the Foxwoods Resort and Casino, and other Indian gambling ventures around the country.

For groups without casino investors, the rising cost of seeking federal recognition can be daunting. In the town of Norwich, Conn., Frank Cook of the Native American Mohegan said his 600 members had applied for recognition.

"We are very small," said Mr. Cook, a member of the tribal council. "We really depend on tribal dues to pay for all the actions that we have taken, because we have absolutely no backing at all."

"Right now we have no plans for gaming," he said, using the term for gambling that the industry favors. "It's going to be up to the membership to decide, and who knows?"

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HEADLINE: A Split Tribe, Casino Plans and One Little Indian Boy in the Middle

BYLINE: By WILLIAM YARDLEY

DATELINE: KENT, Conn.

BODY:

There are more people dead than alive on the Schaghticoke Indian Reservation overlooking the Housatonic River in northwest Connecticut. There are more headstones than houses. There is more silence than sound.

Just one member of the Schaghticoke Tribal Nation lives on the 400-acre reservation at the foot of Schaghticoke Mountain in the tidy town of Kent.

His name is Brett Rothe, and he is 4, a child of a divorce between a father who is Indian and has rejected the Tribal Nation government and a mother who is not but has embraced it. But Brett is also caught in a larger divide, between the Tribal Nation and a separate Schaghticoke faction at odds over control of the reservation and who will capitalize on the tribe's newfound leverage in the region's escalating casino wars.

When the federal Bureau of Indian Affairs formally recognized the Schaghticokes last month, the ruling culminated a decade-long pursuit by a tribe that claims 273 members in one faction, 76 in another. To earn its sovereignty, the tribe cobbled a piecemeal three-century narrative hopscotching from Brett back through Schaghticokes serving in the Revolutionary War and still further to a patriarch named Gideon and the arrival of early colonists to the river valleys of western Connecticut.

But the new decision, a reversal of a previous bureau finding, has prompted critics, including some state officials, to accuse the Schaghticokes and the bureau of massaging history into something close to fraud.

Although the recognition could still be reversed on appeal, the Schaghticokes' tale helps reveal the increasingly complex equations involved when a democratic bureaucracy determines matters of Indian identity and every tribal designation is perceived by critics as a license to build casinos and to bully whoever might stand in the way of one.

"I'll guarantee you that if there was no casino issue, no one would care less," said Kevin A. McBride, a professor of anthropology at the University of Connecticut and the director of research at the Mashantucket Pequot Museum and Research Center, which is financed by the tribe's Foxwoods Casino in southeastern Connecticut.

Since gambling on Indian lands began to boom in the early 1990's, the tribal recognition process has become freighted with lobbyists, Congressional intervention, outside investors, court agreements and accusations of incompetence and inconsistency at the Bureau of Indian Affairs.

But amid the politics and pressure, government researchers scrupulously study family links and community interaction to determine whether to confirm that a tribe, according to federal requirements, "has existed as a community from historical times until the present."

The stakes of recognition have risen exponentially, but the process remains tied to the most elemental human connections.

"With no Schaghticoke blood you're not a member," said the Tribal Nation genealogist, Linda Gray. "It has to be

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blood."

Turning to her computer in the tribe's offices in Derby, Conn., Ms. Gray began clicking through a database she and a consultant to the tribe have built using Family Tree Maker, a popular genealogy program. "We'll do the chief," she said, beginning a search.

The Schaghticoke (pronounced SKAT-a-coke) Tribal Nation chief, Richard L. Velky, comes up quickly in the database, the two stars by his name indicating he is a confirmed member of the tribe who can trace his roots to the reservation at least to 1910. Tribal Nation rules require members to be able to trace their lineage to residents of the reservation that year, the first in which the Census Bureau has described the area specifically as Schaghticoke land.

One man, Gideon Mauwee, is generally considered the "founder" of the present-day Schaghticokes, descendants of what the bureau calls "an amalgamation of the Weantinock and Potatuck" tribes that settled along the Housatonic in the first half of the 18th century under a land agreement with the state.

State overseers in the late 19th century confirmed the existence of the tribe, but also reported that many Schaghticokes had moved from the reservation. By the 1930's, a guide to Connecticut published by the Federal Writers' Project described the "shaggy head" of Schaghticoke Mountain and, at its base, "a few weather-beaten shacks occupied by descendants of the Schaghticoke Indian Tribe."

The same account suggests that the Schaghticokes once were more cohesive and "furnished more than 100 warriors" to the colonists' cause during the Revolutionary War. "These Indians acted as a liaison unit, relaying messages from Stockbridge to Long Island Sound by means of drumbeats and signal fires," according to the guide.

Evidence of cohesive tribe activity becomes harder to find after that. A timeline on the tribe's Web site jumps from the war to the "mid/late 1800's," saying that as "overseers sell off much of the tribe's land, reservation dwindles to several hundred mountainous acres and a resident population less than 100."

The tribe has long claimed that much of its land was taken, including a burial ground flooded by a dam and acres absorbed by the prestigious Kent School. The reservation now is a narrow, wooded tract with fewer than a dozen buildings and even fewer people. Fewer than 10 people live on the reservation full time, and no more than five claim Schaghticoke lineage. But only Brett, the little boy, is enrolled in the Tribal Nation.

Mr. Velky, 53, is a former commercial printer who has been chief since 1987. He has been aggressive in pressing for recognition, filing lawsuits, making land claims and defending the Schaghticokes against doubters. Since the ruling, on Jan. 29, he already has begun seeking a "host community" in Southwest Connecticut that will allow the Tribal Nation to build a casino. The founder of the Subway restaurant chain, Frederick A. DeLuca, has been a major outside investor in the tribe's efforts.

Mr. Velky said he hoped to use the Kent reservation, and the land the tribe claims was taken, for new housing that will allow scattered tribe members to live "in harmony" with "the neighboring community."

About 80 Tribal Nation members have said they would like to move to the reservation, Mr. Velky said. If they do, they could have a neighbor, other than Mr. Velky, who also calls himself chief.

Alan Russell lives with his non-Indian wife atop a hill on the reservation, calling off his dogs when they meet visitors coming up the driveway.

"I took my first steps right out there," said Mr. Russell, 57, pointing to where the Housatonic River bends toward the only road running through the reservation.

Mr. Russell, who calls himself Chief Gray Fox, is tribal chairman of the Schaghticoke Indian Tribe, which he says has 76 members and is separate from Mr. Velky's Tribal Nation. The Tribal Nation's current pursuit of recognition began in 1994, before the tribe divided in the late 1990's. The Indian Tribe filed a separate petition in 2001, claiming it had first requested recognition in 1981.

"We're the tribe, and they broke away from us," said Mr. Russell's sister, Gail Harrison, the Indian Tribe's vice chairwoman.

The Indian Tribe petition is still pending, and the group seems somewhat uncertain of its standing in light of the recognition given the Schaghticokes through the Tribal Nation petition. The lawyer for the Indian Tribe, Michael J.

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Burns, said lawyers representing the Bureau of Indian Affairs "have basically told me that the two groups need to work this out, need to work together."

Mr. Velky, of the Tribal Nation, said the bureau explicitly recognized his group's authority, though he did not rule out finding common ground with members of the rival group, some of whom are identified as "unenrolled members" on the Tribal Nation petition.

The precise roots of the conflicts within the Schaghticokes are murky, but several people said they began in the 1980's and involved tribal elections and accusations of corruption.

After initially weakening the Schaghticokes' pursuit of recognition, infighting may ultimately have strengthened it.

In a preliminary finding of December 2002, the bureau of Indian Affairs generally accepted the Schaghticokes' Indian lineage but denied recognition because of "insufficient evidence" of a continuous community and failing to maintain "political influence or authority" for all but a single decade — 1875 to 1885 — during the period from 1800 to 1967.

The bureau, whose recognition decisions are handled by its Office of Federal Acknowledgement, also found that the "present-day group" did not meet the political requirement, citing the breakdown between the Tribal Nation and the Indian Tribe after 1996. The bureau described the Indian Tribe members as having "a strong history of past involvement in these political processes."

According to its findings, "These individuals are clearly part of the same group, but not of the current petitioner."

But after the Tribal Nation submitted more information last year, the bureau saw things differently. It cited "a thorough review of the existing data together with new data," including oral histories and tribe enrollment lists. Previously thin political evidence apparently was bolstered after the bureau "re-evaluated the evidentiary weight" it had given to the Schaghticokes' history of recognition by the state. It also said "internal conflict" after 1996 as evidence of political activity.

The Connecticut attorney general, Richard Blumenthal, has said the state will fight the decision. While the Schaghticokes may descend from Indians of the 18th century, he said in a telephone interview, they have not functioned as a tribe since then.

"Our point is that this group failed to meet two key criteria: No. 1, that it existed continuously as a community with ties across family lines, a social unit over the time since colonial years," Mr. Blumenthal said. "And the second is that it failed to show that it had political authority or an internal governance over the years."

The divided status of 4-year-old Brett is another matter. Ms. Harrison said the boy, who is her grandson and lives with his mother, Amy Rothe, in a house next to Ms. Harrison's, remained on the rolls of the Indian Tribe even though his mother "wanted to go to the other side." Ms. Harrison said that she planned to evict them, her grandson included, and that the house belonged to her.

"He's going to have to leave, too," she said. "In order to live on the reservation you have to get permission from the tribe."

In the Tribal Nation offices in Derby, Ms. Gray, the genealogist, said whatever separates those claiming Schaghticoke heritage does not necessarily jeopardize their ambitions, whether they include pursuing federal recognition or entering the casino business.

"Conflict," she said, "represents continuity."

http://www.nytimes.com

GRAPHIC: Photos: Amy Rothe with her son Brett, 4, at their home on the Schaghticoke Indian Reservation, at the foot of Schaghticoke Mountain in Kent, Conn., on the New York border. (Photo by Librado Romero/The New York Times)(pg. 29); Alan Russell, who calls himself Chief Gray Fox, is the tribal chairman of the Schaghticoke Indian Tribe. (Photo by Librado Romero/The New York Times)(pg. 34)

Map of Connecticut highlighting Schaghticoke Indian Reservation: The Schaghticoke Indians of Connecticut, who

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have split into two groups, won federal recognition. (pg. 34)

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LENGTH: 1144 words

HEADLINE: TRIBES COUNT ON D.C. LOBBYISTS;
NATIVE AMERICANS SAY THE HUNDREDS OF THOUSANDS THEY SPEND LEVEL THE PLAYING FIELD

BYLINE: RICK GREEN; Courant Staff Writer

BODY:

When the Schaghticoke Tribal Nation needed a Washington insider to help guide the way to federal recognition, they found an expert Washington door-opener: Paul J. Manafort, a Connecticut native who has forged a career out of influence and access.

A Republican lawyer with close ties to the White House, as well as to national and state party leaders, Manafort was a key part of the team that persuaded the Bureau of Indian Affairs to change its mind and grant federal recognition to the Kent-based Schaghticokes.

Some critics say the hiring of Manafort — son of a New Britain mayor and a sought-after political strategist — is an example of the high-stakes, behind-the-scenes maneuvering involved in the tribal recognition process. Financed by wealthy casino investors, tribes have spent big money to try to influence a decision-making process that is supposed to be above politics.

Tribes, including the Schaghticokes, say they have no choice but to play by the rules of Washington.

"I'd like to ask, what means are we using that nobody else is using?" said Schaghticoke Tribal Nation Chief Richard Velky. "There we go again. We are not all equal. What's wrong with Native Americans playing on the same field?"

According to documents filed with Congress, the Schaghticokes have spent more than $500,000 since 1998 on political lobbyists seeking to sway bureaucrats at the BIA and in Congress. On Jan. 29, the millions of dollars the tribe spent on historians, genealogists, lawyers and lobbyists paid off when the BIA reversed its preliminary rejection and granted federal recognition to the 273-member tribe. In Connecticut and other states where Las Vegas-style gambling is legal, this also carries the right to run a casino.

The Eastern Pequots, who won recognition in 2002 in a decision Connecticut officials are appealing, spent nearly $700,000 on lobbying, much of it going to Republican insider Ronald Kaufman, who has close ties to the Bush White House.

Opponents of Indian gambling — who also hire their own lobbyists, albeit for a fraction of the amount investor-backed tribes are spending — say the process is being corrupted by special interests.

"The BIA is not making legislation. They are creating sovereign entities. Lobbying should have no role in that process," said Jeff Benedict, president of the Connecticut Alliance Against Casino Expansion.

"We've had two decisions where a highly placed Republican lobbyist played a major influential role in the decision. What is going on here?" asked Joseph McGee, vice president at SACIA, a Fairfield County business advocacy group that is fighting the creation of more casinos in the state. "It raises really serious concerns that a prominent Republican lobbyist was paid a large sum of money and following that the tribe was recognized."

"One of the major issues that has to be addressed is who are the investors in Indian casinos. Why are they doing it and what are the benefits?" McGee said.

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Velky said last week that his tribe would soon identify its investors. Court documents and Schaghticokes have said those investors include Fred DeLuca, founder of the Bridgeport-based Subway Restaurants.

Manafort, who has worked for numerous Republican presidents, managed national Republican Party conventions and who once described his work to Congress as "influence peddling," did not return a call to his home in Virginia.

"Paul Manafort is a member of the legal team assembled by one of our investors, and has provided valuable strategic advice and counsel," said a statement by Velky released by Sullivan & Leshane, a Hartford public relations lobbying firm working for the Schaghticokes. "Mr. Manafort's involvement is as a regulatory attorney. He is not a registered lobbyist and at no time has he lobbied on behalf of the Schaghticoke Tribal Nation."

The tribe declined to say how much it has paid Manafort.

Close observers of lobbying in Washington said Manafort provides clients an essential Washington commodity — entree to Republican decision-makers.

"This is a Republican Rolodex guy. He opens the doors to the Bush folks and to Washington," said Charles Lewis of the Center for Public Integrity and author of "The Selling of the President 2004." "For the first time in half a century you have the Republican Party controlling the entire government. You need a GOP door-opener. A guy like Manafort is exactly what you need."

Connecticut Attorney General Richard Blumenthal and others charge that the Schaghticokes, by hiring insiders such as Manafort, are corrupting a system in which decisions should be made on the merits of history, genealogy and clear evidence of a modern tribal existence.

"The best proof is in the outcome. This reversal is inexplicable except if somebody succumbed to some special interest," Blumenthal said. "Very simply, federal recognition shouldn't be for sale. It shouldn't go to the highest bidder with the biggest financial backers and the most well-connected lobbyists."

This sort of argument is nonsense, said Michael Anderson, a former top BIA official under President Clinton who now lobbies on behalf of tribes.

"It is totally meritless. It is part of a political agenda of Mr. Blumenthal to derail [recognition] applications," Anderson said.

"Any tribe can make appointments with government officials. If it is simply [to try to] influence the policy of the department, that happens every day," said Anderson, who added that tribal recognition is a "decision based on merits."

Officials at the BIA did not immediately return calls for comment.

Tribes, meanwhile, say they need lobbyists to protect their interests. Two tribal groups awaiting decisions by the BIA — the Nipmuc Nation, located in Massachusetts but interested in building a casino in Connecticut, and the Golden Hill Paugussetts, who want to build a casino in Bridgeport — have hired influential lobbying firms in recent years.

"This is not just a matter in the BIA. The state attorney general is waging his war on several fronts, including in the U.S. Congress," said Michael O'Connell, a lawyer for the Paugussetts. The tribe recently hired J.C. Watts, a prominent former Republican congressman from Oklahoma, to lobby for it.

"There have been a number of proposals to intercede and to interrupt the BIA process," O'Connell said, referring to efforts to freeze tribal recognition proposed by Connecticut Sens. Chris Dodd and Joseph Lieberman. "That was a political thrust that we didn't start."

Virginia W. Boylan, a lobbyist who works for the Schaghticokes and the Mohegans, said it is "an insult" to suggest that the BIA makes decisions based on anything but the facts.

"The accusation that the process is politically driven is just wrong," Boylan said. "People keep saying it's a political process over there at the BIA, but it's not."

GRAPHIC: PHOTO: (b&w) mug; MANAFORT

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The man who stopped Miami recount makes gaming millions

A Dirty Trickster's Bush Bonanza

by **Wayne Barrett**

April 19th, 2004 9:30 AM

In Focus: George W. Bush

- **Mondo Washington: The Royal Business** In this slick little Bush family saga, Bandar is the prince, and we're the paupers
- **A Dirty Trickster's Bush Bonanza** The man who stopped Miami recount makes gaming millions
- **Condoliar Rice** Perhaps with lies and delusions the Bush administration is looking for a mistrial.
- **Things Fall Apart**
- **Mondo Washington: The Meaning of Clarke** A civil servant speaks up? There's nothing the right-wingers hate more.

See More ...

Roger Stone, the dirty-tricks hobgoblin of Republican politics, has exploited his Bush connections to become an influence-peddling force in the $13 billion Indian gaming industry. Stone's booming business in such a federally regulated enterprise makes his recent pro bono orchestration of Al Sharpton's double-edged presidential campaign an even stranger covert caper.

The longtime GOP consultant's reward for fomenting the "Brooks Brothers mob" that shut down the Miami-Dade recount in 2000 was an invitation within days of Bush's election to serve on the Department of Interior transition working group—helping, in his own words, to staff its Bureau of Indian Affairs (BIA). Stone has since used this unannounced perch to market himself to tribes and developers from Louisiana to California, earning fat fees and contingent percentages of future casino revenue. Just two of the five deals examined by the *Voice* are projected to pay him at least $8 million, and perhaps as much as $13 million.

Time, *The Washington Post* and *The New York Times* have published exposés about Bush's BIA, with a February story highlighting $45 million in payments to two GOP lobbyists from four tribes since 2001. But no one has focused on Stone's profiteering, which, unlike the payments to registered lobbyists, is not reported on any public filings. He is routinely brought into casino deals in part because of his perceived ability to win Bush and/or Republican congressional support, a role ostensibly inconsistent with his financing and staffing of the Bush-bashing reverend's campaign.

But it was Sharpton himself who focused the *Voice*'s attention on Stone's bonanza, indicating that business motives pushed Stone to take over the campaign. "It's all about Indian gaming," he said. When pressed recently to explain, Sharpton said, "I will not spell it out." In fact, Stone has a

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history of bizarre political operations, beginning with his Watergate-era infiltration of the McGovern campaign. And Sharpton has his own bunko background—beating up on Democrats to benefit behind-the-scenes GOP allies like Al D'Amato, George Pataki, and Mike Bloomberg.

"I helped Sharpton because I like him," says Stone, a veteran of the Nixon, Reagan, Dole, and Bush campaigns, who steered $288,000 to Sharpton's National Action Network last year. "There's no connection between helping Sharpton and my business." But with adviser Stone scripting Sharpton, any damage the reverend might do would burnish Stone's bona fides with Bush, thereby bolstering his leverage for second-term gaming deals. Stone and Sharpton concede that they still talk, and Stone's ally, Charles Halloran, remains the manager of Sharpton's suspended campaign, organizing fundraisers to pay off a $634,500 debt, $134,000 of it due to five Stone-tied aides.

VOICE in the News

Sydney Schanberg will discuss the Iraq war on C-Span's "Washington Journal" Friday 4/23 at 9 am

Michael Musto will be interviewed as part of WNBC/Jane Hanson special "Gay Life" which airs saturday 4/24 at 7 PM.

Michael Musto will be interviewed on VH1 "All Access: Celebrity Diets" Monday April 26 at 11 am

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STONE'S MULTIMILLION-DOLLAR MOTIVATION

The 52-year-old Stone, who's based in Miami but also has an apartment at 40 Central Park South, acknowledges he has "a piece" of at least three deals. His 2002 contract with Buena Vista Rancheria of the Me-Wuk Indians entitles him to a $250,000 retainer plus 7.5 percent of annual "gaming revenue" from a $150 million casino 35 miles southwest of Sacramento, California. Warring factions of this minuscule tribe have long stymied a deal, but they signed a tentative agreement in December that must be finalized by July. It is currently under review by BIA. Stone also has lucrative stakes in casinos connected to two other California tribes—Enterprise Rancheria, which has a BIA application and a congressional corrections bill currently under consideration, and the Lytton Band of Pomo Indians, which won BIA approval in October for a San Francisco Bay casino opposed by Senator Dianne Feinstein.

The Buena Vista agreement calls for a $25 million payment to the tribal leader who retained Stone and permits the construction of two casinos, at least one of which would pay Stone his percent off the top. Documents obtained by the *Voice* also list the value of Stone's interest in the Enterprise project—40 miles north of Sacramento—as between $4.2 million and $6.3 million over five years.

Sam Katz, the general partner in the Lytton deal, refuses to reveal what Stone's holdings are worth, saying only that Stone "will get a portion of the proceeds" when the already negotiated sale to another gaming company is completed. Tony Cohen, the tribe's attorney, said Katz's group would be paid "tens of millions of dollars," and Stone has told business associates that he will earn $4 million to $7 million, a figure he would not confirm to the *Voice*.

In addition to these three stakeholder positions, a Stone prospectus, circulated last summer in California for casino investors, listed four other tribes that supposedly had agreements with Stone. The 157-page prospectus names Stone as one of three "participants" in Ikon LLC, a Mississippi company that the brochure says "now has an agreement" with the Ione Band of Miwok Indians to build a $120 million casino in Plymouth, California. Stone contends that he hasn't been associated with

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Ione since 2001. He dismisses the prospectus as old, though documents dated August 14, 2002, and March 10, 2003, appear in it, and Ikon is the name of his Washington-based firm.

Willard "Bud" Smith, another Ikon principal, adamantly denied that Stone is currently associated with the project. If he is, he'd be in line for another multimillion-dollar payday should it be built. Ione, however, is the thorniest issue on BIA's current agenda, with the DOI inspector general investigating the project, as well as a storm of local and congressional opposition to it. Ione, Enterprise, and Stone's Buena Vista faction—if the settlement is approved—will be landless tribes, making them the heaviest lobbying lifts, requiring administrative or congressional exemptions to obtain federally designated land in trust. That's precisely what Lytton won in October. With potential multimillion-dollar deals like these dangling, it's highly unlikely that Stone would take on the Sharpton campaign if it antagonized his Bush allies.

Hiding himself from the burden of public disclosure, Stone has brought an old lobbyist friend, Scott Reed, who already represented Connecticut tribes, into the incestuous world of California gaming. He got Buena Vista and the developers doing the Lytton and Enterprise ventures to retain Reed's firm, Chesapeake Enterprises. The campaign manager for Bob Dole in 1996, Reed, unlike the tarnished Stone, actually registers on behalf of the tribes he represents, only works on retainer, and is now doing cable appearances as a GOP insider.

"I'm paid to think, not lobby," insists Stone. He was, for example, "very helpful" to Katz when he suggested ways to win the support of anti-gambling senator and "very dear" Stone friend Arlen Specter, whose campaigns Stone has long aided. In 2001, Specter played a key role in protecting a special land-in-trust exemption that had been granted to Katz's project. Similarly, a two-page Stone memo in March 2003 to Enterprise's development team lays out "a legislative strategy in which we will attempt to insert language" in a still-pending technical corrections bill. Urging that the bill not identify the tribe or casino location, Stone wrote that it was "essential to maintain the element of surprise," contending that a "premature leak" to Congressman Wally Herger "would be disastrous."

Since 2001 Reed has represented a dozen tribes and developers, many unconnected to Stone. Stone hovers in the shadows because of the scandals that have dogged him for years— especially his jettisoning by the Dole campaign after widespread news accounts of a magazine ad he and his wife placed, with photos, seeking swinging partners. Since then, his career as an up-front lobbyist or consultant in presidential campaigns has come to a gradual end.

STONE: FROM BAKER TO CHENEY

Despite Stone's sordid past, former secretary of state James Baker, who was coordinating the 2000 Bush recount operation in Florida, tapped him to run its street operations. Stone has been credited in television and book accounts with putting together the mixed mob of Cuban and congressional-aide protesters who prevented the count in Miami—

universally seen as the turning point in the battle that made Bush president. Out of sight in both a Winnebago and the building across the street, Stone ordered the shutdown. "I said, yes, break the door down," Stone told the *Voice*. "It was only when the Democratic commissioners removed the ballots that you had a near riot." Stone now says that "after" this Miami performance, he was "asked if I wanted to serve on the transition."

The Stone prospectus, which is titled "Indian Gaming Opportunities," contains a bio that features Baker's "recruiting" of him for the Florida recount and discloses that he "subsequently served on the Presidential Transition" for Interior. It even contends that Stone "was involved in selecting appointees for that department for the present administration." A brief introduction makes five references to Interior's role and twice as many to "federal" powers in Indian gaming, concluding, "We believe that based on our superior political contacts we could win all necessary approvals in a time between 8 and 16 months."

In fact, Stone was not among the 38 members of the formal Interior transition committee, consisting of prominent lawyers and members of conservative environmental groups. But that committee never met, according to members contacted by the *Voice*, responding instead to phone calls and e-mail from a small "working group" whose names were never released. Tom Sansonetti, who was tapped by Vice President Dick Cheney to lead the working group, told the *Voice*, "We built a network of advisers that helped us put together the transition briefing books, and Roger was one of those." Currently the assistant attorney general in the Justice Department overseeing Interior and several other departments, Sansonetti says he "reached out to Roger for his thoughts on Indian gaming." Calling Stone "very helpful," Sansonetti said he "may have had some names" to recommend for key posts.

Told that Stone had boasted to gaming associates that Cheney himself called after Miami-Dade to ask what Stone wanted, Sansonetti, the former Republican National Committeeman from Cheney's home state of Wyoming, said: "It would not surprise me if Cheney contacted him separately. I'm sure he knows Roger and knew that he would have a lot to contribute to the transition in general." Stone says he doesn't remember who called him: "I filled out a form with the areas in which I wanted to serve. I checked the box for Interior and served with about 40 other people." He says he's "met Cheney" but is not a friend of his.

Stone sent notes on Bush-Cheney Presidential Transition Foundation letterhead to tribal leaders, asking them to support the appointment of Neal McCaleb as head of BIA. McCaleb, who was subsequently appointed, says that he never met Stone but that he did meet Reed "through mutual friends" he refused to identify, "fairly soon after coming to Washington" from Oklahoma. Stone says he set up a meeting for McCaleb with Specter and that Reed "coordinated" other "efforts to get McCaleb" through Senate confirmation, though McCaleb insisted that Reed did not formally "prepare" him for the hearing.

Stone also helped by submarining McCaleb's top competitor, an Indian leader named Tim Martin. A kiss-of-death letter endorsing Martin appeared "out of the blue," Martin remembers. It was signed by Donald Trump, a client of Stone for 20 years who was all over the media at the

time for having funded an anti-Indian advertising campaign in New York while simultaneously trying to do Indian projects in California and Connecticut. "I don't know why Trump did that," says Martin, who'd never spoken to Trump. "I don't think he and I have ever been in the same city at the same time." Stone says he "most certainly did" the Trump letter, claiming he saved BIA from "even bigger scandals" because Martin was supported by the lobbyists who are the focus of the ongoing *Washington Post* stories and a future hearing by Senator John McCain.

"It knocked Martin out," recalls Wayne Smith, the former deputy assistant secretary at BIA who recalls McCaleb attributing the letter to Stone (McCaleb abruptly terminated a *Voice* interview). The letter reinforced the irony of Stone's role in the BIA transition, as he and Trump had just been fined $250,000 in October by the New York State Lobbying Commission for Trump's secret funding of Stone-directed ads blasted by tribal leaders as "racist." Tying a tribe proposing a casino that would've competed with Trump's Jersey empire to "drug trafficking, money laundering, the mob, violence, and the smuggling of illegal immigrants," the ads featured pictures of cocaine lines and drug needles.

Beyond McCaleb, Stone and Reed pushed other top Bush gaming appointments. "If you are lucky," says Stone, suggesting he was, "a transition team will sift through a thousand résumés for mid- to low-level positions." Stone acknowledges a role in eventually installing Chuck Choney on the three-member National Indian Gaming Commission, while Reed and partner John Fluharty urged the hiring of Aurene Martin, who got the No. 3 job at BIA. Interior general counsel William Myers, a former law partner and a friend of Sansonetti now up for a federal appeals judgeship, hardly needed much help from Stone. But Stone told clients like Russell Pratt, the president of Buena Vista's development company at the time, that he aided Myers's appointment and had "easy access" to him. Stone now says he meant access through Sansonetti and Myers's ex-firm.

BIA's Smith claims that McCaleb told him when he started in September 2001 that Reed was "very important to the White House." McCaleb gave Smith a short list of insiders and lobbyists, including Reed, that he said Smith should "talk to and make sure they don't get upset with you." Smith wound up doing a half-dozen lunches with Reed, who pressed him on behalf of Buena Vista. Smith said his top aide, Aurene Martin, "always dealt with Reed's partner, Fluharty" and "urged me to be helpful to him." So did Jennifer Farley, who oversaw BIA matters in the White House and knew Reed and Fluharty from the Dole campaign, where she worked as a press aide. Smith says Farley and Martin openly championed the same position as Reed on Buena Vista. Martin even met at BIA with Fluharty, Pratt, and the Buena Vista tribal leader, Donna Marie Potts, to hear their case, a morning meeting that followed a strategy session the night before in Stone's Washington office.

When Smith was forced out in a June 2002 swirl of controversy, Martin became deputy, even moving up temporarily to McCaleb's job after his December departure. Coming to BIA from Colorado senator Ben Nighthorse Campbell's Indian Affairs Committee staff, where Stone has long had well-placed contacts, Martin has been the only fixture at BIA in the first Bush term. At a September 2002 hearing of Campbell's committee, for example, she made no attempt to defend a decision Smith made against Buena Vista, paving the way for a Stone-conceived

corrections bill that passed in 2004 and re-establishes Stone's tribal chief.

IT'S OUR TURN

Smith recalls that at his first lunch with Reed, in the fall of 2001, Reed told him that Democrats had been "making money off of Indian gaming for too long" and "ran this place," referring to BIA. Calling the business "very lucrative" and pointing out that it could lead to major GOP contributions, "Reed said it was 'our turn,' " Smith recalls. "He talked to me as if I worked for him." Smith says Farley had already called him about Fluharty and said she was "sending over a friend to meet me," which Smith did, recalling that Farley had said much the same when she "called over urging that Martin be interviewed" for a top post. While Fluharty would not answer most *Voice* questions, he denied the Reed quotes and the Farley introduction.

Stone, who never contacted Smith, obviously saw the same opportunities, becoming a "casino developer," as he called himself in a recent deposition, after a California referendum boosting Indian gaming passed in March 2000. He began madly chasing cross-country deals that fall, at the same time that he played his Winnebago Warrior role in Miami-Dade and joined the transition. From November 12 to November 14, he picked up the tab at the Hyatt in San Francisco, where he entertained one wing of the Ione tribal war, Nick and Joan Villa, and signed an exclusive agreement with them. In the same time frame, he was entertaining the rival Mississippi group led by Willard Smith, bringing them to Jersey for hard-boiled negotiations about Ione and five other tribes, and signing deals with them.

Stone's sidekicks in both negotiations were Hersh Kozlov and Al Luciani, who worked for billionaire Carl Icahn, the owner of the Luciani-run Sands in Atlantic City. Luciani, who is now listed in Stone's prospectus as part of his team, recalls that these early conversations with Stone "started in the later part of 2000, got serious in February of 2001," and abruptly ended when Icahn "lost his enthusiasm because all of Roger's tribes were landless." But Luciani remembers Stone "telling me about his role in the Bush transition and saying that he knew Cheney," leaving the impression that he had "played a role in placing people at BIA."

While these talks were going on, a *Philadelphia Inquirer* clip materialized that spelled out Stone's transition role. The clip, dated December 22, 2000, and headlined "Veteran GOP Operative Named to Transition," said that Cheney had installed Stone as "Deputy Director of the working charged with making recommendations for all Senate-confirmation level positions" at Interior, repeating virtually verbatim all of the Stone achievements cited in his prospectus bio. When a *Voice* check with the *Inquirer* established that the clip had never appeared in that paper and the *Voice* asked Stone about it, he said, "You can believe whatever you want to believe." Later, Stone e-mailed the *Voice* the identical clip with the *Inquirer* removed and the letterhead of an Atlantic City radio show superimposed, insisting that a developer had "incorrectly attributed" this script to the *Inquirer* "without my knowledge."

The *Inquirer* clip was concocted to advertise an insider role that Stone actually played but had no paper trail or coverage to cite. Asked if Stone might in fact have been deputy director, Sansonetti said, "I don't think they ever had titles, but I've heard everything from deputy director on down the line."

DOUBLE AGENT MAN

Each of these Stone deals pushes the envelope. In October 2001, for example, he brought an investor to H.K. Stanley, the Louisiana developer who had a deal to build a casino for the Jena Band of Choctaw Indians on Lake Charles in Louisiana. Stone and the investor, which was variously listed as Penn Gaming and the Fort Hill Group, made an unsuccessful $10 million bid. Stone and associates, including Louisiana lobbyist and friend Bill Rimes, signed noncompete and nondisclosure agreements with Stanley, acquiring all kinds of confidential information. Two months later, Louisiana's Republican governor approved a compact for Stanley's casino, sending it to BIA for final land-in-trust approvals.

Powerhouse lobbyists weighed in at BIA for and against the deal in one of the cosmic gaming battles of the Bush era. One opponent, Pinnacle Entertainment, which was planning to construct its own $325 million casino on the lake, put Rimes on retainer. Stone also introduced Pinnacle to another close business associate and former BIA official, Phil Thompson, and he, too, was retained to oppose Jena. In addition, Rimes worked for two companies whose Louisiana casino interests had just been acquired by Penn Gaming—a deal that resulted in a substantial finder's fee for Stone. Penn, too, was potentially affected by the Jena casino plans, though its riverboats were 120 miles away. Rimes told the *Voice* he was "constantly advised" by Stone on how to get BIA to block Jena, the project Stone had just tried to acquire. BIA rejected Stanley's deal in March 2002.

Similarly, Pratt says he was "flabbergasted" to discover last year that "right smack dab in the middle of the period" when Stone was paid to represent Buena Vista, he was working with the next-door Ione, "the very same people he was supposed to be fighting." While Stone contends he ended his ties to Ione before signing on with Buena Vista in January 2002, the prospectus matches him with Ione throughout 2002 and into 2003. Confronted with this evidence, Stone argued that there was no conflict because his contract with Buena Vista did not contain a "radius clause" restraining him from repre- senting a nearby casino.

When Reed's efforts to get Wayne Smith to reverse a regional BIA decision against Buena Vista failed, Stone led a media campaign that, by his own account, prompted Smith's ouster. Smith's best friend, Phil Bersinger, handed Stone the ammunition he needed—letters seeking tribal consulting business that invoked his close relationship with Smith. Stone claims he persuaded Buena Vista and another tribe, California Valley, to ask Bersinger to put his business solicitation in writing, then "faxed the letters to certain members" of the press. A *Time* story forced McCaleb to fire Smith, though, as McCaleb told the *Voice*, "there was no reason to believe that Wayne had some complicity in Bersinger's activity." With the friendlier Aurene Martin running the shop, appeals

stymied at BIA, and Bush's signing of Senator Campbell's corrections bill last month, the BIA ruling against Buena Vista has effectively been repudiated. That positions Stone's allies to get whatever they want—the settlement or their own casino.

Stone's pending Enterprise Rancheria deal, as well as his uncertain claim on the Buena Vista gold mine, are mere examples of his million-dollar incentive to maintain his Bush clout. His double-agent role in gaming mirrors his seemingly bizarre orchestration of the Sharpton scam. Both are just the latest sagas in Stone's exotic career of self-serving misdirection.

Research Assistance:Catrinel Bartolomeu, Molly Bloom, Andrew Burtless, Tommy Hallissey, Adam Hutton, Catherine Shu, Jessie Singer, Jennifer Suh, and Andrea Toochin

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Schaghticoke Tribal Nation: Final Determination Issues

Introduction
The Office of Federal Acknowledgment (OFA) requests guidance from the ASIA concerning two issues that must be resolved in order to complete the final determination on the Schaghticoke Tribal Nation (STN) (Petitioner #79).

One issue concerns a lack of evidence for political authority for one substantial historical time period and insufficient evidence for a second, longer period. The other issue concerns the refusal of one faction to re-enroll because of opposition to the current STN leadership.

Background: Proposed Finding versus Final Determination

- Criterion 83.7(b) (community)
  The STN PF found that community had not been demonstrated between 1940 and 1967. With the additional data for the final determination, the STN now meets community for all periods up until 1996 (see *Issue 2* concerning 1996-2001).
- Criterion 83.7(c) (political influence)
  The STN PF found that the group had not demonstrated political influence between 1800 and 1875 and between 1885 and 1967. With the additional data for the final determination, there remains a lack of evidence for criterion 83.7(c) between 1820 and 1840 and insufficient evidence between 1892 and 1936. (see *Issue 2* concerning 1996-2001)
- Criteria 83.7(b) and (c) between 1996 and 2001
  These criteria were not met for the PF because the current STN membership list did not include a substantial portion of the actual social and political community. This faction continues to refuse to re-enroll.

Issue 1
Should the petitioner be acknowledged even though evidence of political influence and authority is absent or insufficient for two substantial historical periods, and, if so, on what grounds?

Discussion
The petitioner has little or no direct evidence to demonstrate that criterion 83.7(c) has been met between 1820 and 1840 and between approximately 1892 and 1936. The evidence for community during the 1820 to 1840 period, based on a high rate of intermarriage within the group, falls just short of the 50 percent necessary, under the regulations, to demonstrate political influence without further, direct evidence (83.7(b)(2)(ii)).

If applied as it was in the Schaghticoke PF, the weight of continuous state recognition with a reservation would not provide additional evidence to demonstrate that criterion 83.7(c) (political influence) has been met for this time period.

State Relationship:
The Schaghticoke have been a continuously state-recognized tribe with a state reservation throughout their history. They have had a special status in Connecticut as a distinct political

community, although there was not evidence of a government-to-government relationship with Connecticut throughout the entire historical span. The state relationship with them has been an active one, and was active during both of the time periods with little direct evidence of political influence. That activity (overseers, reservation maintenance, legislation and appropriations) did not extend to direct dealings with Schaghticoke leaders or consultation with the group on group matters during the time periods in question.

Unique Circumstances for Evaluation.

- There is no previous case where there is little or no direct evidence of political influence within the group for extended periods even though the existence of community is well established throughout the petitioner's entire history, including the two periods when evidence of political processes is very limited.

- There is no previous case where a petitioner meets all of the criteria from earliest sustained contact for over 100 years, does not meet one of the criteria during two separate, substantial historical periods and then meets all of the criteria for a substantial period up to the present (subject to *Issue 2*).

General Requirements of the Regulations

The regulations require demonstration of a "substantially continuous tribal existence" (83.3(a)). Under 83.1, "Continuously or continuous means extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption."

The regulations provide that a petitioner shall be denied if there is insufficient evidence that it meets one or more of the criteria (83.6(d)).

Additional Background Information

Acknowledgment of the Schaghticoke would give them standing in the current litigation to procede with their Non-Intercourse Act land claim.

The deficiencies found in the petitioner's case are similar to, though less extensive, than found by researchers for the petitioner in earlier stages of preparation of the petition. Their reports are included in the record reviewed.

Options

1. Acknowledge the Schaghticoke under the regulations despite the two historical periods with little or no direct political evidence, based on the continual state relationship with a reservation and the continuity of a well defined community throughout its history.

2. Decline to acknowledge the Schaghticoke, based on the regulations and existing precedent.

3. Acknowledge the STN outside of the regulations.

4. Decline to acknowledge the STN, but support or not object to legislative recognition.

Discussion of Options

- Option 1 would require a change in how continuous state recognition with a reservation was treated as evidence in the STN PF and in the Historical Eastern Pequot (HEP) decisions. The STN PF stated that state recognition in the Schaghticoke case did not provide additional evidence for political influence in the periods in question in part because there were no known State dealings with Schaghticoke leaders. In addition, the position in the HEP decisions and the STN PF was that the state relationship was not a substitute for direct evidence of political processes, and can add evidence only where there is some, though insufficient, direct evidence of political processes.

The revised view, under Option 1, would be that the overall historically continuous existence of a community recognized as a political community by the State (a conclusion denied by the State) and occupying a distinct territory set aside by the state (the reservation), together with strong evidence of continuous community, provides sufficient evidence for political influence even though direct evidence of political influence is absent for some periods.

Recognition of STN under Option 1 would not affect past negative decisions because the clear continuity as a community together with the continuous historical state relationship and reservation are not duplicated in petitioners that have been rejected in the past. There are no more than six other historically state recognized tribes with a continuously existing state reservation which have not yet been considered for acknowledgment.

Option 1 may be interpreted by petitioners as establishing a lesser standard which would be cited in some future cases, if the STN decision is interpreted as allowing substantial periods during which evidence is insufficient on one criterion. Its impact on future cases would be limited by the weight given the state relationship and the continuity in community.

- Option 2 maintains the current interpretations of the regulations and established precedents concerning how continuous tribal existence is demonstrated.

- Option 3, acknowledgment outside the regulations, would require an explicit waiver of at least part of the regulations, based on a finding that this was in the best interests of the Indians. A waiver could be narrowly defined to distinguish this case from other potentially similar future cases.

- Option 4 would probably be strongly opposed by the Connecticut delegation.

Recommendation

The OFA recommends Option 1 on the grounds that it is the most consonant with the overall intent of the regulations.

Issue 2
Should the STN be acknowledged (subject to decision on Issue 1) even though a substantial and important part of its present-day social and political community are not on the current membership list because of political conflicts within the group?

If STN is acknowledged, who should be defined by the Department as included within the tribe acknowledged?

Discussion
The STN membership list does not include a substantial portion of the actual social and political community. The activities of these individuals were an essential part of the evidence for the PF's conclusion that the STN met criterion 83.7(b) and 83.7(c) between 1967 and 1996 and their absence was one of the reasons the PF concluded these criteria were not met from 1996 to the present. After 1996, these individuals either declined to reenroll as the leadership required of all members, or subsequently relinquished membership, because of strong political differences with the current STN administration.

STN negotiations with these individuals during the comment period did not resolve this issue. They have refused offers of the STN to consider them for membership. The STN has created a list of 43 individuals, not currently enrolled, who it considers to be part of their community. The OFA concludes there are 54, based on different estimates of family size but comprising the same group as identified by the STN. The current STN membership is 273.

The OFA's concern is that the current status of a long-term pattern of factional conflict may either have the undesirable consequence of negatively determining Schaghticoke's tribal status, or of disenfranchising part of its actual membership if acknowledged.

Authority to Acknowledge
The PF stated that "The Secretary does not have the authority to recognize part of a group" (citing HEP final determination which acknowledged two petitioners as together forming the historical tribe).

Options:

1. Acknowledge the STN as defined by its current membership list (assumes ***Issue 1*** is decided in favor of acknowledgment).

2. Acknowledge the STN but define the base roll membership of the tribe acknowledged as those on the current membership list <u>and</u> the specific body of 54 additional individuals. This body is defined in the determination based on past enrollment and past and continuing social and political involvement (assumes ***Issue 1*** is decided in favor of acknowledgment).

3. Decline to acknowledge the STN as not the complete group.

Discussion of Options

- Option 1: If the current STN membership is acknowledged, the additional 54 individuals, who meet the petitioner's own membership criteria, would qualify to be added to the base roll under 83.12(b). This section defines the membership list of a tribe as acknowledged as becoming the base roll and states that additional individuals maintaining tribal relations may be added to that base roll. This option leaves some authority with the existing leadership to accept or reject these individuals.

- Option 2: Past decisions, before the HEP FD, treated a petitioner's membership list as the definition of the community to be acknowledged or denied acknowledgment. The HEP FD combined two membership lists into one. This option would go farther, including in the group's membership individuals who have not specifically assented to or been accepted as members, albeit appearing on past membership lists. The PF stated "The purpose of the regulations is to provide for the acknowledgment of tribes, not of petitioners per se."

- Option 3: Depending on the resolution of *Issue 1*, this would disqualify an otherwise eligible petitioner because of its factional conflicts. Potentially, the STN and the faction could remedy this deficiency by combining and appealing to IBIA on the grounds of new evidence which would change the decision (83.11(d)(1)).

Recommendation

The OFA recommends Option 2, as consistent with the intent of the acknowledgment regulations.

Prepared by Office of Federal Acknowledgment, 1/12/2004

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Statement of
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GOVERNOR,
on behalf of the
PIRO/MANSO/TIWA INDIAN TRIBE,
PUEBLO OF SAN JUAN DE GUADALUPE,
LAS CRUCES, NEW MEXICO

Submitted to the
SENATE INDIAN AFFAIRS COMMITTEE
Regarding
S. 297,
FEDERAL ACKNOWLEDGMENT PROCESS REFORM ACT
OF 2003
April 21, 2004

Good morning, Chairman Campbell and distinguished members of the Senate Committee on Indian Affairs. My name is Edward Roybal, II, and I am the Governor of the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe of Las Cruces, New Mexico. It is a great honor to represent my tribe here today and to submit this testimony on S. 297, the Federal Acknowledgment Process Reform Act of 2003.

The Piro/Manso/Tiwa Tribe, although unrecognized, is a traditional Pueblo. While there are currently two other groups from New Mexico in the administrative

process for recognition[1], we are the only traditional Pueblo, with our own Indian ceremonial and civil governing structures, which has sought recognition through the acknowledgment process under the Office of Federal Acknowledgment (or OFA), formerly the Branch of Acknowledgment and Research (BAR).

I was elected to serve as Governor of Piro/Manso/Tiwa at our annual elections in December, 2002, and again in 2003. My father, Edward Roybal, Sr., is our Cacique. In this position, which he holds for his lifetime, my father carries the core of thousands of years of tribal traditions and ceremonies, and maintains a lineage that has been documented as being in my family for more than 300 years. In addition to our traditional structure of Cacique and War Captains, since 1965, we have had a Tribal Council form of government, which combines the administrative (Governor, etc.) and traditional offices of the Pueblo under the guidance of the Cacique.

Although we are currently unrecognized, we have long been known as an Indian Pueblo. In 1888, Eugene Van Patten, a United States land commissioner and census officer in Dona Ana County, NM, helped our Cacique, Felipe Roybal, and two other tribal commissioners obtain a land grant of 120 acres to establish the Town of Guadalupe on behalf of the Tribe which was later confirmed by a Deed from the territorial government in 1908. From 1890 to1910, 110 children from our Pueblo were taken to Indian boarding schools in Albuquerque, Santa Fe, California, Oklahoma, and Arizona – a form of what might be called the Tribe being recognized and receiving federal services as an Indian tribe. The boarding school experience impacted two generations of Piro/Manso/Tiwa children, who were enrolled because federal agents such as Van Patten identified them as children of an existing Indian Pueblo which had not abandoned tribal relations.

Currently, certain members of our Tribe receive some health care benefits from the Indian Health Service based on certification of enrollment issued by the Tribe. The states of New Mexico, Arizona, California and Nevada periodically contact our tribal officials in connection with child and family services agencies' compliance with the Indian Child Welfare Act. Our Cacique and War Captain have testified in state Family and Child Custody Court on behalf of the Tribe in child placement proceedings. The magistrate for the City of Las Cruces cross-deputizes our five war captains as local law enforcement officers for tribal gatherings after their selection each December. The Tribe receives permits from the Bureau of Land Management (BLM) to harvest traditional plants for our ceremonies, and has an ongoing relationship with White Sands National Monument for the protection of ancient burial grounds which tie to our people.

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[1] These two petitioners are the Canoncito Band of Navajos,'Petitioner #114, and a group whose name is like that of our Tribe, called the "Piro/Manso/Tiwa Tribe of Guadalupe Pueblo." This group, which submitted a letter of intent to the BAR in December, 2002, is represented by individuals who have not applied or are not eligible for membership in our Tribe. This group formerly sought to gain possession of our petition. In filing their own letter of intent, they have now indicated that they are not part of our tribal community.

We also have a land access agreement to our sacred mountain and ceremonial grounds with New Mexico State University and BLM. We will be one of the tribes with which the National Park Service conducts consultation as part of the El Camino Real de los Tejas heritage trails project in Texas.

My uncle, Louis Roybal, who served as Governor for ten years (1992-2002), testified before this Committee in May, 2000, on Chairman Campbell's earlier acknowledgment reform legislation (S. 611). As this Committee knows from his testimony then, the Piro/Manso/Tiwa first sent a letter to the Department of the Interior in 1971, requesting federal recognition as an Indian tribe.

In 1976, in the second session of the 94th Congress, and soon after the Tribe had submitted to the Department of the Interior the letter requesting acknowledgment, Senator Domenici introduced recognition legislation for our Tribe. No action was taken on this legislation. During this time, the Tribe's effort to achieve judicial relief in order to receive Snyder Act services was proceeding in the case Avalos v. Morton in U.S. District Court. The court held, however, that it was not able to determine our tribal status judicially. Two years later, in 1978, the Bureau of Indian Affairs issued the acknowledgment regulations that are now found at 25 CFR Part 83.

In 1992, the Tribe submitted a revised documented petition to the Department under the new regulations . The documentation we submitted in 1992 was extensive – regarding history, references in local newspapers and Spanish, Mexican and American documents, genealogy, tribal events and meetings, named political and religious leaders, maps, examples of how the Tribe and its members have interacted, etc. Under the acknowledgment process, BAR conducted a preliminary assessment of the petition, and, in 1993, advised the Tribe of the "obvious deficiencies" its preliminary assessment had found. In 1996, the Tribe submitted extensive additional material in response to this "obvious deficiencies" assessment, and in January, 1997, was deemed by BAR to have presented a complete petition. Since January, 1997, the Tribe has been in the "Ready, Waiting for Active Consideration" part of the petition "queue" – waiting for BAR staff to complete their reviews of other petitions and become available to begin review of the material presented by Piro/Manso/Tiwa.

Where the Recognition Process Has Bogged Down for Us: If I may offer just one comment which sums up this tribe's experience in the recognition process, it would be this: When Governor Louis Roybal testified before the Senate Indian Affairs Committee in May, 2000, Piro/Manso/Tiwa was seventh on the "Ready, Waiting for Active Consideration" list maintained by the Branch of Acknowledgment and Research. Today, nearly four years to the day later, we are still seventh on "Ready and Waiting."

In the intervening years, BAR staff has been gracious in agreeing to meet with us. In 1999, a delegation of Piro/Manso/Tiwa representatives met with Director Lee Fleming regarding the release of certain sensitive information in our petition to an outside party, and how to insure that certain material was protected from disclosure to

third parties in the future. BAR has been available to legal counsel to allow review of our administrative file from time to time. More recently, in 2002, our Cacique and Federal Recognition Project Director, Andy Roybal, met to inquire when BAR thought we might go on "Active Consideration," and to discuss both the submission of additional materials and the retention of other sensitive materials by legal counsel. Our meetings with BAR have been infrequent, at our initiative and provided no certainty of a timeline for "Active Consideration." Mr. Fleming has indicated to us that OFA/BAR's priority is those petitions under "Active Consideration," and getting those petitions all the way through the process, not on simultaneously juggling the petitions under "Active Consideration" and moving petitioners on "Ready, Waiting" on to "Active Consideration". With the trend in petitions going on to litigation or the Interior Board of Indian Appeals, that has meant that petitioners in the "Ready" part of the queue (including several of us deemed ready for review in 1995, 1996, 1997 or 1998) have had even longer to wait.

Our experience in the recognition process is also one of "what is enough?" in terms of documentation to substantiate the seven mandatory criteria.

Our initial petition was supplemented in 1996 with our response to the "obvious deficiencies" review. Subsequent to that submission, our researcher, Al Logan Slagle[2], before his unexpected death in November, 2002, was conducting an elaborate social networking survey of tribal activities; mapping an expanded residency study (since at the present time 75% of all enrolled Piro/Manso/Tiwa members live within a six-mile radius of the original Pueblo settlement); and analyzing our tribal members' experiences at Indian boarding schools from 1893 to 1914. Following BAR's venture into the Federal Acknowledgment Information Resource System (or FAIRS), Logan was in the process of scanning on to computer disks all the documents referenced in and submitted as part of our petition, so that BAR staff would have those extensive materials available electronically. (I should note that some of these documents required special care since they date back to the 16th century with the entradas and the early Catholic missions established to Christianize our people.)

Mr. Slagle was also following the format of recent BAR decisions [3] and plotting each piece of evidence in a chart that noted its date, criterion addressed, relevant BAR precedent, analysis and conclusion. Upon his passing, this "long chart" ran over 3,000 pages on legal-sized paper.

Additionally, based on guidance from BAR staff, we hope to undertake transcriptions of the more than 100 audio and video tapes of interviews with tribal

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[2]For the record, Mr. Slagle – who served as the Tribe's attorney, genealogist, anthropologist and historian – was on the staff of the Association on American Indian Affairs (AAIA), and also provided his services under grants from the Administration for Native Americans. The current Recognition Project Director, Andy Roybal, has also received a grant from AAIA to continue the Tribe's recognition efforts.

[3]See decision for Eastern Pequot, Nipmuc(k), Little Shell and Duwamish

members and of tribal meetings and ceremonies. This is in order to submit both videos/audios and hard copies as evidence for our petition. We also plan to submit an extensive chronological exhibit of documents of tribal council meetings from 1886 to the present, even as we assemble documentation regarding the most recent decade. We also understand that BAR staff would find valuable in their review the actual field notes of our anthropologist and other researchers, and plan on submitting that material as well.

Comments on Recognition Reform Legislation and S. 297: In our previous testimony before this Committee, the Piro/Manso/Tiwa Tribe noted that the current recognition process is lengthy, literally, in our case, taking generations. Secondly, and in general, the federal acknowledgment process is too expensive, for some petitioners costing millions of dollars for the professional services of genealogists, anthropologists, attorneys and others – most of whom, I would note, are non-tribal members and do not reside in the unacknowledged tribe's local area – needed to prepare a petition that can confidently meet the criteria. Our Tribe has been fortunate in the last decade to enjoy the support and assistance of professionals and others dedicated to our recognition, despite our Tribe's impoverished status.

As a traditional Pueblo, Piro/Manso/Tiwa has also faced a unique aspect in that our traditions and ceremonies, our religious practices and sacred sites are traditionally not revealed to outsiders, because to do so would violate our traditions and our elders' teachings. Yet in order to prove to OFA/BAR that we are who we know ourselves to be – a traditional Pueblo – we must submit information about our sacred knowledge, traditions and practices, which is passed down orally from generation to generation, our leaders, internal governmental matters and other issues in which the Tribe has been involved.

Before offering some specific comments on the provisions of S. 297, I would like to make a general statement that the bill is somewhat confusing in its current form in terms of its relationship to –either supplement to or replacement of --the current regulations. The language of section 9, Regulations, seems to suggest that S. 297 represents a blend of the current process with additional steps, timelines and options set forth in the bill. Given that this acknowledgment process is confusing enough as it is, if Congress were to enact this legislation as the statutory framework for recognition, we believe this relationship between the bill and the regulations should be made clearer.

Turning now to specific provisions of S. 297, I would like to offer the following comments:

Sec. 2. Findings and Purposes.

We support the purpose of the Federal Acknowledgment Process Reform Act to ensure that decisions to recognize an Indian tribe are made with a "consistent legal,

factual and historical basis." We recognize that BAR/OFA and the Department of the Interior undertake a serious task in determining and establishing a government-to-government relationship between the petitioner and the federal government.

Sec. 3. Definitions.

We appreciate that the definition of "Treaty" has been revised from the earlier bill, S. 611, to include a recognition of agreements made with colonial governments which were the predecessor to the United States government.

Sec. 4. Acknowledgment Process.

We support the idea of what might be called an "expanded" letter of intent, which provides additional information about the petitioner in a brief narrative. The language of this subsection might be clarified regarding the Committee's intent whether this "expansion" is intended to apply retroactively to the 130 current "petitions" pending before OFA (according to the February 10, 2004 status summary) which are only letters of intent and for which no documentation has been submitted.

As this Committee has held hearings over the past 13 or more years on various legislative proposals to make the recognition process fairer and more streamlined, and particularly in the past several years, two important themes have emerged which I want to address briefly with respect to the provisions of S. 297: the role of interested parties and the mandatory criteria.

The role of interested parties may be addressed with regard to section 4. Although Piro/Manso/Tiwa is privileged to enjoy a cordial relationship with the State of New Mexico and the City of Las Cruces, we know that for other petitioners, state and local governments often register concerns -- often not focusing on the petitioner or their petition until after the issuance of a Proposed Finding (for acknowledgment, generally, I would note). It is our view that the current regulations provide sufficient input for interested parties. Interested parties should not be given veto authority. Hopefully, the provision for an expanded letter of intent will provide opportunities for state and local governments to receive information and, in the best of all possible scenarios, continue to build a good relationship with their tribal neighbors.

Section 4 also provides for petitioners to have access to the Library of Congress and the National Archives. We strongly support this provision, noting that information reviewed at the National Archives, as well as in various church and Mexican repositories, was key to documenting our petition.

We also see a shift toward the role of interested parties in provisions of subsection (c)(B) which would afford an interested party an opportunity to submit evidence regarding a petition and have it be considered by the Assistant Secretary prior

to the issuance of a Proposed Finding, as currently provided for under the regulations. We would recommend that interested parties be required to comply with established timeframes in submitting evidence, so that their participation does not slow the process down.

The language of the subsections related to Review of Petitions and the Final Determination is somewhat unclear in whether or not it incorporates the various steps currently set forth under the regulations. It is also not clear whether the steps under the current process for a request for reconsideration to be filed with the Interior Board of Indian Appeals still would apply, or whether the petitions would go directly to U.S. District Court for a judicial review of a final determination.

We also wish to note our support for the bill's increased level of appropriations that would be authorized for the processing of petitions: $5 million for each FY 2004 through 2013. This level should be quite a boost to OFA from its current level around $1.7 million, and hopefully will enable that office to hire not only FOIA specialists but additional teams of historians, genealogists and anthropologists so that more petitions can be reviewed in a more timely manner.

Sec. 5. Documented Petitions

Section 5 of the bill relates to Factors for Consideration in a documented petition. It is here that I wish to address a second theme of recent hearings dealing with recognition, and that is the seven mandatory criteria that a petitioner must satisfactorily meet in order for the Assistant Secretary to issue a positive Proposed Finding and/or Final Determination for recognition.

With respect to the criteria, given the current climate of scrutiny around acknowledgment decisions, I believe that it will be hard for any legislation to be approved by Congress which would change the current seven mandatory criteria that a petitioner must meet now. By saying this, I do not mean to suggest that I believe the current criteria are fair or even the most appropriate. I am just concerned with opening up the criteria to revision. Representatives of both local government and recognized tribes have expressed their strong opposition on the legislative record to proposals to change the criteria. I would even suggest for the Committee's consideration that the language of section 5 of S. 297 be amended to track precisely the language of 25 CFR 83.7, and also to include specifically in that section the criteria of the current regulations that the petitioner's membership is composed principally of "persons who are not members of any acknowledged North American Indian tribe" (criterion f), and that the petitioner has not been the subject of termination legislation or legislation which prohibited a relationship with the federal government (criterion g).

Sec. 6. Additional Resources.

The Independent Review and Advisory Board could prove to be very helpful in its

consideration of unique questions raised by a petitioner's evidence and in providing another level of peer review for the work performed by the OFA. However, we would offer the suggestion of the addition of meaningful timelines for the review of a documented petition by the Advisory Board, so that this review does not become a source of substantial delays.

With respect to this section's provisions for assistance to petitioners and interested parties, we would prefer that not less than 75% of grants authorized under this section be reserved for petitioners.

The Federal Acknowledgment Pilot Project could bring an exciting new level of expertise to the assistance of petitioners. Since the Committee is exploring in S. 297 the kinds of expertise various institutions might offer in the petitioning process, I wish to note that our 1996 submission greatly benefitted from the assistance of Dr. Howard Campbell, a cultural anthropologist with the University of Texas at El Paso. Tribal members' concerns regarding Privacy Act matters were handled through the signing of confidentiality statements with Dr. Campbell. His students, in particular, who eagerly expended countless hours in the drudgery of organizing scores of documents, were a real asset to our petition effort. Our experience, however, also showed that a university requires a substantial "cut" of such research funds, so that the balance available for our researcher, students, supplies and travel was actually less than half the grant amount.

In closing, the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, thanks you for the privilege of being invited here today to submit testimony on S. 297. We deeply appreciate the efforts of the Chairman and the Vice Chairman and this Committee to champion voices largely not heard – that of unacknowledged tribes.

I will be pleased to answer any questions the Committee may have.

Thank you very much for this opportunity.

Responses of

Honorable Edward Roybal, II
Governor
Piro Manso Tiwa Indian Tribe
Las Cruces, NM

to Questions of the Senate Indian Affairs Committee
in connection with the April 21, 2004 hearing
on S. 297, federal acknowledgment reform

1. I see from your testimony that your tribe received a land grant from the Federal government in the 1800's. It also appears that your tribe's children were sent to Indian boarding schools. Yet, your Pueblo is not "recognized".

Q. What happened along the way to cause the Piro-Manso-Tewas to lose status?

(Our correct name is "Piro-Manso-Tiwa").

Answer: Neither the Piro-Manso-Tiwa Tribe (Tribe) nor its people ever abandoned tribal relations, or chose not to be identified as a tribe or as Indian, or in some way "self terminated". The United States government has attempted to unilaterally disregard its trust responsibility to the Tribe. It appears that the Tribe was targeted for systematic assimilation programs such as the Indian Boarding School experience with the assumption that the children would be de-Indianized enough to where they would choose not to remain culturally and politically an Indian tribe. This was incorrect. Traditional practices continued in public and underground in private. Moreover, the tribal government continued under the leadership of the Cacique, primarily away from the public eye at his residence so as to avoid any further forced assimilation (termination).

In the 1880s, a federal land grant was made to individual tribal leaders for the Tribe, but was never designated as trust or Indian land. In 1914, in a suspicious transaction, these lands were transferred to a New Mexico non-profit corporation that was established by a non-Indian, and whose President and Secretary/Treasurer were both non-Indians. There was a written Resolution which transferred this land from the Town Commissioners to the Corporation. This document was in written in English (which at the time no tribal members knew how to read) and was signed by tribal leaders with an "X" above their names. It seems clear in hindsight that this was a legal maneuver whereby tribal lands were manipulated away from the Tribe's ownership. Today this land is still under the control of this non-profit corporation, all of whose members and the Board of Directors are non-Indians. A very similar method was used by A. J. Fountain and others in the El Paso area in the late 1800's to steal land from the Ysleta del Sur Pueblo Indians. In all honesty, we do not know why the Tribe is not federally recognized. It is a situation that was brought about through no fault, agreement, or treaty of the Tribe with the federal government, hence it is the trust responsibility of the U.S. government to remedy.

2. In your testimony you mention that the tribe originally filed a petition in 1976, submitted a revised documented petition in 1992, and then submitted "extensive additional materials" in 1996.

Q. Just to give us an idea of the amount of paper you have compiled, can you estimate how many boxes of documents you have sent to the BAR over the years and whether the volume required has increased since the original filing?

Answer: There were 4 boxes filed in 1990. We sent another 4 in 1996 and 4 more in 1997, for a total of 12 boxes. When one of our legal staff went to review the petition files several years ago, all the boxes which BAR staff had pulled filled up one long conference table.

Our researcher, Al Logan Slagle, who worked with a number unacknowledged tribes over a period of many years, frequently emphasized to us that, in his view, the amount of material that a petitioner must submit to prove that they meet the mandatory criteria under the regulations has certainly increased since the regulations were first issued in 1978. In his experience, a complete set of the documents for some of the early petitions would have only filled one banker's box, let alone fill up a conference table!

3. It appears that there is some tension created by the BAR's need for documentation, and the sensitivity of your traditions and ceremonies. I find this curious since one of the criticisms of the BAR has been that they rely too much on paper and not enough on oral traditions.

Q. Were you and the BAR staff able to reach a mutually satisfactory arrangement on this matter?

Q. What reasons did the BAR staff give for needing this type of sensitive information?

Answer: When we refer to the "documentation" in our petition, we are referring to oral traditions that have to be written down in a report such as the anthropologist's report compiled by Dr. Campbell at UTEP. At that point it becomes written documentation, but the information itself is derived from oral tradition.

After the Tribe learned that the BAR had released some sensitive material to a third party, our Governor, Cacique and war captains met with Assistant Secretary Gover, as well as Lee Fleming and others, to discuss the disclosure of petition materials. We followed these meetings by sending a letter to BAR, outlining a proposed protocol for both how BAR would respond to future public inquiries about our petition, and how documentation that the Tribe has not yet submitted to the BAR would be submitted in the future. We did not receive a reply to this letter; however, legal counsel and tribal representatives have periodically asked to review our petition's administrative file maintained by OFA/BAR to learn what additional inquiries and contacts have been made concerning our petition.

With respect to your second question about why the Tribe has submitted sensitive information as part of our petition, it is because our ceremonies and traditional practices provide very strong, clear and convincing evidence that our Tribe has maintained a tribal community over which leaders have exercised political authority through history. BAR has told us that evidence of this kind is necessary to prove that we meet the seven mandatory criteria for federal acknowledgment under the regulations.

4. I am very impressed, Governor, with your tribe's ability to persist so long in this process without relying upon significant outside funding sources. I believe most tribes would prefer not to have to rely on a "financial backer" or "developer" and as we know their services do not come cheaply.

Q. If given a choice of resources, do you think your tribe would choose to obtain the assistance of a university or other institution, or would it rather sign up with a developer and use "hired guns"?

Answer: The best case scenario would be to have enough funding to work with a university and enjoy full access to their resources, expertise, and facilities. This would mean contracting with faculty in various departments such as anthropology, history, linguistics, and perhaps archeology. Only with the full cooperation and coordination between different departments and faculty, would the project have the best chance for success.

One note is that funding for petition work with any university must take into account the indirect costs or "overhead" rate that each university charges for grant or contract research. In many cases this rate can be as high as 60%. This means that only 40% of the funding goes directly toward the research activity, i.e., the petition. Therefore, the funds allocated for each petition would have to include the indirect costs, barring any special arrangements with particular institutions.

Q. What has been the single greatest expense the tribe has incurred in the 33 years of its recognition efforts?

Answer: The greatest single expense has been fees for the professional research (including gathering of documentation) and the writing of the petition narrative and related reports by historians, anthropologists, genealogists, ethnographers, attorneys and others.

5. Your interactions with the University of Texas-El Paso in terms of research are the kind of cooperative effort I had in mind when I introduced the Research Pilot idea.

Q. In your opinion, did UTEP appears to have the research and scholarly expertise to be helpful to you, or was it something they developed in working with you?

Answer: Yes, UTEP had most of the expertise needed, such as archival research, anthropology, and ethnography. However, no university will have the legal expertise to write a narrative that presents the information (petition) in a way that satisfies the 25 CFR 83 criteria. That requires legal expertise, in addition to anthropological, historical, ethnographic and genealogical expertise. This may not be true in all cases but this is what happened to us. The 25 CFR 83 process to me is a legal and political process although BAR and others may offer it as a historical and anthropological process. The acknowledgment process has become a litigious process with a very exacting and increasing burden of proof. The bottom line to me seems that if the information is not presented in a legal fashion as evidence, or at the very least in a format that meets each criteria, the petition will fail. In the end, the university or the research professional will have to become an expert in the 25 CFR 83 process and have legal expertise to make it work.

Q. What was the financial cost to the tribe of working with UTEP on your petition?

Answer: The financial costs to work with UTEP have been about $75,000 in the last ten years.

Q. Would you recommend to other petitioners the idea of working with independent research institutions?

Answer: I would recommend that petitioners work with research institutions to complete certain portions of the petition, such as an ethnographic report or historical report. However, some universities may also have political biases that would make them not so "independent". In our case, New Mexico State University has not been helpful, and in the past the anthropology department has been outright hostile to our efforts to obtain additional information or evidence from the University in support of our petition. This is why we had to go to the University of Texas and not work with the school in our own back yard. This may be true all around the country for other petitioning tribes.

Another draw back to working with universities is that many times the "experts" in the particular field do not want to counter what are already "accepted" beliefs or theories about a particular tribe or the history of an area. In most cases, anthropologists or historians who write positive things about a petitioner may be going out on an academic limb since it may be the first time anyone has written anything about that particular tribe because that tribe is not supposed to exist anymore. With us, no one in New Mexico that is a so-called expert is willing to say that yes there is this tribe in Las Cruces and yes this is who they are, etc. This is true of most of academia. Most of the time researchers more often than not restate what someone else has written, especially if there is come type of consensus about a particular issue. This is true in history, anthropology, biology, physics, etc. This would be one of the concerns for tribes working with universities.

Thank you again for the opportunity to illustrate our Tribe's struggle for recognition. If you have any additional questions please let me know.

Sincerely,

PIRO-MANSO-TIWA INDIAN TRIBE

/s/
Edward R. Roybal II
Governor

United States Senate

WASHINGTON, DC 20510

April 21, 2004

Senator Ben Nighthorse Campbell
Chairman
Senate Committee on Indian Affairs
836 Hart Senate Office Building
Washington, D.C. 20510

Senator Daniel K. Inouye
Vice Chairman
Senate Committee on Indian Affairs
836 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Campbell and Vice Chairman Inouye:

We are writing to thank you for convening a hearing today in the Senate Committee on Indian Affairs on the federal tribal acknowledgement process. The Committee has held other hearings on this important concern in the past. Those hearings, as well as the hearing today, demonstrate your desire to address this issue in a meaningful manner. We are grateful for the opportunity to submit this letter for your consideration, and we respectfully request that it be made part of the record.

As you know from your leadership on this issue, the process by which American Indian tribes are considered for federal recognition is deeply flawed. Kevin Gover, the former Assistant Secretary for Indian Affairs who is testifying before the Select Committee on Indian Affairs today, made a remarkable admission during his tenure that "I am troubled by the money backing certain petitions and I do think it is time that Congress should consider an alternative process." Mr. Gover concluded that there is a significant danger that "[w]e're more likely to recognize someone that might not deserve it."

Subsequently, the General Accounting Office (GAO) found in a November 2001 report that the tribal recognition process is tainted with unfairness, inconsistency, concerns about influence-peddling, and delay. The GAO concluded that "because of weakness in the recognition process, the basis for the Bureau of Indian Affairs' (BIA) tribal recognition decisions is not always clear and the length of time involved can be substantial." When the Senate considered our proposal to reform the federal recognition

process in September 2002, there was considerable bipartisan agreement among us and our colleagues about the need for legislative action in this area.

Our position on this issue has always been straightforward: each and every tribe seeking recognition should be considered according to the same criteria, and these criteria should be applied equally to all tribes. We have also urged that the recognition process provide for the meaningful input and consideration of all evidence pertaining to a given petition. Our goal is not to deny any tribe recognition, but to ensure that every tribe is given the same full and fair consideration as any other tribe.

We have sought these reforms not just in the legislative arena but in the administrative arena as well. On several occasions, the entire Connecticut Congressional delegation has urged the Secretary of the Interior to institute changes to address the well-documented shortcomings with the recognition process. To our knowledge, no such reforms have been made. As a result, recent recognition decisions by the BIA have been criticized for failing to adhere in a clear and convincing way to the BIA recognition criteria and existing precedent.

Earlier this month, a bipartisan group of lawmakers from Connecticut Congressional delegation met with the Secretary of the Interior to voice our concerns not just about these decisions but about the continuing inadequate response by the Department to these shortcomings in the recognition process . She indicated that she would ask the appropriate officials to review the recognition process and determine what, if any, changes have been made in light of the GAO report. She also said that she planned to expedite a Department of the Interior Inspector General investigation into whether or not there were any improprieties connected with the recent decision pertaining to a Connecticut tribe. Finally, she expressed a willingness to work with the Connecticut Congressional delegation on reforming the federal recognition process.

As you may be aware, we have previously introduced legislation to reform the BIA's authority to recognize tribes (S. 462 and S. 463). We would be grateful for the opportunity to work with you and the Committee on Indian Affairs to bring much needed changes to this broken process.

Thank you for your leadership in this important matter.

Sincerely,

Christopher J. Dodd

Joseph I. Lieberman

Order Code RS21109
Updated April 9, 2004

CRS Report for Congress

The Bureau of Indian Affairs' Process for Recognizing Groups as Indian Tribes

M. Maureen Murphy
Legislative Attorney
American Law Division

Summary

The list of federally recognized Indian tribes is not a static one. The Department of the Interior's Bureau of Indian Affairs has an administrative process by which a group may establish itself as an Indian tribe and become eligible for the services and benefits accorded Indian tribes under federal law. The process requires extensive documentation, including verification of continuous existence as an Indian tribe since 1900, and generally takes considerable time. Final determinations are subject judicial review.

Federal Recognition or Acknowledgment of Indian Tribal Existence

The list of federally recognized Indian tribes is not static. Not only does Congress periodically pass legislation according federal recognition to individual tribes, but the Department of the Interior (DOI), through its Bureau of Indian Affairs (BIA) has a process, 25 C.F.R. Part 83, by which a group can establish itself as an Indian tribe and thereby become eligible for all the services and benefits accorded to Indian tribes under federal law.[1] Included among these are the ability to have land taken into trust under 25

[1] The federal courts have had a role in determining whether a group qualifies as an Indian tribe for a particular purpose. For example, in 1877, in *United States v. Joseph*, 94 U.S. 614, the Supreme Court determined that the Pueblos were not an Indian tribe for purposes of the Indian liquor laws. Later, their status was reconsidered, and the Pueblos were held to be an Indian tribe and their lands protected under a federal law that prohibited the sale or alienation of Indian land without federal approval. *United States v. Candelaria*, 231 U.S. 28 (1913). Groups have sought court orders to compel DOI to process their applications for acknowledgment in a more timely fashion. See, e.g., *Tribe v. Babbitt*, 233 F. Supp. 2d 30 (D.D.C. 2000). That approach may have been precluded by a ruling in *Mashpee Wapanoag Tribal Council, Inc. v. Norton*, 336 F. 3d 1094 (D.C. Cir. 2003), in favor of DOI. The court found that competing agency priorities and limited resources must be considered in claims that the length of time it takes to process an (continued...)

C.F.R. Part 151 and to conduct gaming under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701, *et seq.* As of November 16, 2001, there were approximately 212 groups petitioning under this process, including 186 that were not ready for evaluation.

The Administrative Recognition Process

DOI regulations, 25 C.F.R. § 83.7, include seven mandatory criteria. For each of these, the petitioning group must establish "a reasonable likelihood of the validity of the facts relating to that criterion." 25 C.F.R. § 83.6(d).

- Existence as an Indian tribe on a continuous basis since 1900. Evidence may include documents showing that governmental authorities — federal, state, or local — have identified it as an Indian group; identification by anthropologists and scholars; and evidence from newspapers and books.
- Existence predominantly as a community. This may be established by geographical residence of 50% of the group; marriage patterns; kinship and language patterns; cultural patterns; and social or religious patterns.
- Political influence or authority over members as an autonomous entity from historical times until the present. This may be established by showing evidence of leaders' ability to mobilize the group or settle disputes, inter-group communication links, and active political processes.
- Copies of its governing documents and membership criteria.
- Evidence that the membership descends from an historical tribe or tribes that combined and functioned together as a political entity. This may be established by tribal rolls, federal or state records, church or school records, affidavits of leaders and members, and other records.
- Unless unusual circumstances exist, evidence that most of the group's members do not belong to any other acknowledged North American tribe.
- Absence of federal legislation barring recognition.

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[1] (...continued)
acknowledgment petition is unreasonable within the meaning of the Administrative Procedure Act. 5 U.S.C. § 555(b). Other groups have tried the indirect approach of identifying a statute that requires that the plaintiff be an Indian tribe and suing under that statute in an attempt to force a court to determine whether that particular statute's definition of "Indian tribe" has been met. In *Golden Hill Paugusset Tribe of Indians v. Weicker*, 39 F. 3d 51 (2d Cir. 1994), involving a land claim by a group asserting that it is an Indian tribe and its land had been alienated without federal approval in violation of 25 U.S.C. § 177, the court remanded the case to the district court with instructions to enjoin the litigation for 18 months pending DOI resolution of the group's acknowledgment petition. In *New York v. Shinnecock Indian Nation*, 280 F. Supp. 2d 1 (E.D. N.Y. 2003), the court temporarily enjoined a state-recognized tribe's construction of a gaming operation for 18 months pending DOI action on an acknowledgment petition. Both courts saw DOI's jurisdiction over the question as primary and their court's jurisdiction as secondary and seemed to have indicated that the court would take up the issue of tribal existence in the absence of a ruling by DOI.

Time Line for Handling Petitions by Groups Seeking Indian Tribal Status

- Group presents petition to BIA.
- BIA must acknowledge receipt of letter of intent or petition within 30 days. It must issue a *Federal Register* notice within 60 days. This acts as a notice to interested parties to submit factual or legal arguments in support of or opposing the petition. Notice is also to be supplied to the governor and attorney general of the state in which the group is located.
- BIA conducts a technical assistance review and informs the petitioner as to supplemental material needed. Petitioner may withdraw petition or supply needed material. No time frame is given for this stage of the process. If BIA finds that petition clearly does not meet certain mandatory criteria, it may deny petition and issue *Federal Register* notice.
- When the BIA determines that the petition is ready for active consideration, it informs the petitioner. No time frame is given.
- When active consideration begins, the petitioner and interested parties are notified of the names of researchers and their supervisors. No time frame specified for beginning active consideration.
- Proposed findings must be published in the *Federal Register* a year after active consideration has begun. But active consideration may be suspended for administrative reasons or petition problems.
- After proposed findings are published, supporters or opponents have 180 days to submit arguments in support or in opposition, with the possibility of a 180-day extension. During the period, the Assistant Secretary for Indian Affairs, upon request, may hold a formal meeting to inquire into the basis for the proposed finding.
- After the expiration of the comment period and any extension, the petitioner has a minimum of 60 days to respond, and time may be extended by the Assistant Secretary. Thereafter, the Assistant Secretary has the discretion to solicit comments from the petitioner or interested parties, but no unsolicited comments will be accepted. The petitioner and interested parties will be informed of any extension of the comment or response periods.
- When the comment period has expired, the Assistant Secretary will consult with the petitioner and interested parties to determine a time frame for considering evidence and arguments.
- A final determination must be published in the *Federal Register* within 60 days after consideration has begun unless there has been extension by the Assistant Secretary. The determination must be published in the *Federal Register*. Petitioner and interested parties must be notified of any extension of the 60 days.
- Determination is effective 90 days after publication unless the petitioner or an interested party files a request for reconsideration with the Interior Board of Indian Appeals (Board) under 25 C.F.R. § 83.11. To vacate the determination, the petitioner or interested party must prove by the preponderance of the evidence: (1) that there is new evidence that could affect the determination; (2) that a substantial part of the evidence relied

upon was unreliable; (3) that the petitioner's or the BIA's research was inadequate in a material respect; or (4) that reasonable alternative interpretations, not considered, would affect the determination. 25 C.F.R. § 83.11(d)(1)-(4).

- The Board may either affirm the determination or vacate it and remand it to the Assistant Secretary for reconsideration. Under certain circumstances, it may affirm the determination but send it to the Secretary for reconsideration.
- If the determination has been sent to the Secretary for reconsideration, the petitioner and interested parties have 30 days to submit comments. If an interested party opposing a petition submits comments, the petitioner shall have 15 days, after receipt of comments, to respond.
- The Secretary must make a determination within 60 days of receipt of all comments. If the Secretary decides against reconsideration, the decision becomes effective when all parties are notified.
- If the determination has been remanded to the Assistant Secretary, a reconsidered determination must be issued within 120 days of receipt of the Board's decision. The reconsidered determination is effective when notice is published in the *Federal Register*.
- Upon final agency action, a challenge may be raised in a federal district court under the judicial review provision of the Federal Administrative Procedure Act, 5 U.S.C. § 702.

Proposed Legislation

Congress has considered replacing the administrative recognition process by a statute to be administered outside of BIA. H.Rept. 105-737, 105th Cong, 2d Sess. (1998), saw the current administrative process as poorly funded, too protracted, and deficient in due process. Costs per tribe can run to $500,000; the average year sees the completion of only 1.3 petitions; and sometimes the very people who search out the facts of a case craft the decision. A GAO Report, *Indian Issues: Improvements Needed in Tribal Recognition Process* (November 2001), recommended that DOI improve its responsiveness and develop transparent guidelines for interpreting the main criteria under the recognition procedures. Three 107th Congress bills, S. 504, S. 1392, and H.R. 1175, would have provided a statutory recognition process. Another, S. 1393, would have authorized grants for petitioning group and local government participation. Other bills recognize specific groups as Indian tribes.

In the 108th Congress, S. 462 would establish a statutory framework for an administrative acknowledgment process by which an Indian group or tribe could petition DOI for recognition as an Indian tribe with a government-to-government relationship with the United States and members entitled to federal services to Indians. The bill sets standards for eligibility that generally deny eligibility to: groups formed after December 31, 2002, for the purpose of seeking acknowledgment; groups separating from an existing federally recognized Indian tribes; terminated tribes; and groups whose petition for acknowledgment had been previously been denied by DOI. Among the mandatory criteria for acknowledgment in this legislation are: identification as an Indian group on a substantially continuous basis since 1900; existence of a distinct community comprised of a predominant portion of the membership since 1900; maintenance of political influence as an autonomous authority over members since 1900; evidence of governing

documents and membership criteria; list with addresses of current members; evidence that members are not members of other Indian tribes; and evidence that there has been no federal termination of tribal existence or prohibition on acknowledging the group.

S. 297 would establish a statutory procedure, with time tables for certain action, for the administrative acknowledgment process by which DOI recognizes Indian tribes. It would define terms, thereby, to some extent, limiting the groups to be considered for federal recognition. The proposal's standards would differ from those currently used by the Department in various ways, e.g., the historical period that must be covered; ways of establishing political influence over members; substitutions for governing documents; and means of dealing with splinter groups. Under the legislation, a list of factors, including historical existence since 1900, would have to be established "with reasonable likelihood that each factor ... has been achieved...." S. 297, sec. (4)(b)(1)(B)2). There is also a provision for an Independent Review and Advisory Board to assist in dealing with unique evidentiary questions and to provide peer review of findings and a Federal Acknowledgment Research Pilot Project to provide grants to research institutions to aid in reviewing petitions for federal recognition. There is also a provision for grants to groups petitioning for recognition and for interested parties supporting or opposing such petitions. The bill provides for public access to petitions at a defined stage in the process and an exemption to prevent access under the Freedom of Information Act, 5 U.S.C. § 552, to such information before that time. A rule of construction favoring liberal construction in behalf of an Indian group or tribe is included as is a procedure to defer funding of federal services for newly acknowledged tribes until funds are made available.

S. 463 would authorize DOI to make individual grants to Indian groups and local government authorities to participate in proceedings involving acknowledgment petitions, land-into-trust petitions,[2] or Indian land claim litigation.

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[2] See CRS Report RS21499, *Indian Gaming Regulatory Act: Gaming on Newly Acquired Lands*, by M. Maureen Murphy.

SUMMARY
STATUS of ACKNOWLEDGMENT CASES
(as of February 10, 2004)

PETITIONS - ACTIVE STATUS				9
BAR's Action Items			7	
Proposed Findings in Progress:		1		
Final Determinations in Progress:		3		
Petitioner Awaiting Amended Proposed Finding:		2		
Final Determinations Pending:		1		
Petitioner's Action Items			2	
Commenting on Proposed Finding:		2		
PETITIONS - READY				13
PETITIONS - RESOLVED				57
By Department			38	
Through Acknowledgment Process:		35		
Acknowledged:	16			
Denied Acknowledgment:	19			
Status Clarified by Legislation at Department's Request:		1		
Status Clarified by Other Means:		2		
By Congress			9[1]	
Legislative Restoration:		2		
Legislative Recognition:		7		
By Other Means			10	
Merged with another petitioner:		3		
Withdrew from process:		5		
Group formally dissolved:		1		
Removed from process:		1		
IN POST-FINAL DECISION APPEAL PROCESS				2
DECISIONS IN LITIGATION (Petitions Resolved through Department)				(1)
NOT READY FOR EVALUATION				213
Incomplete Petitions (petitioner has partial documentation):			68	
Letters of Intent to Petition (no documentation submitted):			130	
No Longer in Touch with BIA (inactive):			9	
Legislative Action Required (inactive):			6	
(Petitioners requiring legislation to permit processing under 25 CFR 83)				====
				294

HISTORICAL NOTE:

40	petitioners when 25 CFR Part 83 became effective October 1978
254	new petitioners since October 1978
294	Total letters of intent and petitions received to date[2]

[1] *Congress has also recognized or restored groups which had not petitioned.*

[2] *Includes groups that initially petitioned as part of other groups but have since split off to petition separately.*

PETITIONS UNDER CONSIDERATION WITHIN THE DEPARTMENT OF THE INTERIOR

(as of February 10, 2004)

ACTIVE STATUS - 9

Members

Proposed Finding in Progress - 1

c 600 Burt Lake Band of Ottawa and Chippewa Indians, Inc., MI (#101) (09/12/1985; doc'n recv'd 9/4/95;TA ltr 4/5/95; respn 10/26/95; ready 10/26/95; active 10/17/98)

Final Determinations in Progress - 2

1602 Nipmuc Nation (Hassanamisco Band), MA (#69a) (Active 7/11/95; proposed negative finding pub'd 10/1/2001; comment period Closed 4/1/2002; comment period extended to 7/1/2002; extended to 10/1/2002; response period ended 12/2/2002)

212 Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, MA (#69b) (Active 7/11/95; separated from the Nipmuc Nation (Hassanamisco Band) 5/31/96; proposed negative finding pub'd 10/1/2001; comment period closed 4/1/2002; comment period extended to 7/1/2002; extended to 10/1/2002; response period Ended 12/2/2002)

215 Golden Hill Paugussett Tribe, CT (#81) (negative final determination pub'd 9/26/96; eff 12/26/96; petitioner requested reconsideration from IBIA 12/26/96; decision affirmed by IBIA subject to supplemental proceeding 6/10/98; decision affirmed by IBIA 9/8/98 with five procedural issues remanded to the Secretary; reconsidered determination issued 5/24/99; response received 10/5/1999; response certified 12/1/99; active 7/22//2002; proposed negative finding pub'd 1/29/2003; comment period closed 7/28/2003; extended at request of petitioner to 1/26/2004)

Petitioner Awaiting Amended Proposed Finding -2

--- Biloxi, Chitimacha Confederation of Muskogees, Inc. (#56a) (Withdrew from the United Houma Nation, Inc. 9/6/95; responding to same Proposed Finding; comment period closed 5/12/1997)

--- Point Au Chien Indian Tribe (#56b) (Withdrew from the United Houma Nation, Inc. 7/22/1996; responding to same Proposed finding; comment period closed 11/6/97)

Final Determinations Pending - 2

17616 United Houma Nation, Inc., LA (#56) (Active 5/20/91; proposed negative finding pub'd 12/22/94; comment period closed 11/13/96; respn to 3rd-party comments recv'd 2/4/97)

ACTIVE STATUS, CONTINUED

Petitioner Commenting on Proposed Finding - 2

612 Steilacoom Tribe, WA (#11) (Active 7/11/95; proposed negative finding pub'd 2/7/2000; comment period closed 8/4/2000; extended at request of petitioner to 2/4/2001; petitioner requested second extension 3/29/2001; comment period extended to 8/5/2002; comment period extended to 2/1/2003; comment period extension pending)

3893 Little Shell Tribe of Chippewa Indians of MT (#31) (Active 2/12/1997); proposed positive finding pub'd 7/21/2000; comment period closed 1/17/2001; extended at request of petitioner to 7/16/2001; extended to 1/12/2002; extended at request of petitioner to 7/16/2002; extended at request of petitioner to 1/16/2003; response period extended at request of petitioner to 7/14/2003; extended at request of petitioner to 1/10/2004; extended at request of petitioner to 5/9/2004)

IN POST-FINAL DECISION APPEAL PROCESS - 2

Before the Interior Board of Indian Appeals (IBIA) - 2

Historical Eastern Pequot Tribe acknowledged, comprising:

1004 Eastern Pequot Indians of Connecticut, CT (#35) (pub. 7/1/2002)

144 Paucatuck Eastern Pequot Indians of CT (#113) (pub. 7/1/2002)

Before the Secretary on Referral from Interior Board of Indian Appeals (IBIA) - 0

Reconsidered Final Determination in Progress - 0

READY STATUS - 13

Ready, Waiting for Active Consideration

Administrative Note: Petitioners have corrected deficiencies and/or stated their petition should be considered "ready" for active consideration. Priority among "ready" petitions is based on the date the petition is determined "ready" by the Office of Federal Acknowledgment (OFA).

Ready Date	Name of Petitioner
1/17/96	St. Francis/Sokoki Band of Abenakis of VT (#68) (OD ltr 6/14/83; "ready" 8/1/86; petitioner says "not ready" 9/18/90; complete 1/17/96)
2/12/96	Juaneno Band of Mission Indians, CA (#84a) (doc'n recv'd 2/24/88; OD ltr 1/25/90; respn recv'd 9/24/93, complete; removed from "ready" list 05/19/95; respn recv'd 9/28/95)
2/14/96	Mashpee Wampanoag, MA (#15) (7/7/1975; doc'n recv'd 8/16/90; OD ltr 7/30/91; respn recv'd 1/24/96; ready 2/14/96; add'l doc'n recv'd 7/11/00; add'l doc'n recv'd 9/27/2000; active 2/2/2002; circuit court granted stay 6/10/2002, reversed district court 8/1/2003)
2/28/96	Brothertown Indians of Wisconsin, WI (#67) (4/15/80; doc'n recv'd 2/13/96; ready 2/28/96)
5/23/96	Juaneno Band of Mission Indians, CA (#84b) (withdrew from #84a 12/17/94; formal letter of intent 3/8/96; doc'n recv'd 3/8/96; TA ltr 5/15/96; respn recv'd 5/23/96)
7/30/96	Tolowa Nation, CA (#85) (1/31/83; doc'n recv'd 5/12/86; OD ltr 4/6/88; respn recv'd 8/22/95 and 11/22/95; limited TA ltr 5/16/96; respn recv'd 7/30/96)
5/29/97	Piro/Manso/Tiwa Indian Tribe of the Pueblo of San Juan de Guadalupe (formerly Tiwa Indian Tribe), NM (#5) (1/18/71; doc'n recv'd 3/24/92; OD ltr 8/25/93; respn recv'd 1/10/97)
10/6/97	Meherrin Tribe, NC (#119b); partial doc'n recv'd 9/11/95; TA ltr 3/15/96; respn recv'd 8/22/97; add'l doc'n recv'd 10/1/98)
1/16/98	Southern Sierra Miwuk Nation (#82) (formerly American Indian Council of Mariposa County aka Yosemite), CA (4/24/82; doc'n recv'd 4/19/84; OD ltr 5/1/85; respn 12/12/86; 2nd OD ltr 4/11/88; respn 1/26/95; respn 1/16/98)
1/29/03	Muscogee Nation of Florida (#32) (formerly Florida Tribe of Eastern Creek Indians), FL (6/2/78; doc'n recv'd 9/28/95; TA ltr 4/11/96; doc'n recv'd 3/19/2002; doc'n recv'd 6/5/2002; ready 1/29/2003)
6/9/03	Georgia Tribe of Eastern Cherokees, Inc. (#41) (aka Dahlonega, Cane Break Band), GA (01/09/79; doc'n recv'd 2/5/80; OD ltr 8/22/80; respn recv'd 8/10/98; TA ltr 1/19/99; respn recv'd 2/14/2002; respn recv'd 2/14/2003; ready 6/9/2003)
9/9/03	Shinnecock Tribe, NY (#4) (2/8/78; partial doc'n recv'd 9/25/98; TA ltr 12/22/98; partial res'n recv'd 6/10/03; resp'n recv'd 9/9/2003; ready 9/9/2003)
9/15/03	Amah Mutsun Band of Ohlone/Coastanoan Indians, CA (#120) (9/18/90; doc'n recv'd 8/22/95; TA ltr 5/21/96; partial respn recv'd 9/26/96; partial respn recv'd 6/10/98; TA ltr 2/16/99; partial respn recv'd 5/20/2002; partial respn recv'd 8/15/2003; resp'n recv'd 9/15/2003; ready 9/15/2003)

PETITIONS RESOLVED - 57

(as of February 10, 2004)

RESOLVED BY THE DEPARTMENT OF THE INTERIOR - 38

Members

Acknowledged through 25 CFR 83 - 16

297 Grand Traverse Band of Ottawa & Chippewa, MI (#3) (eff. 5/27/80)
175 Jamestown Clallam Tribe, WA (#19) (eff. 2/10/81)
200 Tunica-Biloxi Indian Tribe, LA (#1) (eff. 9/25/81)
199 Death Valley Timbi-Sha Shoshone Band, CA (#51) (eff. 1/3/83)
1170 Narragansett Indian Tribe, RI (#59) (eff. 4/11/83)
1470 Poarch Band of Creeks, AL (#13) (eff. 8/10/84)
521 Wampanoag Tribal Council of Gay Head, MA (#76) (eff. 4/11/87)
188 San Juan Southern Paiute Tribe, AZ (#71) (eff. 3/28/90)
972 Mohegan Indian Tribe, CT (#38) (eff. 5/14/94)
189 Jena Band of Choctaws, LA (#45) (eff. 8/29/95)
602 Huron Potawatomi Inc., MI (#9) (eff. 3/17/96)
590 Samish Indian Tribe, WA (#14) (eff. 4/26/96)
143 Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of MI (formerly, Gun Lake Band) (#9a) (eff. 8/23/99)
313 Snoqualmie Indian Tribe, WA (#20) (eff.10/6/99)
1517 Cowlitz Tribe of Indians, WA (#16) (eff.1/4/02)
271 Schaghticoke Tribal Nation (formerly Schaghticoke Indian Tribe), CT (#79) (Final Determination to acknowledge signed 1/29/04)[3]

Denied acknowledgment through 25 CFR 83 - 19

1041 Lower Muskogee Creek Tribe-East of the MS, GA (#8) (eff. 12/21/81)
2696 Creeks East of the Mississippi, FL (#10) (eff. 12/21/81)
34 Munsee-Thames River Delaware, CO (#26) (eff. 1/3/83)
324 Principal Creek Indian Nation, AL (#7) (eff. 6/10/85)
1530 Kaweah Indian Nation, CA (#70a) (eff. 6/10/85)
1321 United Lumbee Nation of NC and America, CA (#70) (eff. 7/2/85)
823 Southeastern Cherokee Confederacy (SECC), GA (#29) (eff. 11/25/85) [Name changed 1996 to American Cherokee Confederacy]
609 Northwest Cherokee Wolf Band, SECC, OR (#29a) (eff. 11/25/85)
87 Red Clay Inter-tribal Indian Band, SECC, TN (#29b) (eff. 11/25/85)
304 Tchinouk Indians, OR (#52) (eff. 3/17/86)
275 MaChis Lower AL Creek Indian Tribe, AL (#87) (eff. 8/22/88)
4381 Miami Nation of Indians of IN, Inc., IN (#66) (eff. 8/17/92)
c2500 Ramapough Mountain Indians, Inc., NJ (#58) (eff 1/7/98)
c4000 MOWA Band of Choctaw, AL (#86) (eff. 11/26/99)
327 Yuchi Tribal Organization, OK (#121) (eff. 3/21/2000)
356 Duwamish Indian Tribe, WA (#25) (eff. 5/8/2002)
1566 Chinook Indian Tribe/Chinook Nation, WA (#57) (eff. 7/5/2002)
419 Muwekma Ohlone Tribe of San Francisco Bay, CA [formerly Ohlone/ Coastanoan Muwekma Tribe] (#111) (eff. 12/16/2002)
1113 Snohomish Tribe of Indians, WA (#12) (Final Determination not to acknowledge signed 12/1/03; Federal Register notice published 12/5/03)

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[3] *Court approved negotiated agreement determines this scheduling of this petition.*

PETITIONS RESOLVED, cont.

Status Clarified by Legislation at Department's Request - 1

c224 Lac Vieux Desert Band of Lake Superior Chippewa Indians, MI (#6) (legis clarification of recog'n status 9/8/88)

Status Clarified by Other Means - 2

650 Texas Band of Traditional Kickapoos, TX (#54) (Determined part of recognized tribe 9/14/81; petition withdrawn)
32 Ione Band of Miwok Indians, CA (#2) (Status confirmed by Assistant Secretary 3/22/94)

RESOLVED BY CONGRESS - 9

Legislative Restoration - 2

328 Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, OR (#17) (legis restoration 10/17/84)
--- Federated Coast Miwok, CA (2/8/95)(#154) (restored under the name Graton Rancheria) (legis restoration 12/27/2000)

Legislative Recognition - 7

651 Cow Creek Band of Umpqua Indians, OR (#72) (legis recog'n 12/29/82)
55 Western (Mashantucket) Pequot Tribe, CT (#42) (legis recog'n 10/18/83 in association with eastern land claims suit)
611 Aroostook Band of Micmacs, ME (#103) (legis recog'n 11/26/91)
c2500 Pokagon Potawatomi Indians of Indiana & Michigan, IN (#75/78) (legis recog'n 9/21/94)
c3500 Little Traverse Bay Bands of Odawa Indians, MI (#115) (legis recog'n 9/21/94)
c2700 Little River Band of Ottawa Indians, MI (#125) (legis recog'n 9/21/94)
--- Loyal Shawnee Tribe, OK (#203) (10/14/98; legis recog'n 12/27/2000)

PETITIONS RESOLVED (cont.)

RESOLVED BY OTHER MEANS - 10

Petition withdrawn (merged with another petition) - 3

Potawatomi Indians of IN & MI, Inc., MI (#75) and Potawatomi Indian Nation, Inc., MI (Pokagon), (#78) merged; became Pokagon...(#78)
Cane Break Band of Eastern Cherokees (#41a) (1/9/79; rejoined #41 7/16/97)
Creek-Euchee Band of Indians of the Blountstown Indian Community of Florida (#218) (11/23/99; rejoined #41 10/20/2000)

Petition withdrawn at petitioner's request - 5[4]

Esselen Tribe of Monterey County, CA (#131) (11/16/92; withdrawn 11/15/96)
Tuscola United Cherokee Tribe of Florida and Alabama, Inc., FL (#43) (1/19/79; withdrawn 11/24/97)
Costanoan Tribe of Santa Cruz and San Juan Bautista Missions, CA (#210) (5/11/99; notification to BIA 5/10/2000)
Chukchansi Yokotch Tribe of Coarsegold, CA (#99) (5/9/85; enrolled with Picayune Rancheria after 1988; notification to BIA 9/06/00)
Dunlap Band of Mono Indians, CA (1/4/84) (#92; withdrawn 7/2/02)

Group formally dissolved - 1

Tuscarora Indian Tribe, Drowning Creek Res., NC (#73) (2/25/81; group formally dissolved; notification to BIA 02/19/97)

Group removed from process - 1

Federation: Moorish Science Temple of America, Inc. [Ancient Moabites or Moors], MD (#167) (By letter 5/15/97 the BIA determined not to treat this group as a petitioner since it does not seek identification as a tribe of Indians and does not fall within the scope of the 25 CFR Part 83 regulations)

IN LITIGATION - (1)

419 Muwekma Ohlone Tribe of San Francisco Bay, CA [formerly Ohlone/Coastanoan Muwekma Tribe] (#111) (denied eff. 12/16/2002)

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[4] *Never included in official count: SouthEastern Indian Nation, GA (#164) (incomplete letter of intent 1/5/96; withdrawn 11/10/97)*

REGISTER
of
INCOMPLETE PETITIONS[5]
pursuant to 25 CFR 83.10(d)

(as of February 10, 2004)

ADMINISTRATIVE NOTE: These petitioners have submitted documentation and are either awaiting TA letters or preparing responses to OD or TA letters issued by the BIA.

Numbers assigned to petitioners under the 'old regs' have been retained to avoid the confusion that renumbering would create. For the purpose of this Register, petitioners are listed in numerical sequence based on the chronological order in which the Branch of Acknowledgment and Research (BAR) received the letter of intent to petition. Gaps in numbering represent petitions that have already been resolved, are now in active or ready status, and groups which have submitted only a letter of intent to petition.

Total - 68

Petition Number	Name of Petitioner
18	Little Shell Band of North Dakota, ND (11/11/75; doc'n recv'd 7/27/95; TA ltr 11/8/95)
22	Washoe/Paiute of Antelope Valley, CA (7/9/76; doc'n recv'd 3/15/97; TA ltr 3/20/98)
23	Four Hole Indian Organization/Edisto Tribe, SC (12/30/76; partial doc'n recv'd 1983)
24	United Maidu Nation, CA (01/06/77; doc'n recv'd 3/8/95; TA ltr 10/27/95)
27	Cherokee Indians of Georgia, Inc., GA (8/8/77; partial doc'n recv'd 6/11/96; TA ltr 9/24/96)
28	Piscataway-Conoy Confederacy & Sub-Tribes, Inc., MD (2/22/78; doc'n recv'd 6/20/95; TA ltr 11/27/95)
30	Clifton Choctaw, LA (3/22/78; doc'n recv'd c.9/28/90; OD ltr 8/13/91)
32a	Apalachicola Band of Creek Indians, FL (1/22/96; partial doc'n recv'd 1/26/01; awaiting TA ltr)
37	Choctaw-Apache Community of Ebarb, LA (7/2/78; doc'n recv'd 12/10/98; TA ltr 9/18/2002)
55	Delawares of Idaho (6/26/79; doc'n recv'd 6/14/79; OD ltr 9/24/79; partial respn recv'd 12/10/79)
61	Rappahannock Indian Tribe (formerly United Rappahannock Tribe, Inc.), VA (11/16/79; partial doc'n recv'd 9/6/2001)
62	The Upper Mattaponi Indian Tribe, VA (formerly Upper Mattaponi Indian Tribal Association, Inc.) (11/26/79; partial doc'n recv'd 7/2/2001; partial doc'n recv'd 9/6/2001)
63	Haliwa-Saponi, NC (11/27/79; doc'n recv'd 10/19/89; OD ltr 4/20/90)
83	Shasta Nation, CA (5/28/82; doc'n recv'd 7/24/84; OD ltr 5/30/85; respn 6/8/86; 2nd OD ltr 10/22/87; partial respn recv'd 8/21/95)
89	Seminole Nation of FL (aka Traditional Seminole) (8/5/83; doc'n recv'd 11/10/82; OD ltr 10/5/83, lacks genealogy; partial respn recv'd 12/7/83)

[5] *Petitioners have submitted some documentation to the BIA and have either received OD or TA letters indicating that the materials submitted are not yet adequate for the Assistant Secretary to make evaluations of the petitions or are awaiting TA letters. Groups which have submitted partial documentation without letters of intent to petition are not included in this list.*

Register of Incomplete Petitions, cont.

90 North Fork Band of Mono Indians, CA (9/7/83; doc'n recv'd 5/15/90; OD ltr 10/28/91)
93 Nor-El-Muk Nation (formerly Hayfork Band of Nor-El-Muk Wintu Indians of Northern California; formerly Nor-El-Muk Band of Wintu Indians), CA (1/5/84; doc'n recv'd 9/27/88; OD ltr 2/26/90; partial respn recv'd 8/22/95)
95 Indians of Person County, NC (formerly Cherokee-Powhattan Indian Association) (9/7/84; partial doc'n recv'd 3/16/00)
104 Yokayo Tribe of Indians, CA (3/9/87; doc'n recv'd 3/9/87; OD ltr 4/25/88)
108 Snoqualmoo of Whidbey Island, WA (6/14/88; doc'n recv'd 4/16/91; OD ltr 8/13/92)
112 Indian Canyon Band of Coastanoan/Mutsun Indians of CA (6/9/89; doc'n recv'd 7/27/90; OD ltr 8/23/91)
114 Canoncito Band of Navajos, NM (7/31/89; partial doc'n recv'd 1/23/98; partial doc'n recv'd 9/3/98; TA ltr 8/25/2003)
117 Oklewaha Band of Yamassee Seminole Indians, FL (2/12/90; doc'n recv'd 2/12/90; OD ltr 4/24/90)
128 Tsnungwe Council, CA (9/22/92; partial doc'n recv'd 8/8/95; TA ltr 12/4/95 re previous Federal acknowledgment; partial doc'n rec'd 7/2/98)
132 Ohlone/Costanoan-Esselen Nation, CA (12/3/92; partial doc'n rec'd 1/25/95; partial doc'n recv'd 8/23/95; TA ltr 5/21/96; partial resp'n recv'd 5/18/98; partial resp'n recv'd 7/27/98; partial resp'n recv'd 6/16/2000; partial resp'n recv'd 1/23/2001)
135 Swan Creek Black River Confederated Ojibwa Tribes, MI (5/4/93; doc'n recv'd 11/13/2000; awaiting TA ltr)
137 Wintu Tribe, CA (doc'n recv'd 8/25/93; OD ltr 12/15/93; respn recv'd 7/24/2002)
138 Caddo Adais Indians, Inc., LA (9/13/93; doc'n recv'd 11/15/99; TA ltr 9/24/2002)
141 Langley Band of the Chickamogee Cherokee Indians of the Southeastern U.S., AL (4/15/94) (doc'n recv'd 1/11/95; TA ltr 05/08/95)
142 Wyandot Nation of Kansas, KS (5/12/94; doc'n recv'd 4/12/95; TA ltr 3/15/96)
145 Pokanoket Tribe of the Wamapanoag, RI (10/5/94; partial doc'n recv'd 12/11/96; partial doc'n recv'd 6/29/2001; partial doc'n recv'd 10/11/2001; awaiting TA ltr)
146 Grand River Bands of Ottawa Indians, MI (formerly Grand River Band Ottawa Council) (10/16/94; doc'n recv'd 12/8/2000; awaiting TA ltr)
147 Costanoan Ohlone Rumsen-Mutsun Tribe, CA (12/7/94; partial doc'n recv'd 1/26/95; limited TA ltr 3/14/95)
148 Occaneechi Band of Saponi Nation, NC (1/6/95; partial doc'n recv'd 5/8/99)
152 PeeDee Indian Association, Inc., SC (1/30/95; partial doc'n recev'd 11/12/98; limited TA ltr 12/22/98)
153 Pocasset Wampanoag Indian Tribe, MA (2/1/95; partial doc'n recev'd 3/11/95)
158 Fernandeno/Tataviam Tribe, CA (4/24/95; doc'n recv'd 1/16/96; TA ltr 3/3/97)
160 United Tribe of Shawnee Indians, KS (7/3/95; partial doc'n recv'd 11/28/2001 awaiting TA ltr)
161 Monacan Indian Nation (formerly Monacan Indian Tribe of Virginia, Inc.), VA (7/11/95; partial doc'n recv'd 7/2/2001; partial doc'n recv'd 9/18/2001)
162 Montauk Indian Nation aka Montaukett Indian Nation, NY (7/31/95; doc'n recv'd 6/23/98; TA ltr 1/19/99)
166a Talimali Band, The Apalachee Indians of Louisiana (formerly Apalachee Indians of Louisiana), LA (2/5/1996; partial doc'n recv'd 8/29/97; TA ltr 1/20/98; partial doc'n recv'd 2/18/99 and 9/23/99; 2nd TA ltr 12/31/2001)

Register of Incomplete Petitions, cont.

168 Chickahominy Indian Tribe, VA (3/19/1996; partial doc'n recv'd 9/6/2001)
169 Mendota Mdewakanton Dakota Community, MN (4/11/96; partial doc'n recv'd 6/10/97, 6/20/97; TA ltr 12/18/97)
171 Powhatan Renape Nation, NJ (4/12/1996; doc'n recv'd 4/12/96; TA ltr 10/29/96)
173 Western Mohegan Tribe and Nation, NY (1/27/97; doc'n recv'd 1/29/98; TA ltr 9/24/98)
174 Federation of Old Plimoth Indian Tribes, Inc. Circa 1620, MA (5/16/2000; partial doc'n recv'd 8/19/96; partial doc'n recv'd 5/16/00; partial doc'n recv'd 10/18/2000; awaiting TA ltr)
182 Eno-Occaneechi Tribe of Indians, NC (11/24/97; partial doc'n recev'd 2/3/1997; petitioner says not ready for TA)
185 Calusa-Seminole Nation of California (4/28/98; partial doc'n received prior to letter of intent; partial doc'n received 12/2/98; limited TA ltr 3/29/99)
189 Comanche Penateka Tribe, TX (4/3/98; partial doc'n recv'd 3/18/99; TA ltr 10/29/99)
195 Southern Pequot Tribe, CT (7/7/98; partial doc'n recv'd 6/10/99; add'l doc'n recv'd 8/4/2000; TA ltr 7/11/2003)
197 Konkow Valley Band of Maidu, CA (8/20/98; partial doc'n recv'd 10/15/2001)
199 Georgia Band of Chickasaw Indians (formerly Mississippi Band of Chickasaw Indians, MS (9/15/98; partial doc'n recv'd 6/22/2000; awaiting TA ltr)
201 Gabrieleno Band of Mission Indians, CA (11/3/98; partial doc'n recv'd 6/29/99 and 9/10/99; TA ltr 3/10/00; respn recv'd 5/17/02)
207 Pequot Mohegan Tribe, Inc., CT (4/12/99; partial doc'n recv'd 12/27/2000 and 1/10/2001; awaiting TA ltr)
214 The Wilderness Tribe of Missouri, MO (8/16/99; partial doc'n recv'd 4/18/2000; TA ltr 8/26/2002)
223 Honey Lake Maidu, CA (6/1/2000; partial doc'n recv'd 7/2/2001)
227 Cherokees of Lawrence County, Tennessee, aka Sugar Creek Band of the Southeastern Cherokee Council Inc. (SECCI),TN (9/14/2000; partial doc'n recv'd 9/14/00; partial doc'n recv'd 5/3/2002; partial doc'n recv'd 8/8/2002)
228 Wiquapaug Eastern Pequot Tribe, RI (9/15/2000; partial doc'n recv'd 9/15/2000; partial doc'n recv'd 3/29/2001)
231 Avogel Nation of Louisiana, LA (11/13/2000; doc'n recv'd 6/1/2001; awaiting TA ltr)
233 The Western Pequot Tribal Nation of New Haven, CT (11/27/2000; partial doc'n recv'd 7/2/2001; partial doc'n recv'd 2/8/2001)
238 Avogel, Okla Tasannuk, Tribe/Nation, LA (3/19/2001; partial doc'n recv'd 8/17/2000; partial doc'n recv'd 11/15/2000)
239 Schaghticoke Indian Tribe, CT (5/11/2001; partial doc'n recv'd 10/ /2002; awaiting TA ltr)
241 Chickahominy Indians, Eastern Division Inc. (9/6/2001; partial doc'n recv'd 9/6/2001)
243 Phoenician Cherokee II - Eagle Tribe of Sequoyah, AL (9/18/2001; partial doc'n recv'd 12/2/2002)
244 Nansemond Indian Tribal Association, VA (9/20/2001; partial doc'n recv'd 9/6/2001; partial doc'n recv'd 9/26/2001; partial doc'n recv'd 3/8/2002)
250 Unalachtigo Band of Nanticoke-Lenni Lenape Nation (2/1/2002; partial doc'n recv'd 12/5/2001)
253 Hudson River Band (formerly Konkapot Band), NY (4/19/2002; doc'n recv;d 10/15/2002; TA Ltr 7/11/2003)
261 Native American Mohegans, Inc., CT (9/19/2002; partial doc'n recv'd 9/19/2002)

REGISTER
of
LETTERS OF INTENT TO PETITION
pursuant to 25 CFR 83.10(d)
(as of February 10, 2004)

ADMINISTRATIVE NOTE: These petitioners have not submitted any documentation.

Numbers assigned to petitioners under the "old regs" have been retained to avoid the confusion that renumbering would create. For the purpose of this Register, petitioners are listed in numerical sequence based on the chronological order in which the Branch of Acknowledgment and Research (BAR) received the letter of intent to petition. Gaps in numbering represent letters of intent that have already been resolved or are now in incomplete, ready, or active status, or are no longer in contact with the BIA.

Total - 130

Petition Number	Name of Petitioner/Date Letter of Intent Received by BIA
21	Mono Lake Indian Community, CA (7/9/76)
22a	Antelope Valley Paiute Tribe, CA (7/9/76)
33	Delaware-Muncie, KS (6/19/78)
36	Tsimshian Tribal Council, AK (7/2/78)
39	Coree [aka Faircloth] Indians, NC (8/5/78)
40	Nanticoke Indian Association, DE (8/8/78; requested petition be placed on hold 3/25/89)
47	Kern Valley Indian Community, CA (2/27/79)
48	Shawnee Nation U.K.B., IN [formerly Shawnee Nation, United Remnant Band, OH] (3/13/79)
49	Hattadare Indian Nation, NC (3/16/79)
50	North Eastern U.S. Miami Inter-Tribal Council, OH (4/9/79)
53	Santee Indian Organization (formerly White Oak Indian Community), SC (6/4/79)
60	Alleghenny Nation (Ohio Band), OH (11/3/79)
74	Coharie Intra-Tribal Council, Inc., NC (3/13/81)
77	Cherokees of Jackson County, Alabama, AL (9/23/81)
80	Coastal Band of Chumash Indians, CA (3/25/82)
88	Waccamaw Siouan Development Association, Inc., NC (6/27/83; SOL determined ineligible to petition 10/29/89; SOL determined eligible to petition 6/29/95)
94	Christian Pembina Chippewa Indians, ND (6/26/84)
96	San Luis Rey Band of Mission Indians, CA (10/18/84)
97	Wintu Indians of Central Valley, California, CA (10/26/84)
100	Northern Cherokee Tribe of Indians, MO (7/26/85)
100a	Sac River and White River Bands of the Chickamauga Cherokee Indian Nation of AR & MO (9/5/91)
100b	Northern Cherokee Nation of Old Louisiana Terr, MO (2/19/92)
105	Pahrump Band of Paiutes, NV (11/9/87)
106	Wukchumni Council, CA (2/22/88)
107	Cherokees of Southeast Alabama, AL (5/27/88)
109	Choinumni Council, CA (7/14/88)
110	Coastanoan Band of Carmel Mission Indians, CA (9/16/88)
116	Salinan Nation, CA (10/10/89)

Register of Letters of Intent to Petition, cont.

118 Revived Ouachita Indians of Arkansas and America, AR (4/25/90)
119a Meherrin Indian Tribe, NC (8/2/90)
124 Piqua Sept of Ohio Shawnee Indians, OH (4/16/91)
126 Lake Superior Chippewa of Marquette, Inc., MI (12/31/91)
127 Nanticoke Lenni-Lenape Indians, NJ (1/3/92)
129 Mohegan Tribe and Nation, CT (10/6/92)
130 Waccamaw-Siouan Indian Association, SC (10/16/92)
134 Chicora Indian Tribe of SC (formerly Chicora-Siouan Indian People) (2/10/93)
136 Chukchansi Yokotch Tribe of Mariposa, CA (5/25/93)
139 Salinan Tribe of Monterey County, CA (11/15/93)
140 Gabrielino/Tongva Tribal Council, CA (3/21/94)
140a Gabrielino/Tongva Indians of California Tribal Council (8/14/97)
143 Costanoan-Rumsen Carmel Tribe, CA (8/24/94)
144 Chicora-Waccamaw Indian People, SC (10/5/94)
149 Accohannock Indian Tribal Association, Inc., MD (1/18/95)
150 Ani-Stohini/Unami Nation, VA (7/8/94)
151 Cowasuck Band-Abenaki People, MA (1/23/95)
155 Amonsoquath Tribe of Cherokee, MO (2/17/95)
157 Mattaponi Tribe (Mattaponi Indian Reservation), VA (4/4/95)
159 Wadatkuht Band of the Northern Palutes of the Honey Lake Valley, CA (1/26/95)
163 Ish Panesh United Band of Indians (formerly Oakbrook Chumash, aka San Fernando Band of Mission Indians) (5/25/95; partial doc'n recv'd 9/ /98, not certified by governing body)
165 Tinoqui-Chalola Council of Kitanemuk and Yowlumne Tejon Indians, CA (letter of intent to BIA dated 12/14/95, recv'd 1/16/96 because of Federal furlough)
166 Apalachee Indian Tribe, LA (1/22/96)
170 Jumano Tribe (West Texas) (formerly The People of LaJunta (Jumano/ Mescalero)), TX (3/26/97)
175 Ani Yvwi Yuchi, CA (7/31/96)
176 Coastal Gabrieleno Diegueno Band of Mission Indians, CA (3/18/97)
177 Chilcoot Kaagwaantaan Clan, AK (4/22/97)
178 Saponi Nation of Ohio, OH (8/4/97)
179 The Nehantic Tribe and Nation, CT (9/5/97)
180 Confederated Tribes - Rogue -Table Rock & Associated Tribes, Inc., OR (6/19/97)
181 Tap Pilam: The Coahuiltecan Nation, TX (12/2/97)
183 Chi-cau-gon Band of Lake Superior Chippewa of Iron County, MI (2/11/98)
184 Beaver Creek Band of Pee Dee Indians, SC (1/26/98)
186 Mackinac Bands of Chippewa and Ottawa Indians, MI (5/13/1998)
187 Pokanoket/Wampanoag Federation/Wampanoag Nation/Pokanoket Tribe/And Bands, RI (1/5/98).
188 Montaukett Tribe of Long Island, NY (3/16/98)
190 The Arkansas Band of Western Cherokee (formerly Western Arkansas Cherokee Tribe, AR (4/7/98)
191 Western Cherokee Nation of Arkansas and Missouri, AR (5/1/98)
192 Cherokee Nation West of MO & AR (formerly Cherokee Nation West - Southern Band of the Eastern Cherokee Indians of Missouri and Arkansas), MO (5/11/98)
193 The Displaced Elem Lineage Emancipated Members Alliance aka DELEMA, CA (5/11/98)
194 Tribal Council of the Carrizo/Comecrudo Nation of Texas, TX (7/6/98)
196 Shawnee Nation, Ohio Blue Creek Band of Adams County, OH (8/5/98)

Register of Letters of Intent to Petition. cont.

198 Piedmont American Indian Association, SC (8/20/98)
200 Seaconke Wampanoag Tribe, RI (10/29/98)
202 T'si-akim Maidu, CA (11/16/98)
204 Lost Cherokee of Arkansas & Missouri, AR (2/10/99)
205 Cherokee Nation of Alabama, AL (2/16/99)
206 Knugank Tribal Council, AK (1/7/99)
208 Yamassee Native American Moors of the Creek Nation, GA (4/27/99)
209 Sierra Foothill Wuksachi Yokuts Tribe, CA (5/11/99)
211 Lipan Apache Band of Texas, Inc., TX (5/26/99)
212 Pee Dee Indian Nation of Beaver Creek, SC (6/16/99)
213 Poquonnock Pequot Tribe, CT (6/6/99)
216 The Old Settler Cherokee Nation of Arkansas, AR (9/17/99)
217 Ozark Mountain Cherokee Tribe of Arkansas and Missouri, MO (10/19/99)
219 Ooragnak-Indian Nation, MI (12/1/99)
220 Saponi Nation of Missouri, MO (12/14/99)
221 Maconce Village Band of Ojibwa, MI (3/7/2000)
222 Traditional Choinumi Tribe, CA (3/29/2000)
224 United Cherokee Indian Tribe of Virginia, VA (7/31/2000)
225 Cherokee River Indian Community, AL (8/3/2000)
226 Wicocomico Indian Nation, VA (8/28/2000)
229 North Valley Yokut Tribe, CA (9/22/2000)
230 Tejon Indian Tribe, CA (10/27/2000)
232 Little Owl Band of Central Michigan Indians, MI (11/27/2000)
234 Rappahannock Indian Tribe, Inc., VA (1/31/2001)
235 Lenape Nation, PA (5/16/2000)
236 Lower Eastern Ohio Mekojay Shawnee, OH (3/5/2001)
237 The Chickamauga Notowega Creeks, NY (3/5/2001)
240 Calaveras Band of Miwuk Indians, CA (7/31/2001)
242 Xolon Salinan Tribe, CA (9/18/2001)
245 Schaghticoke Tribe (Reed Family), CT (9/27/2001)
246 United Cherokee Ani-Yun-Wiya Nation (formerly United Cherokee Intertribal), AL (11/08/2001)
247 Western Cherokee of Arkansas/Louisiana Territories, MO (4/21/2001)
248 Barbareno/Ventureno Band of Mission Indians, CA (1/17/2002)
249 Dumna Wo-Wah Tribal Government (formerly Dumna Tribe of Millerton Lake), CA (1/22/2002)
251 The Golden Hill Paugussett Tribal Nation, CT (2/8/2002)
252 Utekcak Native Tribe, AK (2/13/2002)
254 Pamaque Clan of Coahuila y Tejas Spanish Indian Colonial Missions Inc., TX (4/23/2002)
255 The Arista Indian Village, TX (5/21/2002)
256 Wesget Sipu Inc., ME (6/4/2002)
257 Paugussett Tribal Nation of Waterbury, Connecticut, CT (7/3/2002)
258 Muskegon River Band of Ottawa Indians, MI (7/26/2002)
259 Chaloklowa Chickasaw Indian People, SC (8/14/2002)
260 Tsalagi Nation Early Emigrants 1817, NC (7/30/2002)
262 Ohatchee Cherokee Tribe Nation of New York and Alabama, NY (12/16/2002)
263 Piro/Manso/Tiwa Tribe of Guadalupe Pueblo, NM (12/17/2002)
264 Cheroenhaka (Nottoway) Indian Tribe, VA (12/30/2002)
265 United Mascogo Seminole Tribe of Texas, TX (12/31/2002)
266 Avoyel Taensa Tribe/Nation of Louisiana, Inc. (1/9/2003)
267 Wyandot of Anderdon Nation, MI (1/ 21/ 2003)
268 Central Tribal Council, AR (1/ 21/ 2003)
269 Pine Hill Saponi Tribal Nation, OH (10/1/2002)

Register of Letters of Intent to Petition, cont.

270 Coweta Creek Tribe, AL (2/12/2003)
271 United Band of the Western Cherokee Nation, OK (3/14/2003)
272 The Chiricahua Tribe of California, CA (4/24/2003)
273 Muhheconnuck and Munsee Tribes, WI (6/4/2003)
274 Wappinger Tribal Nation, RI (7/7/2003)
275 Digueno Band of San Diego Mission Indians, CA (10/15/2003)
276 Choctaw Allen Tribe, CA (10/20/2003)
277 Arkansas White River Cherokee, TN (10/22/2003)

On hold awaiting letter of intent signed by full council:
172 Ahon-to-ays Ojibwa Band, MT (2/1/98 council)

Discrepancy between assigned petition numbers and the total number of petitions is caused by splinter groups which have received 'a' and 'b' designations.

Groups that at one time filed a letter of intent to petition, but are no longer in contact with the BIA:[6]

Total - 9

46 Kah-Bay-Kah-Nong (Warroad Chippewa), MN (2/12/79)
64 Consolidated Bahwetig Ojibwas and Mackinac Tribe, MI (12/4/79)
98 Wintoon Indians, CA (10/26/84)
122 Etowah Cherokee Nation, TN (1/2/91)
123 Upper Kispoko Band of the Shawnee Nation, IN (4/10/91)
130 Waccamaw-Siouan Indian Association, SC (10/16/92)
133 Council for the Benefit of Colorado Winnebagos, CO (1/26/93)
141 The Langley Band of the Chickamogee Cherokee Indians of the Southeastern United States, AL (4/20/94)
156 Katalla-Chilkat Tlingit Tribe of Alaska, AK (2/2/95; doc'n recv'd 3/6/95)

[6] As of the autumn of 1997, the BIA had not heard from these groups for at least two years. Certified letter requesting confirmation of petitioner status sent October 14997; returned by Post Office as undeliverable. These groups may return to petitioning status simply by contacting the BIA at BAR. Three of the groups placed in this category in 1997 have done so.

Legislative Action Required[7]

Total - 6

34 Hatteras Tuscarora Indians, NC (6/24/78)
44 Cherokee Indians of Robeson and Adjoining Counties, NC (2/1/79)
65 Lumbee Regional Development Association (LRDA/Lumbee), NC (1/7/80)
91 Cherokee Indians of Hoke County, Inc., NC (aka Tuscarora Hoke County) (9/20/83)
102 Tuscarora Nation of North Carolina, NC (11/19/85)
215 Tuscarora Nation East of the Mountains, NC (9/8/99; partial doc'n rec'vd 8/30/99)

Prepared by:

Office of Federal Acknowledgment
Assistant Secretary - Indian Affairs
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[7]Cases requiring legislation to permit processing under 25 CFR 83 - 5 (inactive). Determined ineligible to petition, SOL opinion of 10/23/1989.

Memorandum April 20, 2004

TO: Senate Indian Affairs Committee
Attention: Paul Moorehead

FROM: Roger Walke
Specialist in American National Government
Domestic Social Policy Division

SUBJECT: **Indian Tribe Recognition: Status of Indian Groups in the Federal Acknowledgment Process**

This memorandum responds to your request for data on the current status of Indian[1] groups petitioning for federal acknowledgment through the process administered by the Department of the Interior's Assistant Secretary — Indian Affairs through the Office of Federal Acknowledgment (OFA),[2] as we discussed. The tables below summarize the number and percentages of petitioners at each step of the OFA process.

The federal acknowledgment process is embodied in the *Code of Federal Regulations* at title 25, part 83. Through this process, a group claiming to be Indian may, if it meets the regulatory criteria and follows the steps laid out in the regulations, be officially recognized as an Indian tribe, with all attendant powers, privileges, benefits, and responsibilities. A CRS report briefly describing the OFA process is attached.

While a petitioning group may begin by sending a letter to the OFA stating its intent to petition for recognition, the OFA does not start its consideration of the petitioner until the group submits some documentation that it meets the regulatory criteria. Of all petitioners who have ever sent a letter of intent to OFA or its predecessor (294 petitions), nearly half (139, or 47%) have sent in no documentation. **Tables 1 and 2** therefore distinguish not only among the various steps of the OFA process, and between petitions resolved or not resolved in the OFA process, but also between petitions on which the OFA process may commence

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[1] In this memorandum, the term "Indian" refers to American Indians and Alaska Natives (the latter term includes Eskimos [Inuit or Yupik], Aleuts, and American Indians in Alaska).

[2] The federal acknowledgment process was formerly administered by the department through the Bureau of Indian Affairs (BIA) and its Branch of Acknowledgment and Research (BAR). BAR functions and staff were transferred to OFA in the Assistant Secretary's office during the BIA reorganization, effective Apr. 21, 2003.

— that is, those who have submitted some documentation — and those on which it may not yet start.

The source for the tables is the most recent version of the OFA table, "Summary Status of Acknowledgment Cases," a copy of which is attached.

Please call me at 707-8641 if you have any questions regarding this request.

Attachment

Table 1. Status of Petitioners for Federal Acknowledgment as Indian Tribes: Number of Petitioners, by Step, as of February 10, 2004

Step in Federal Acknowledgment Process (*Note*: steps in *italics* require *petitioner* action)	Number of petitioners	
Petitions not resolved by Office of Federal Acknowledgment (OFA) or other federal action	**237**	
Petitions on which OFA process may not start	***145***	
*Letters of Intent to Petition with **no documentation** submitted*	*139*	
Letter of Intent: active petitioner		*130*
Letter of Intent: inactive petitioner[a]		*9*
Letter of Intent: ineligible petitioner requiring congressional action[b]	*6*	
Petitions on which OFA process may start	**92**	
Petitioner Documenting Petition with OFA Technical Assistance[c]	*68*	
Documented Petitions Ready for Active Consideration	13	
Documented Petitions under Active Consideration	9	
Active Consideration: Proposed Findings		3
Active Consideration: Petitioner Responding to Proposed Finding		*2*
Active Consideration: Final Determination by AS/IA in process		4
Appeals within Interior Department of AS/IA's final determination[d]	2	
Petitions resolved by OFA or other federal action	**57**	
Resolved within OFA process	**45**	
AS/IA: acknowledged via OFA process[e]	16	
Litigation in federal court versus final determination to grant recognition		0
AS/IA: denied acknowledgment via OFA process	19	
Litigation in federal court versus final determination to deny recognition		1
AS/IA: other resolution within OFA process: petitions withdrawn; group dissolved; group removed from process	10	
Resolved outside OFA process	**12**	
AS/IA letter: recognition confirmed	1	
AS/IA determination: part of recognized tribe	1	
Congress: acknowledged/restored	10	
Grand Total: Petitions Resolved and Not Resolved	**294**	

Abbreviations: AS/IA = Assistant Secretary–Indian Affairs
OFA = Office of Federal Acknowledgment

Source: U.S. Department of the Interior, Office of Federal Acknowledgment, "Summary Status of Acknowledgment Cases (as of Feb. 10, 2004)," unpublished table available from the Bureau of Indian Affairs, transmitted Feb. 11, 2004.

a. Includes groups that at one time filed a Letter of Intent to Petition but are no longer in contact with OFA or BIA.
b. Includes Lumbee and five other North Carolina Indian petitioners determined by an Interior Solicitor opinion (Oct. 23, 1989) to be ineligible to petition because of P.L. 84-570 (Act of June 7, 1956; 70 Stat. 254).
c. Both petitioners and OFA take actions in this step.
d. Includes Eastern Pequot Indians and Paucatuck Eastern Pequot Indians: final determination to recognize two tribes as single Historic Eastern Pequot Tribe is under appeal before Interior Board of Indian Appeals. Total does not include Schaghticoke Tribal Nation final recognition determination (Jan. 29, 2004), which was appealed after Feb. 10, 2004.
e. Includes Schaghticoke Tribal Nation final recognition determination (Jan. 29, 2004).

Table 2. Status of Petitioners for Federal Acknowledgment as Indian Tribes: Percent of Petitioners, by Step, as of February 10, 2004

Step in Federal Acknowledgment Process (*Note*: steps in *italics* require *petitioner* action)	Percent of unresolved petitions: on which OFA may not act	Percent of unresolved petitions: on which OFA may act	Percent of unresolved petitions: total	Percent of resolved petitions	Percent of grand total of all petitions
Petitions not resolved by Office of Federal Acknowledgment (OFA) or other federal action	—	—	**100.0%**	—	**80.6%**
Petitions on which OFA process may not start	***100.0%***	—	***61.2%***	—	***49.3%***
*Letters of Intent to Petition with **No Documentation** Submitted*	*95.9%*	—	*58.6%*	—	*47.3%*
Letter of Intent: active petitioner	*(89.7%)*	—	*(54.9%)*	—	*(44.2%)*
Letter of Intent: inactive petitioner	*(6.2%)*	—	*(3.8%)*	—	*(3.1%)*
Letter of Intent: ineligible petitioner requiring congressional action	*4.1%*	—	*2.5%*	—	*2.0%*
Petitions on which OFA process may start	—	**100.0%**	**38.8%**	—	**31.3%**
Petitioner Documenting Petition with OFA Technical Assistance	—	*73.9%*	*28.7%*	—	*23.1%*
Documented Petitions Ready for Active Consideration	—	14.1%	5.5%	—	4.4%
Documented Petitions under Active Consideration	—	9.8%	3.8%	—	3.1%
Active Consideration: Proposed Findings	—	*3.3%*	*1.3%*	—	1.0%
Active Consideration: Petitioner Responding to Proposed Finding	—	*2.2%*	*0.8%*	—	*0.7%*
Active Consideration: Final Determination by AS/IA in process	—	4.3%	1.7%	—	1.4%
Appeals within Interior Department of AS/IA's final determination	—	2.2%	0.8%	—	0.7%
Petitions Resolved by OFA or other federal action	—	—	—	**100.0%**	**19.4%**
Resolved within OFA process	—	—	—	**78.9%**	**15.3%**
AS/IA: acknowledged via OFA process	—	—	—	28.1%	5.4%
Litigation in federal court versus final determination to grant recognition	—	—	—	0.0%	0.0%
AS/IA: denied acknowledgment via OFA process	—	—	—	33.3%	6.5%
Litigation in federal court versus final determination to deny recognition	—	—	—	1.8%	0.3%

Step in Federal Acknowledgment Process (*Note*: steps in *italics* require *petitioner* action)	Percent of unresolved petitions: on which OFA may not act	on which OFA may act	total	Percent of resolved petitions	Percent of grand total of all petitions
AS/IA: other resolution in OFA process: petitions withdrawn; group dissolved; group removed from process	—	—	—	17.5%	3.4%
Resolved outside OFA process	—	—	—	**21.1%**	**4.1%**
AS/IA letter: recognition confirmed	—	—	—	1.8%	0.3%
AS/IA determination: part of recognized tribe	—	—	—	1.8%	0.3%
Congress: acknowledged/restored	—	—	—	17.5%	3.4%
Grand Total: Petitions Resolved and Not Resolved	—	—	—	—	**100%**

Abbreviations: AS/IA = Assistant Secretary–Indian Affairs
OFA = Office of Federal Acknowledgment

Source: **Table 1**.