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H.R. 512, TO REQUIRE THE PROMPT REVIEW BY THE SECRETARY OF THE INTERIOR OF THE LONGSTANDING PETITIONS FOR FEDERAL RECOGNITION OF CERTAIN INDIAN TRIBES.

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

Thursday, February 10, 2005

Serial No. 109-1

Printed for the use of the Committee on Resources

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

U.S. GOVERNMENT PRINTING OFFICE

98-700 PS WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
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C O N T E N T S

	Page
Hearing held on Thursday, February 10, 2005	1
Statement of Members:	
Kildee, Hon. Dale, a Representative in Congress from the State of Michigan	2
Prepared statement of	3
Pombo, Hon. Richard W., a Representative in Congress from the State of California	1
Prepared statement of	2
Statement of Witnesses:	
Gumbs, Lance A., Tribal Trustee, Shinnecock Indian Nation	26
Prepared statement of	28
Nazzaro, Robin M., Director, Natural Resources and Environment, U.S. Government Accountability Office (GAO)	8
Prepared statement of	9
Olsen, Michael D., Acting Principal Deputy Assistant Secretary--Indian Affairs, U.S. Department of the Interior	4
Prepared statement of	6
Sachse, Harry R., Partner, Sonosky, Chambers, Sachse, Endreson and Perry, LLP	22
Prepared statement of	24
Additional materials supplied:	
Roybal, Hon. Edward, II, Governor, Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, Las Cruces, New Mexico, Statement submitted for the record	35

LEGISLATIVE HEARING ON H.R. 512, TO REQUIRE THE PROMPT REVIEW BY THE SECRETARY OF THE INTERIOR OF THE LONGSTANDING PETITIONS FOR FEDERAL RECOGNITION OF CERTAIN INDIAN TRIBES, AND FOR OTHER PURPOSES.

Thursday, February 10, 2005
U.S. House of Representatives
Committee on Resources
Washington, D.C.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 1324, Longworth House Office Building, Hon. Richard W. Pombo [Chairman of the Committee] presiding.

Present: Representatives Pombo, Cubin, Hayworth, Renzi, Nunes, Brown, Fortuno, Jindal, Kildee, Pallone, Napolitano, Tom Udall of New Mexico, Herseth, and Boren.

STATEMENT OF HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The CHAIRMAN. The Committee on Resources will come to order. The Committee is meeting today to hear testimony on H.R. 512.

Under Rule 4(g) of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. This will allow us to hear from our witnesses sooner and help Members to keep to their schedules. Therefore, if other Members have statements, they can be included in the hearing record under unanimous consent.

The purpose of H.R. 512, which I sponsored, is to clear the Interior Department's decks of some longstanding petitions by Indian groups seeking Federal recognition.

Recognition establishes a formal relationship between a tribe and the United States. For this reason, recognizing a tribe has major implications for the Federal Government, for the members of the recognized tribe, and for other tribes, States, and communities. Many tribes historically are recognized under treaties, statutes, and executive orders.

In 1978, the modern recognition process was established by rule in the Bureau of Indian Affairs. It was supposed to provide an objective, rational means of judging whether a group is really a tribe that has been in continuous existence since the first arrival of

European settlers. It was also created in order to handle a large number of petitions that were pending or expected to be filed.

The problem addressed by H.R. 512 is the BIA process has worked much slower than expected. Many Indian groups have waited decades to go through this process and they are still waiting. Ten petitions ready to be considered were filed before 1988. Some of these have languished without a decision for years.

The Committee held an oversight hearing on this problem last year and I later introduced H.R. 5134. With the cooperation of our Ranking Democrat, Mr. Rahall, the Committee quickly reported it.

H.R. 512 is a reintroduction of that bill. Making a decision on these longstanding petitions is a necessary first step as the Committee looks into broader reforms of the recognition process, which I intend to pursue this year. In this vein, I intend to hold more hearings on recognition, including a hearing on this bill in Mashpee, Massachusetts, the location of a petitioner that has waited many years for a decision on his petition.

With that, I look forward to hearing from today's witnesses.

[The prepared statement of Chairman Pombo follows:]

Statement of The Honorable Richard W. Pombo, Chairman, Committee on Resources

The purpose of H.R. 512, which I've sponsored, is to clear the Interior Department's decks of some long-standing petitions by Indian groups seeking federal recognition.

Recognition establishes a formal relationship between a tribe and the United States. For this reason, recognizing a tribe has major implications for the federal government, for the members of the recognized tribe, and for other tribes, states, and communities. Many tribes historically are recognized under treaties, statutes, and executive orders.

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The problem addressed by H.R. 512 is the BIA process has worked much slower than expected. Many Indian groups have waited decades to go through this process...and they're still waiting.

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H.R. 512 is a re-introduction of that bill. Making a decision on these long-standing petitions is a necessary first step as the Committee looks into broader reforms of the recognition process, which I intend to pursue this year.

In this vein, I intend to hold more hearings on recognition including a hearing on this bill in Mashpee, Massachusetts, the location of a petitioner that has waited many years for a decision on its petition.

With that, I look forward to hearing the testimony of today's witnesses.

The CHAIRMAN. I would now like to recognize Mr. Kildee for an opening statement.

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

Mr. KILDEE. Thank you, Mr. Chairman. I am pleased that you scheduled this hearing today on H.R. 512, a bill that you sponsored

to expedite the administrative process by which Indian tribes can obtain recognition of their sovereignty.

We have all heard the complaints over the years about the current administrative process, that the Office of Federal Acknowledgment is underfunded, that the process is too slow as it can take decades before a petition is reviewed—I have been in Congress 29 years and some of these petitions were here when I got here—and that the process is too expensive for tribes that have very little resources.

Previous attempts to revamp the Federal recognition process have failed in the past because of concerns raised by some that doing so would lead to more Indian gaming. This, I want to strongly state, is not a question of gaming. The only question, of course, that should be looked at here is does this tribe, indeed, have the retained sovereignty that is stated in Article 1, Section 8 of the Constitution and reaffirmed by the decisions of the Supreme Court starting with John Marshall. That is the only thing that should be considered and not the question of whether this will expand gaming. It is a question of whether these tribes have that retained sovereignty.

So I look forward to hearing from the witnesses today, and again, I thank Chairman Pombo for his deep interest and concern with this.

[The prepared statement of Mr. Kildee follows:]

Statement of The Honorable Dale Kildee, a Representative in Congress from the State of Michigan

Mr. Chairman, I am pleased that you scheduled this hearing today on H.R. 512, a bill that you sponsored to expedite the administrative process by which Indian tribes can obtain Federal recognition.

We have all heard the complaints over the years about the current administrative process—

- that the Office of Federal Acknowledgment is underfunded;
- that the process is too slow as it can take decades before a petition is reviewed; and
- that the process is too expensive.

Previous attempts to revamp the Federal recognition process have failed in the past because of concerns raised by some that doing so would lead to more Indian gaming.

But such concern does not remove the fact that the Federal recognition process needs to be improved.

I look forward to hearing from the witnesses today. Thank you.

The CHAIRMAN. Thank you, Mr. Kildee.

I would now like to introduce our first panel of witnesses, Mr. Michael D. Olsen and Robin Nazzaro.

Mike is the Acting Principal Deputy Assistant Secretary for Indian Affairs of the Interior Department. He is accompanied by R. Lee Fleming, Director of the Office of Federal Acknowledgment.

Ms. Nazzaro is a Director with the Natural Resources and Environment team of the GAO. She is accompanied by Jeff Malcolm, the Assistant Director of the same GAO team.

Let me take this time to remind all of today's witnesses that under our Committee Rules, oral statements are limited to 5 minutes. Your entire statements will appear in the record.

If you could join us at the witness table and remain standing for a second to take the oath. Please just stand and raise your right hand, those that are testifying.

Do you solemnly swear or affirm under the penalty of perjury that the statements made and responses given will be the whole truth and nothing but the truth, so help you, God?

Mr. OLSEN. I do.

Mr. FLEMING. I do.

Ms. NAZZARO. I do.

Mr. MALCOLM. I do.

The CHAIRMAN. Thank you. Please sit down. Let the record show they all answered in the affirmative.

Welcome to the Committee. Mr. Olsen, it is good to see you back. We are going to begin with you when you are ready.

STATEMENT OF MICHAEL OLSEN, ACTING PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY R. LEE FLEMING, DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. OLSEN. Thank you. Good morning, Mr. Chairman and members of the Committee. My name is Mike Olsen. I am the Acting Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. It is a pleasure to be back here before the Committee again.

I am pleased to be here today to provide the administration's position on H.R. 512. We thank the Chairman for his interest in Federal acknowledgment and look forward to working with the Committee on ways to streamline the process.

The Federal acknowledgment regulations govern the Department's process for determining which groups are Indian tribes under Federal law. In order to meet this standard, petitioning groups must demonstrate that they meet each of seven mandatory criteria listed in the Department's regulations, and we have set those out in our written statement and I won't go through each one of those.

The recognition of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment carries with it certain immunities and privileges. It enables tribes to participate in Federal programs. And it establishes a government-to-government relationship between the United States and a tribe.

These decisions have significant impacts on the petitioning group as well as on the surrounding community. Federal acknowledgment must, therefore, 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, and timely.

Congress has in the past considered several bills to modify the criteria for groups seeking acknowledgment as Indian tribes or to remove the process altogether from the Department. While the Department does not support enactment of H.R. 512, we do agree that improvements could be made to provide for more timely

decisions while maintaining integrity and transparency in the Federal acknowledgment process.

We are prepared, for example, to examine whether the Department possesses and should use regulatory authority to establish deadlines, like for the submission of letters of intent or for the submission of fully documented petitions. Any rule of timeliness and repose would provide a clear timeframe for petitioner submissions as well as help the Department better manage and coordinate its available resources.

Now, if I could, I would just like to describe some of the specific concerns that the Department has with H.R. 512.

The legislation would require the Secretary to publish in the Federal Register a proposed finding for each so-called eligible tribe, as that term is defined in the legislation, within 6 months of enactment of the bill. The bill also requires the Secretary to publish a final determination for each eligible tribe within 1 year. These requirements, we feel, could result in those currently on the active consideration list having to move down in the queue so that the eligible tribes can move in ahead of them in the process. Moreover, because groups have 90 days from the date of enactment to op into the expedited process, the timeframe for decisions could potentially leave the Department only 3 months to make a proposed finding, and then as few as 6 months to make a final determination.

We are concerned that the timeframes established by the bill would not allow the Office of Federal Acknowledgment adequate time to thoroughly review a petition, thereby lowering the acknowledgment standards. The administrative record for an acknowledgment petition, as you know, is voluminous. Some completed petitions have been in excess of 30,000 pages. One year to review ten petitions consisting of thousands of pages, coupled with the other responsibilities of the acknowledgment staff, is, we feel, unrealistic.

We are also concerned that the timeframes established by the bill may limit the role of interested parties by not allowing them the opportunity to review and comment on petitions. Acknowledgment decisions impact local communities, States, and other federally recognized tribes. We recommend extending the deadlines to allow all potentially interested parties an opportunity to participate in the acknowledgment process.

Finally, we are concerned about the bill's provision for the extensive involvement of the courts in the acknowledgment process. Under H.R. 512, if the Department does not comply with the required timeframes, a Federal District Court would assume the decisionmaking role. The bill proposes to allow the court to make its own determination on the merits based on the existing criteria rather than review the Department's action.

We are concerned that diverse courts reviewing assorted petitions will result in national inconsistency and turn the process into an adversarial one. We believe it is more appropriate for the court to review the Department's determination, which is based on an evaluation by professional anthropologists, genealogists, and historians, rather than take on additional fact finding responsibility.

We are also concerned, I will note, that a judicial proceeding would exclude public participation in the acknowledgment process.

Thank you again for the opportunity to testify. We as the administration look forward to working with the Committee to improve the acknowledgment process and I will be happy to answer any of your questions.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Olsen follows:]

Statement of Michael D. Olsen, Acting Principal Deputy Assistant Secretary—Indian Affairs, Office of the Assistant Secretary--Indian Affairs, U.S. Department of the Interior

Mr. Chairman and members of the Committee, my name is Michael Olsen and I am the Acting Principal Deputy Assistant Secretary—Indian Affairs. I am pleased to be here today to discuss H.R. 512, a bill "[T]o require the prompt review by the Secretary of the Interior of the longstanding petitions for Federal recognition of certain Indian tribes, and for other purposes." We thank the Chairman for his interest in this important issue. We recognize Congress has plenary authority over this issue and look forward to working with this Committee on coming up with solutions on how to better streamline the Acknowledgment process.

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. The Department's regulations are intended to apply to groups that can establish a substantially continuous tribal existence and that 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.

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.

Congress has considered several bills in the past to modify the criteria for groups seeking acknowledgment as Indian tribes or to remove the process altogether from the Department. While some parties seek to change the administrative process by speeding it up, others believe that doing so will undermine the factual basis for the decision. For example, 20 Attorneys General collectively stated their concern that quality in the review process should not be sacrificed in the name of expediency and that "all parties benefit from a careful and comprehensive review of the evidence on each petition." Although the Department supports the current Federal acknowledgment criteria, we do recognize that improvements could be made in the acknowledgment process to encourage more timeliness and increased transparency of both the Department and the applicant. While the Department does not support enactment of H.R. 512, the Department agrees that greater time sensitivity needs to be added to the principles of integrity and transparency in the federal recognition process.

The Department supports a more timely decision-making acknowledgment process, but does not believe that a thorough factual review should be forfeited merely to advance longstanding petitions. The Department is prepared to examine whether it has and should use regulatory authority to institute rules of timeliness and repose which could, for example, establish a deadline for a petitioner to submit a letter of intent for federal recognition as well as a deadline for submitting a fully documented petition. After a group files a letter of intent, and the Assistant Secretary acknowledges the receipt of that letter (usually within 30 days), it is often the case that the group does not come forward with a documented petition for several years, some up to 20 years. Currently, there are 71 incomplete petitions where a group has only submitted partial documentation. In addition, there are 134 letters of intent to petition, some dating back to 1976, that have not submitted any documentation. An additional ten groups have filed letters of intent and are no longer in contact with OFA. Rules of timeliness and repose would provide a clear timeframe for petitioners' submissions of final documented petitions with supporting evidence as well as help the Department better manage and coordinate its available resources.

The recognition of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables tribes to participate in federal programs and establishes a government-to-government relationship between the United States and the tribe. Acknowledgment carries with it certain immunities and privileges, including exemptions from state and local jurisdiction and the ability to undertake casino gaming. The Department believes that the Federal acknowledgment process set forth in 25 C.F.R. Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship.

These decisions have significant impacts on the petitioning group as well as on the surrounding community. Federal acknowledgment must, therefore, 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, and timely.

Next, I would like to discuss some of the particular concerns the Department has with H.R. 512.

H.R. 512 would require the Secretary to publish in the Federal Register a proposed finding for each "eligible tribe" within six months of enactment of the bill. Eligible tribes are those that have made an initial application for recognition to the Department as of October 17, 1988 and are listed on the Ready, Waiting for Active Consideration list as of July 1, 2004. This may result in those on the Active Consideration list, which is a different list, being bypassed by these groups. It also requires the Secretary to publish a final determination with regard to each eligible Tribe within one year after enactment of the legislation. In addition, the Department would have to notify groups within 45 days that they may enter into this expedited process. The groups would have 90 days from the date of enactment to decide if they wanted to opt-in to this process. This timeframe could potentially leave the Department one and a half months to make a proposed finding and then perhaps only six months to make a final determination.

We are concerned that the timeframes established by the bill would not allow the Office of Federal Acknowledgment (OFA) adequate time to thoroughly review a petition and, thus, may result in the acknowledgment standards being lowered. The administrative record for an acknowledgment petition is voluminous. Some completed petitions have been in excess of 30,000 pages. One year to review potentially 10 petitions (the approximate number of those qualifying under the bill) consisting of thousands of pages is simply unrealistic. We recognize that the acknowledgment process is time consuming. These vast applications, coupled with the staff having to respond to FOIA requests and litigation needs often lengthens the process considerably. We understand this is a frustration for many groups seeking acknowledgment, but OFA reviews petitions and responds to FOIA and litigation deadlines as expeditiously as it can.

We are also concerned that the timeframes established by the bill may limit the role of interested parties by not allowing them ample opportunity to review and comment on petitions. Acknowledgment decisions impact not only the groups seeking tribal status, but also the local communities, states, and federally recognized tribes. We recommend extending the deadlines to allow all potentially interested parties an opportunity to participate in the acknowledgment process.

Finally, we are concerned with acknowledgment decisions being made by the courts rather than by Congress or the Department. Under H.R. 512, if the Department does not make a finding within the timeframe set forth, a federal district court would assume that role and make the acknowledgment decision. The bill proposes

to allow the court to make its own determination on the merits, based on the existing criteria, rather than review the Department's action. We are concerned that various courts reviewing petitions will result in a lack of uniformity across the nation and turn the process into an adversarial one. We believe it is more appropriate for the court to review the Department's determination that is based on an evaluation that is based on an evaluation by professional anthropologists, historians, and genealogists, rather than take on additional fact-finding responsibility. We are also concerned that a judicial proceeding would exclude public participation in the acknowledgment process.

Thank you for the opportunity to testify. While we cannot support H.R. 512, we look forward to working with the Committee on ways we can improve the Acknowledgment process. I will be happy to answer any questions you may have.

The CHAIRMAN. I now recognize Ms. Nazzaro.

STATEMENT OF ROBIN M. NAZZARO, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; ACCOMPANIED BY JEFF MALCOLM, ASSISTANT DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. NAZZARO. Thank you, Mr. Chairman and members of the Committee. I am pleased to be here today to discuss the Bureau of Indian Affairs' regulatory process for federally recognizing Indian tribes.

There are currently 562 recognized tribes in the United States with about 1.8 million members. In addition, several hundred groups are currently seeking recognition.

BIA's regulatory process for recognizing tribes was established in 1978. The process requires groups that are petitioning for recognition to submit evidence that they meet certain criteria, basically, that the group has continuously existed as an Indian tribe since historic tribes. Critics of the process claim that it produces inconsistent decisions and it takes too long.

In November 2001, we reported on BIA's regulatory recognition process, including the timeliness of the process and recommended ways to improvement. My testimony today is based on that report and the actions that the Department of the Interior's Office of Federal Acknowledgment has taken to improve the timeliness of the recognition process.

In summary, in November 2001, we reported that BIA's tribal recognition process was ill-equipped to provide timely responses to tribal petitions for Federal recognition. BIA's regulations outline a process for evaluating a petition that was designed to take about 2 years. However, the process was hampered by limited resources, a lack of timeframes, and ineffective procedures for providing information to interested third parties. As a result, there were a growing number of completed petitions waiting to be considered.

In 2001, BIA officials estimated that it could take up to 15 years to complete all of the petitions that need to be resolved. Compounding this backlog of petitions awaiting evaluation was the increased burden of related administrative responsibilities that reduced the proportion of time available for BIA's technical staff to evaluate petitions.

To correct these problems, we recommended that BIA develop a strategy for improving its responsiveness of the recognition process, including an assessment of needed resources. Since that time,

Interior's Office of Federal Acknowledgment has taken a number of important steps to improve the responsiveness of the tribal recognition process. For example, two vacancies within the Office of Federal Acknowledgment were filled, resulting in a professional staff of three research teams. However, it still could take four or more years at these current staff levels to work through the existing backlog of petitions currently under review as well as those that are ready and waiting for consideration.

In addition, in September 2002, a strategic plan issued by the Assistant Secretary for Indian Affairs has been almost completely implemented. The main impediment to completely implementing this strategic plan and to making all the information that has been compiled more accessible to the public is the fact that BIA continues to be disconnected from the Internet because of ongoing computer security concerns involving Indian trust funds.

In conclusion, although Interior's recognition process is only one way by which groups can receive Federal recognition, it is the only avenue to Federal recognition that has established criteria and a public process for determining whether groups meet that criteria. However, in the past, limited resources, a lack of timeframes, and ineffective procedures for providing information to interested third parties has resulted in substantial wait times for Indian groups seeking Federal recognition. While Interior's Office of Federal Acknowledgment has taken a number of actions to improve the timeliness of the process, it will still take years to work through the existing backlog of tribal recognition petitions.

Mr. Chairman, this concludes my prepared statement and I would be happy to respond to any questions you or members of the Committee may have.

The CHAIRMAN. Thank you.

[The prepared statement of Ms. Nazzaro follows:]

Statement of Robin M. Nazzaro, Director, Natural Resources and Environment, U.S. Government Accountability Office

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to discuss our work on the Bureau of Indian Affairs' (BIA) regulatory process for federally recognizing Indian tribes.[1] There are currently 562 recognized tribes in the Unites States with a total membership of about 1.8 million. In addition, several hundred groups are currently seeking recognition. Congressional policymakers have struggled with the tribal recognition issue for over 27 years. Since 1977, 28 bills have been introduced to add a statutory framework for the tribal recognition process. Additional bills have also been introduced to recognize specific tribes; provide grants to local communities or Indian groups involved in the tribal recognition process; or, more recently, address the timeliness of the recognition process. H.R. 4933 and H.R. 5134, introduced in the 108th Congress, and H.R. 512, which was introduced last week, have focused on the timeliness of the recognition process.

As you know, federal recognition of an Indian tribe can dramatically affect economic and social conditions for the tribe and the surrounding communities. Federally recognized tribes are eligible to participate in federal assistance programs. In Fiscal Year 2004, the Congress appropriated about $6 billion for programs and funding almost exclusively for recognized tribes. Recognition also establishes a formal government-to-government relationship between the United States and a tribe. The quasi-sovereign status created by this relationship exempts certain tribal lands from most state and local laws and regulations. Such exemptions generally apply to lands that the federal government has taken in trust for a tribe or its members.

[1] In this statement the term "Indian tribe" encompasses all Indian tribes, bands, villages, groups, and pueblos, as well as Eskimos and Aleuts.

Currently, about 54 million acres of land are held in trust.[2] The exemptions also include, where applicable, laws regulating gaming. The Indian Gaming Regulatory Act of 1988, which regulates Indian gaming operations, permits a tribe to operate casinos on land in trust if the state in which it lies allows casino-like gaming and the tribe has entered into a compact with the state regulating its gaming businesses.[3] In Fiscal Year 2003, federally recognized tribes reported an estimated $16.7 billion in gaming revenue.

BIA's regulatory process for recognizing tribes was established in 1978. The process requires groups that are petitioning for recognition to submit evidence that they meet certain criteria—basically that the group has continuously existed as an Indian tribe since historic times. Critics of the process claim that it produces inconsistent decisions and takes too long. In November 2001, we reported on BIA's regulatory recognition process, including the timeliness of the process, and recommended ways to improve it.[4] We testified on this issue in February 2002 before the House Committee on Government Reform, Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs,[5] and again in September 2002 before the Senate Committee on Indian Affairs.[6] Our testimony today is based on our November 2001 report and the actions the Department of the Interior's Office of Federal Acknowledgment has taken to improve the timeliness of the recognition process.[7]

In summary,

- In November 2001, we reported that BIA's tribal recognition process was ill equipped to provide timely responses to tribal petitions for federal recognition. BIA's regulations outline a process for evaluating a petition that was designed to take about 2 years. However, the process was hampered by limited resources, a lack of time frames, and ineffective procedures for providing information to interested third parties, such as local municipalities and other Indian tribes. As a result, there were a growing number of completed petitions waiting to be considered. In 2001, BIA officials estimated that it could take up to 15 years for all the completed petitions to be resolved. To correct these problems, we recommended that BIA develop a strategy that identified how to improve the responsiveness of the process for federal recognition. Such a strategy was to include a systematic assessment of the resources available and needed that could lead to the development of a budget commensurate with the workload.
- While Interior's Office of Federal Acknowledgment has taken a number of important steps to improve the responsiveness of the tribal recognition process it still could take 4 or more years, at current staff levels, to work through the existing backlog of petitions currently under review, as well as those that are ready and waiting for consideration. In response to our 2001 report, two vacancies within the Office of Federal Acknowledgment were filled, resulting in a professional staff of three research teams, each consisting of a cultural anthropologist, historian, and genealogist. In addition, the September 2002 Strategic Plan, issued by the Assistant Secretary for Indian Affairs in response to our report, has been almost completely implemented by the Office of Federal Acknowledgment. The main impediment to completely implementing the Strategic Plan and to making all of the information that has been compiled more accessible to the public is the fact that BIA continues to be disconnected from the Internet because of ongoing computer security concerns involving Indian trust funds.

Background

Historically, the U.S. government has granted federal recognition through treaties, congressional acts, or administrative decisions within the executive branch—principally by the Department of the Interior. In a 1977 report to the Congress, the American Indian Policy Review Commission criticized the department's tribal recognition policy. Specifically, the report stated that the department's criteria for

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[2] Tribal lands not in trust may also be exempt from state and local jurisdiction for certain purposes in some instances.

[3] 25 U.S.C. § 2701.

[4] GAO, Indian Issues: Improvements Needed in Tribal Recognition Process, GAO-02-49 (Washington, D.C.: Nov. 2, 2001).

[5] GAO, Indian Issues: More Consistent and Timely Tribal Recognition Process Needed, GAO-02-415T (Washington, D.C.: Feb. 7, 2002).

[6] GAO, Indian Issues: Basis for BIA's Tribal Recognition Decisions Is Not Always Clear, GAO-02-936T (Washington, D.C.: Sept. 17, 2002).

[7] In 2001, the tribal recognition process was administered by BIA's Branch of Acknowledgment and Research. In a reorganization, effective July 27, 2003, the Branch of Acknowledgment and Research was elevated and moved into Interior's Office of the Assistant Secretary for Indian Affairs and renamed the Office of Federal Acknowledgment. In this statement, when referring to our work from 2001, we will refer to the tribal recognition process as a BIA process; in all other cases, we will refer to it as a process within Interior's Office of Federal Acknowledgment.

assessing whether a group should be recognized as a tribe were not clear and concluded that a large part of the department's policy depended on which official responded to the group's inquiries. Nevertheless, until the 1960s, the limited number of requests for federal recognition gave the department the flexibility to assess a group's status on a case-by-case basis without formal guidelines. However, in response to an increase in the number of requests for federal recognition, the department determined that it needed a uniform and objective approach to evaluate these requests. In 1978, it established a regulatory process for recognizing tribes whose relationship with the United States had either lapsed or never been established—although tribes may also seek recognition through other avenues, such as legislation or Department of the Interior administrative decisions, which are unconnected to the regulatory process. In addition, not all tribes are eligible for the regulatory process. For example, tribes whose political relationship with the United States has been terminated by the Congress, or tribes whose members are officially part of an already recognized tribe, are ineligible to be recognized through the regulatory process and must seek recognition through other avenues.

The 1978 regulations lay out seven criteria that a group must meet before it can become a federally recognized tribe. Essentially, these criteria require the petitioner to show that it is descended from a historic tribe and is a distinct community that has continuously existed as a political entity since a time when the federal government broadly acknowledged a political relationship with all Indian tribes. The burden of proof is on petitioners to provide documentation to satisfy the seven criteria. The technical staff within Interior's Office of Federal Acknowledgment, consisting of historians, anthropologists, and genealogists, reviews the submitted documentation and makes recommendations on a proposed finding either for or against recognition. Staff recommendations are subject to review by Interior's Office of the Solicitor and senior officials within the Office of the Assistant Secretary for Indian Affairs. The Assistant Secretary for Indian Affairs makes the final decision regarding the proposed finding, which is then published in the Federal Register, and a period of public comment, document submission, and response is allowed. The technical staff reviews the comments, documentation, and responses and makes recommendations on a final determination that are subject to the same levels of review as a proposed finding. The process culminates in a final determination by the Assistant Secretary who, depending on the nature of further evidence submitted, may or may not rule the same way as the proposed finding. Petitioners and others may file requests for reconsideration with the Interior Board of Indian Appeals.

Congressional policymakers have struggled with the tribal recognition issue for decades. Since 1977, 28 bills have been introduced to add a statutory framework for the tribal recognition process (see table 1).

Table 1: Bills Introduced to Provide a Specific Statutory Framework for Interior's Tribal Recognition Process, as of December 31, 2004

Session of Congress	Bills introduced in the House of Representatives	Bills introduced in the Senate	Total number of bills
95	H.R. 11630 H.R. 12691 H.R. 12830 H.R. 12996 H.R. 13773	S. 2375	6
96	H.R. 2701	[a]	1
97	[a]	[a]	0
98	[a]	[a]	0
99	[a]	[a]	0
100	[a]	[a]	0
101	[a]	S. 611 S. 912	2
102	H.R. 3430	S. 1315	2
103	H.R. 2549 H.R. 4462	S. 1844	3
104	H.R. 671 H.R. 2591 H.R. 2997	S. 479	4
105	H.R. 115	[a]	1
106	H.R. 361	S. 611	2
107	H.R. 1175 H.R. 3548	S. 504 S. 1392	4
108	H.R. 4213	S. 297 S. 462	3
Total	**17 House bills**	**11 Senate bills**	**28**

Source: GAO analysis.

[a]No bills introduced.

Of the House bills, only H.R. 4462 from the 103rd Congress was passed by the full House (on October 3, 1994). None of the Senate bills have been passed by the full Senate. Additional bills have also been introduced to recognize specific tribes; provide grants to local communities or Indian groups involved in the tribal recognition process; or, more recently, address the timeliness of the recognition process. For example, H.R. 4933 and H.R. 5134, introduced in the 108th Congress, and H.R. 512, which was introduced last week, have focused on the timeliness of the recognition process.

In 2001 the Recognition Process Was Ill Equipped to Provide a Timely Response

BIA's regulations outline a process for active consideration of a completed petition that should take about 2 years. However, because of limited resources, a lack of time frames, and ineffective procedures for providing information to interested third parties, we reported in 2001 that the length of time needed to rule on tribal petitions for federal recognition was substantial. At that time, the workload of the BIA staff assigned to evaluate recognition decisions had increased while resources had declined. There was a large influx of completed petitions ready to be reviewed in the mid-1990s. The chief of the branch responsible for evaluating petitions told us that based solely on the historic rate at which BIA had issued final determinations, it could take 15 years to resolve all the completed petitions then awaiting active consideration.

Compounding the backlog of petitions awaiting evaluation in 2001 was the increased burden of related administrative responsibilities that reduced the proportion of time available to BIA's technical staff to evaluate petitions. Although they could not provide precise data, members of the staff told us that this burden had increased substantially over the years and estimated that they spent up to 40 percent of their time fulfilling administrative responsibilities. In particular, there were substantial numbers of Freedom of Information Act (FOIA) requests related to petitions. Also, petitioners and third parties frequently filed requests for reconsideration of recognition decisions that needed to be reviewed by the Interior Board of Indian Appeals, requiring the staff to prepare the record and respond to issues referred to the Board. Finally, the regulatory process had been subject to an increasing number of lawsuits from dissatisfied parties—those petitioners who had completed the process and had been denied recognition, as well as by petitioners who were dissatisfied with the amount of time it was taking to process their petitions.

Technical staff represented the vast majority of resources used by BIA to evaluate petitions and perform related administrative duties. Despite the increased workload faced by BIA's technical staff, the available staff resources to complete the workload had decreased. The number of BIA staff assigned to evaluate petitions peaked in 1993 at 17. However, from 1996 through 2000, the number of staff averaged less than 11, a decrease of more than 35 percent.

While resources were not keeping pace with workload, the recognition process also lacked effective procedures for addressing the workload in a timely manner. Although the regulations established timelines for processing petitions that, if met, would result in a final decision in approximately 2 years, these timelines were routinely extended, either because of BIA resource constraints or at the request of petitioners and third parties (upon showing good cause). As a result, only 12 of the 32 petitions that BIA had finished reviewing by 2001 were completed within 2 years or less, and all but 2 of the 13 petitions under review in 2001 had already been under review for more than 2 years.

While BIA could extend the timelines, it had no mechanism to balance the need for a thorough review of a petition with the need to complete the decision process. As a result, the decision process lacked effective timelines that would have created a sense of urgency to offset the desire to consider all information from all interested parties in the process. In Fiscal Year 2000, BIA dropped its long-term goal of reducing the number of petitions actively being considered from its annual performance plan because the addition of new petitions would have made this goal impossible to achieve.

We also found that as third parties, such as local municipalities and other Indian tribes, became more active in the recognition process—for example, initiating inquiries and providing information—the procedures for responding to their increased interest had not kept pace. Third parties told us they wanted more detailed information earlier in the process so that they could fully understand a petition and effectively comment on its merits. However, in 2001 there were no procedures for regularly providing third parties more detailed information. For example, while third parties were allowed to comment on the merits of a petition before a proposed finding, there was no mechanism to provide any information to third parties before the proposed finding. As a result, third parties were making FOIA requests for informa-

tion on petitions much earlier in the process and often more than once in an attempt to obtain the latest documentation submitted. Since BIA had no procedures for efficiently responding to FOIA requests, staff members hired as historians, genealogists, and anthropologists were pressed into service to copy the voluminous records of petitions to respond to FOIA requests.

In light of these problems, we recommended in our November 2001 report that the Secretary of the Interior direct BIA to develop a strategy to improve the responsiveness of the process for federal recognition. Such a strategy was to include a systematic assessment of the resources available and needed that could lead to the development of a budget commensurate with the workload. The department generally agreed with this recommendation.

Timeliness Has Improved, but It Will Still Take Years to Clear the Existing Backlog of Petitions

In response to our report, Interior's Office of Federal Acknowledgment has hired additional staff and taken a number of other important steps to improve the responsiveness of the tribal recognition process. However, it still could take 4 or more years, at current staff levels, to work through the existing backlog of petitions currently under review, as well as those ready and waiting for consideration. In response to our report, two vacancies within Interior's Office of Federal Acknowledgment were filled, resulting in a professional staff of three research teams, each consisting of a cultural anthropologist, historian, and genealogist. In September 2002, the Assistant Secretary for Indian Affairs estimated that three research teams could issue three proposed findings and three final determinations per year and eliminate the backlog of petitions in approximately 6 years, or by September 2008.

Through additional appropriations in Fiscal Years 2003 and 2004, the Office of Federal Acknowledgment was also able to utilize two sets of contractors to assist with the tribal recognition process. The first set of contractors included two FOIA specialists/record managers. The second set of contractors included three research assistants who worked with a computer database system scanning and indexing documents to help expedite the professional research staff evaluation of a petition. Both sets of contractors helped make the process more accessible to petitioners and interested parties, while increasing the productivity of the professional staff by freeing them of administrative duties.

In addition, the September 2002 Strategic Plan, issued by the Assistant Secretary for Indian Affairs in response to our report, has been almost completely implemented by the Office of Federal Acknowledgment. Among other things, the Office of Federal Acknowledgment has developed a CD-ROM compilation of prior acknowledgment decisions and related documents that is a valuable tool for petitions and practitioners involved in the tribal recognition process. The main impediment to completely implementing the Strategic Plan and to making all of the information that has been compiled more accessible to the public is the fact that BIA continues to be disconnected from the Internet because of ongoing computer security concerns involving Indian trust funds.

Even though Interior's Office of Federal Acknowledgment has increased staff resources for processing petitions and taken other actions that we recommended, as of February 4, 2005, there were 7 petitions in active status and 12 petitions in ready and waiting for active consideration status. Eight of the 12 petitions have been waiting for 7 years or more, while the 4 other petitions have been ready and waiting for active consideration since 2003.

In conclusion, although Interior's recognition process is only one way by which groups can receive federal recognition, it is the only avenue to federal recognition that has established criteria and a public process for determining whether groups meet the criteria. However, in the past, limited resources, a lack of time frames, and ineffective procedures for providing information to interested third parties resulted in substantial wait times for Indian groups seeking federal recognition. While Interior's Office of Federal Acknowledgment has taken a number of actions during the past 3 years to improve the timeliness of the process, it will still take years to work through the existing backlog of tribal recognition petitions.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Contact and Acknowledgments

For further information, please contact Robin M. Nazzaro on (202) 512-3841. Individuals making key contributions to this testimony and the report on which it was based are Charles Egan, Mark Gaffigan, and Jeffery Malcolm.

GAO

Highlights

Highlights of GAO-05-347T, a testimony before the Committee on Resources, House of Representatives

February 10, 2005

INDIAN ISSUES

Timeliness of the Tribal Recognition Process Has Improved, but It Will Take Years to Clear the Existing Backlog of Petitions

Why GAO Did This Study

The Bureau of Indian Affairs' (BIA) regulatory process for recognizing tribes was established in 1978. The process requires groups that are petitioning for recognition to submit evidence that they meet certain criteria—basically that the petitioner has continuously existed as an Indian tribe since historic times. Critics of the process claim that it produces inconsistent decisions and takes too long.

Congressional policymakers have struggled with the tribal recognition issue for over 27 years. H.R. 4933 and H.R. 5134, introduced in the 108th Congress, and H.R. 512, which was introduced last week, have focused on the timeliness of the recognition process.

This testimony is based in part on GAO's report, *Indian Issues: Improvements Needed in Tribal Recognition Process* (GAO-02-49, November 2, 2001). Specifically, this testimony addresses (1) the timeliness of the recognition process as GAO reported in November 2001 and (2) the actions the Department of the Interior's Office of Federal Acknowledgment has taken since 2001 to improve the timeliness of the recognition process.

What GAO Recommends

GAO's November 2001 report recommended that BIA develop a strategy that identified how to improve the responsiveness of the process for federal recognition.

www.gao.gov/cgi-bin/getrpt?GAO-05-347T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin M. Nazzaro at (202) 512-3841 or nazzaror@gao.gov.

What GAO Found

In November 2001, GAO reported that BIA's tribal recognition process was ill equipped to provide timely responses to tribal petitions for federal recognition. BIA's regulations outline a process for evaluating a petition that was designed to take about 2 years. However, the process was being hampered by limited resources, a lack of time frames, and ineffective procedures for providing information to interested third parties, such as local municipalities and other Indian tribes. As a result, there were a growing number of completed petitions waiting to be considered. In 2001, BIA officials estimated that it could take up to 15 years for all the completed petitions to be resolved. To correct these problems, we recommended that BIA develop a strategy that identified how to improve the responsiveness of the process for federal recognition. Such a strategy was to include a systematic assessment of the resources available and needed that could lead to the development of a budget commensurate with the workload.

While Interior's Office of Federal Acknowledgment has taken a number of important steps to improve the responsiveness of the tribal recognition process, it still could take 4 or more years, at current staff levels, to work through the existing backlog of petitions currently under review, as well as those that are ready and waiting for consideration. In response to GAO's 2001 report, two vacancies within the Office of Federal Acknowledgment were filled, resulting in a professional staff of three research teams, each consisting of a cultural anthropologist, historian, and genealogist. In addition, the September 2002 Strategic Plan, issued by the Assistant Secretary for Indian Affairs in response to GAO's report, has been almost completely implemented by the Office of Federal Acknowledgment. The main impediment to completely implementing the Strategic Plan and to making all of the information that has been compiled more accessible to the public is the fact that BIA continues to be disconnected from the Internet because of ongoing computer security concerns involving Indian trust funds.

United States Government Accountability Office

The CHAIRMAN. Mr. Olsen, I just had a couple of questions based on what some of your concerns were, or the Department's concerns were, with the legislation.

It is my understanding that there would be ten tribes that would be considered eligible under this bill and all ten of those applied before 1988 and all of their documentation has been at the Department since that time. When you talk about the statutory timelines and dates within the legislation, it is not as if you have 90 days

or 45 days to make a decision. The Department has had decades, in some cases, and at least 15 years to look at all of the documentation. It is not as if someone is coming into you with brand new documentation, a 30,000-page brand new documentation that you haven't seen before.

So I am not sure exactly what the concern is with the timelines because it is not new information for the Department. I know you are relatively new in the job that you are doing now, but this information has been at the Department for decades.

Mr. OLSEN. May I respond?

The CHAIRMAN. Yes.

Mr. OLSEN. I don't disagree with that. That is true. The information has been with the Department. These ten groups that would be eligible for this expedited review are currently on the ready, waiting for active consideration, list.

The concern is based on the fact that there are currently six groups on the active list now that are under consideration. So it is a matter of basically, I think, looking at by moving ten up on the active list, we are faced with a situation where we are currently considering six, would have specific very short timeframes to move those other ten through, and we just are concerned about our ability to be able to meet those deadlines.

The CHAIRMAN. Well, I would tell you that the intention of the legislation is to move these ten groups forward and to get these decisions done. I think it is unconscionable that a number of these have been waiting decades for a decision. I don't care how busy the Department is or lack of money or time or personnel. At some point over the last 20 or 30 years, there should have been enough time to move forward on these, and that was the reason that I introduced the legislation to begin with.

The intention is to move them ahead, to get them a decision. We are not prejudicing the decision at all. It is still within the Department's discretion to make that decision. But I do want a decision and we need to move forward.

When you talk about the courts being brought into this, as I am sure you are aware, I am not too wild about bringing the courts into anything. But they have to have some remedy if a decision is not made. They have been sitting there for years waiting, and if the Department just ignores this bill, this legislation, when it becomes law and doesn't give them a decision, there has to be some kind of hammer that follows that. There has to be some kind of remedy for these tribes, and that is the only thing that we have is to go to court. In that case, I do believe that it is warranted to move forward.

I do understand what some of the concerns are. We have had a chance to talk about this in the past. But I do believe that this is something that is needed and we should have done it a long time ago.

I appreciate both of your testimony very much.

I am going to recognize Mr. Kildee for any questions he may have.

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

When the Bureau of Acknowledgment and Recognition (BAR) Office of Federal Acknowledgment (OFA) process is slow, and I

think everyone would agree it is slow, then the temptation of tribes, of course, is to turn to Congress and this Committee has enacted legislation, which has been signed into law, recognizing tribes, and I think we did it prudently. I think we did it with research, also.

But I think the process should really ordinarily be going through the BAR process, and that is why in 2003, we appropriated an additional half-million dollars, and then in 2004 an additional quarter-of-a-million dollars, for $750,000, to help you hire a full-time anthropologist, a genealogist, and historians. That is about, what, half of the $1.7 million budget your office has. Yet I can't find any real effort here to bring aboard full-time anthropologists or genealogists and historians. Would that not help you in making these decisions?

Mr. OLSEN. It certainly would, and as Ms. Nazzaro pointed out, we have filled, I think, two or three of the vacancies that we had at the time that the GAO report was originally released, and that—

Mr. KILDEE. The plan was to bring about 22 people aboard, I believe.

Mr. OLSEN. I am sorry?

Mr. KILDEE. I said the plan was to bring more than that aboard, about 22 people aboard.

Mr. OLSEN. We would certainly welcome additional staff, and understand that as we talk about this, part of the concern has been, part of the discussion has been that resources are limited. I don't want to delve too deeply into that.

But what we have been able to do, in addition to bringing on board our own full-time staff, is contract out with five or six contractors to handle some of the work that we do, three for research assistants as well as two additional for work on Freedom of Information Act requests. So although it is not the 22 that may have been discussed originally, we are attempting to fill positions and provide ourselves with the assistance that we need to move the process forward.

Mr. KILDEE. I recognize that Congress has the obligation to supply you with the amount of money you need, but we did make an effort in that and we have not really seen the results of that effort to the degree that we had intended.

I think really every agency of government, when it comes to dealing with matters of justice, has to have a sense of urgency, and that is very, very important that you have that sense of urgency. And when there is not that sense of urgency, and I have been here in Congress for 29 years, you might have a sense of a concern, and I am not saying—I have met so many people over there, they are good people, but the sense of urgency to really realize that that tribe's whole future depends upon a decision that has not been made, and that is very frustrating.

I have visited some of these tribes. I am not an anthropologist. I am not a genealogist. But I do know a great deal of the history of Michigan. I helped five tribes get their sovereignty reaffirmed, not granted, to retain sovereignty. I could tell just from my father's own, who was born in 1883, who lived around the Indians around Traverse City, that these tribes had kept themselves intact, that their history was intact. They had kept good records. And yet, fi-

nally, for the most part, those tribes in Northern Michigan, we had to use the legislative process to reaffirm our recognition of their retained sovereignty.

So I think the executive branch of government has to really have this sense of urgency. If you need more money, come to us. We will try. It is tight right now, but we did give you some more money on that. I know money doesn't solve everything, but you really have to reach out to those people who can help you make those decisions.

So I would urge you to have that sense of urgency and recognize how they feel. The one tribe, I mean, I knew they were a tribe when I was 7 years old. My dad—but clearly, they could not get through the BAR process so we finally did the Congressional process. I would urge, again, that sense of urgency.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Hayworth?

Mr. HAYWORTH. Thank you, Mr. Chairman. Mr. Olsen, Ms. Nazzaro, welcome.

Well, here we are again. The personnel may change but the problem seems, sadly, to remain the same.

I think I have shared in similar proceedings the observation of a Navajo elder, when I was honored to represent the Navajo Nation, at a town hall meeting when he said, from his perspective, that "Congressman, as far as I am concerned, BIA stands for 'Bossing Indians Around.'" And when we have these hearings and talk about this situation and the length of time involved in recognition, it seems the acronym today stands for "Bureaucratic Inaction Always."

My intent is not to indict any personalities. Mr. Olsen, we have known you a long time. You have obviously had different roles. Now, as part of the administration—it just may be the ultimate oxymoron, political science, but I can recall one of my instructors speaking of bureaucratic inertia. And when I read and I hear your testimony, the intent is not to embarrass but actually to try and understand.

I know there are some good people who work down there, but is there just a culture that we have to decide by committee if we are going to sharpen pencils in the morning, if we are going to carry out any type of workload, because always and forever, it is the same answer. The 3-month period, followed by 6 months of intense consideration, is just unrealistic. That is the human gestation period. A human being is formed and created and the miracle of birth occurs, and yet 9 months is too much of a fast track. The Chairman pointed out we have gone years in the process, a decade and a half.

Mr. Olsen, again, without indicting personalities, is it safe to say that there is a fair amount of bureaucratic inertia inculcated into the culture of the Bureau of Indian Affairs and that, in essence, is one of the problems we are confronting?

Mr. OLSEN. Well, I don't want to be critical of my own agency, but, you know, I guess that may be part of the concern, but I think that if some of our concerns that we have with, say, for example, this legislation or if we were able to sit down with the Committee and work together to work through some of our concerns, I think

we could move forward with something that would be palatable for the Chairman and the Committee as well as for the Department.

I think there are those at the Department who are more than willing, as our testimony states, to work together with the Committee to accomplish this.

Mr. HAYWORTH. Mr. Olsen, there is another political admonition. If they feel the heat, they see the light. In essence, perhaps one of the provisions Congress might consider is sunsetting the recognition procedures of the Bureau of Indian Affairs as part of its portfolio. Would this help concentrate and perhaps bring some energy and urgency to developing a culture of actually finishing work on schedule?

Mr. OLSEN. I think that some sort of sunset provision in any context would probably spur the process along. As I said before, I think just the fact that the Chairman has introduced this legislation certainly has the Department's attention. I think, like I said, we are willing to work with the Committee. We have supported sunset provisions in the past. I made reference to a couple of different examples, perhaps, of sunset provisions in my testimony, and certainly we would be more than willing to examine that further.

Mr. HAYWORTH. Ms. Nazzaro, could Congress authorize an independent commission to review the petition that the Office of Federal Acknowledgment compiles? Can we do that? I understand the irony of this. I am asking the GAO permission to do—

[Laughter.]

Mr. HAYWORTH. Let me go ahead and I will just take Congressional prerogative. Yes, we can. Let me—

[Laughter.]

Ms. NAZZARO. I was going to say, I don't want to be the one to say—

Mr. HAYWORTH. That is great. You didn't know this was—boy, I tell you what. Anyway, I won't ruminate. I know my time is short.

From your vantage point, would this be consistent with the GAO recommendations made in 2001 to establish the independent commission to accelerate these things?

Ms. NAZZARO. Well, from my read of what the problem was, the problem wasn't the 2-year process. The problem was that they did not have staff to handle all the other administrative, if you will, requirements, whether they be FOIA requests or other activities, that that was distracting the teams from actually evaluating and completing their piece of the process.

Mr. HAYWORTH. I see my time has expired. Thanks to everyone here. Curiouser and curiouser, said Alice. Thank you very much.

The CHAIRMAN. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chair.

I won't belabor the same questions and I will just ask straight out, is there a way to be able to take the oldest petitions to the Department of Interior and work on those and try to work out on those ten that have been waiting for at least a decade and a half, and then report to this Committee whether or not you are able to work through them and at what pace, or is there a reason for the delay or something that will give this body something to understand why the delay?

Going back to the issue of additional funding for personnel in 2001, would it have taken, what was it, 2001 or 2003?

Ms. NAZZARO. Funding?

Mrs. NAPOLITANO. Funding.

Ms. NAZZARO. Two-thousand-three.

Mrs. NAPOLITANO. Three. Two years—well, a year and a half, if you will, to hire personnel, whether it was 4 or 20. Are you staffed so that you can do the job? Is the money still there to be able to carry that process along and be able to work on these tribes that have been waiting for so long?

Understand that—and I don't have tribes in my area, but I have dealt with many of them, and those that have very few resources are very open to business coming in and saying, we want to do a club, a gambling club, because they can't afford to wait that long for the petition. So how do you try to help those tribes so that they can be recognized and be able to move along, especially when they have been waiting this long? Can somebody answer that for me?

Mr. OLSEN. Well, our process is generally, in very simple terms, somewhat of a first in, first out process. You referenced the ten tribes or groups that would be—that are petitioning for acknowledgment that would move up to active consideration. We are currently considering—the groups that are on the list of active consideration now are, that we are currently working on, have petitions that are older than those that would be moving up from ready, waiting for active consideration, to active consideration. So we try to—we approach this process generally as a first in, first ready, first out process.

Mrs. NAPOLITANO. I would hate to think that that is at least longer than 20-some-odd years, or 30 years in some instances, maybe.

Mr. OLSEN. In some cases, the process is, as we have discussed here, is long. We have a petitioner on our active—let me see, I believe active consideration list that has been on that list for somewhere in the neighborhood of seven, 8 years, for example.

Mrs. NAPOLITANO. Do you have the staff necessary to do the job?

Mr. OLSEN. Well, that is—there are, I guess, a couple of ways of answering that. Do we have the staff necessary to be able—

Mrs. NAPOLITANO. Straightforward, can you get the job done?

Mr. OLSEN. Well, to carry out what H.R. 512 requires us to do, I am not sure that at this point we do have the staff to do that. We have the staff to be able to continue to process petitions. We are able to meet and process the petitions that come in consistent with our regulations, but it does, because of our either limited resources or the staff that we have, we cannot—and the other things that simply are required of the Office of Federal Acknowledgment, litigation support, responding to FOIA requests, we simply can't move through as quickly as we would like to.

We recognize that the process takes longer than, I think, than it was intended to, but we are working to try and move these petitioners through as expeditiously as we can.

Mrs. NAPOLITANO. Mr. Chair, I just can't understand the reason why. Like you, I am flabbergasted, and J.D. left. I agree with his frustration. It is just unthinkable.

May we request a report to find out what tribes have been holding for what years and where their status is and if there is a specific area that we can deal with, a hang-up, if you will, that we can address it and be able to move forward?

The CHAIRMAN. The Committee has requested that information and a lot of that information is what went into the development of this particular legislation. We can provide for you the status on where all the different tribes are, when they originally filed, and how long they have been waiting. These ten that we are talking about in this particular legislation are all tribes that applied before 1988, and so those were the oldest group that applied. That was what drove this legislation to begin with.

Mrs. NAPOLITANO. OK, because he is indicating there are some that applied prior to that.

The CHAIRMAN. They did not apply prior to that. I believe that they had their—some of them had all of their documents completed before these ten did, but these ten are the ones that applied first.

Mrs. NAPOLITANO. Gentlemen, I know I am out of time, but I am sure that you have heard the frustration. If there is anything that you would want to clarify, whether it is the issue of the funding for personnel to finish working on these or your regulations need to be revamped to allow for specific things that you don't have on the books, I don't know. I don't know the issue.

Mr. OLSEN. We are certainly, as I said, we are certainly willing to work with the Committee to make improvements to the process, whether that is through legislation, whether that is through amending our regulations. A revamping, as you refer to it is something we would certainly be open to exploring.

Going back to the—just so that I can kind of go back to answer your question about the cost and staffing and so forth, I think CBO has indicated that in order for us to meet the requirements of this legislation, we would be required to have, I believe, somewhere in the neighborhood of 60 additional staff and another $12 million. So based on what we have got, it is not—it is very difficult to meet those deadlines. Currently, we have nine professional staff.

Mrs. NAPOLITANO. Mr. Chair, maybe that is something we can take into consideration. Thank you very much.

The CHAIRMAN. I will acknowledge that in order for us to meet what I believe is our obligation and the Department's obligation on this, it will require additional staff, and when I introduce follow-up legislation to this, that will include the authorization of additional staff, because this is just the beginning of what we need to do.

Mr. Fortuno, did you have any questions this morning?

Mr. FORTUNO. No.

The CHAIRMAN. Mr. Nunes?

Mr. NUNES. Thank you, Mr. Chairman.

Mr. Olsen, I will keep this very brief, and perhaps you may want to just respond in writing. It is about a specific tribe in my district that for a long time has been seeking recognition. At one time, they were recognized. And I want to ask a very specific question. I would like to take this opportunity to seek clarification of the Bureau's position on whether the Dunlap Band of Mono Indians

merits legislative or administrative action to confirm its status as a federally recognized tribe.

Now, there seems to be two sides to the equation as they have been trying to go through the process. As has been stated earlier, I don't want to continue to beat a drum here, but as you know, this process seems to be bogged down, and this is a tribe, one of the tribes in my district that wants to seek recognition amongst many others, but this tribe actually has some kind of a precedent that has been set from the Dawes Act many years ago, where they were granted land and now they are not a recognized tribe.

I would hope that perhaps you can, if you don't want to respond now, because I know it is dealing with a specific issue, if you could respond in writing—

Mr. OLSEN. I would be more than happy to do that. I am vaguely familiar with the situation, but rather than discuss it now, we would be more than happy to respond in writing with a fairly comprehensive answer to your question.

Mr. NUNES. I look forward to it. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Renzi?

Mr. RENZI. Thank you, Mr. Chairman. I apologize for not being here during your testimony. I was interested in a couple of issues that may have already been covered. Forgive me if I am overlapping.

In the last 5 years, how many applications have you been able to process, the last five, 6 years? How much success have you had?

Mr. OLSEN. Within the last, oh, let me see, within the last three—let me see. We have completed 17 decisions on acknowledgment since 2001, six proposed findings, nine final determinations, and two reconsidered final determinations.

Mr. RENZI. Anybody rejected at all?

Mr. OLSEN. In the last—I guess since March of 2004, there were three, I believe, that were rejected.

Mr. RENZI. Three rejected? Is there an assumption that some of the hold-up is because we are seeing so many applications as a result of a perception that many Indian tribes are just wanting to be recognized to rush into the gaming operation? Is there an institutional bias? That is kind of the skunk in the room, isn't it? Is there an institutional bias really that, well, hey, let us just hold anyway because this is all about gaming?

Mr. OLSEN. I don't think that—I mean, we certainly don't look at whether the tribe wants to game as one of the criteria for whether they should be federally acknowledged, nor do we consider things such as the tribes' or the groups' size or enrollment or measurement.

Mr. RENZI. Not when it comes down to consideration and prudence and reason. I am talking about just kind of, well, we can hold a little here or we can slow-walk this, just our own little—

Mr. OLSEN. Well, I think that certainly there are tribes that have—and I can't—I don't know off the top of my head, but there are tribes that have gone through the acknowledgment process that are gaming tribes and I think—

Mr. RENZI. I think what I am trying to say is, I represent probably more Native Americans than anyone else in Congress other than Don Young out of Alaska. We have got a nice little tribe up

in the borderlands near the Hopis called the Southern San Juan Paiute who only want to be recognized so that they can have the cultural heritage, the homogeniality, the unity that comes with that, not looking to get into gaming. And I think that that is a great example when you go back as a leader within the Department for those people doing the applications, that, hey, a lot of it has to do with just pulling their roots together and having their own culture and their own identity.

I am not here to lecture you, just to say that I wonder how much it is all about just slow-walking this thing over people looking at where the applications are now compared to what it was in the past. So anyway, thanks for coming up.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I want to thank the panel for their testimony. If there are follow-up questions from members of the Committee, they will be submitted to you in writing and you can answer them in writing so that they may be included in the hearing record. Thank you very much for being here.

I am going to call up our second panel. The Committee welcomes Mr. Harry Sachse of the law firm Sonosky, Chambers, Sachse, Endreson and Perry, and we welcome Mr. Lance Gumbs, Tribal Trustee of the Shinnecock Indian Nation.

If you could join us at the witness table, remain standing to take the oath. If you would raise your right hand.

Do you solemnly swear or affirm under the penalty of perjury that the statements made and the responses given will be the whole truth and nothing but the truth, so help you, God?

Mr. SACHSE. I do.

Mr. GUMBS. I do.

The CHAIRMAN. Thank you very much. You can take a seat. Let the record show that they both answered in the affirmative.

Welcome, gentlemen. It is nice to have you here. We are going to begin with Mr. Sachse.

STATEMENT OF HARRY R. SACHSE, PARTNER, SONOSKY, CHAMBERS, SACHSE, ENDRESON AND PERRY

Mr. SACHSE. Thank you, Mr. Chairman, and thank you for inviting me here. I got a call last week that the Committee would like to have me here.

I want to say that I have been representing Indian tribes for about 27 years. Our firm does it all around the country and in Alaska. Also before that, I was in the Solicitor General's Office and argued a number of the cases in the Supreme Court that have to do with Indian rights.

It wasn't until 4 or 5 years ago that I ever got involved in this recognition procedure, but I have really been through it with this procedure in that time. I think it is awful, and I think that your bill is correct and that you have got to do something tough with the Department of Interior. Nothing will ever happen. You will get excuse after excuse after excuse.

I think that the unreasonable delay is one of the terrible things that is going on, but there are other things. There are unreasonable standards that I think were set up to keep tribes from being

recognized, maybe when fishing rights were the issue. But beyond that, there is an entrenched bureaucracy that applies those standards in an even more restrictive way than the clear language in the standards calls for.

And also, this culture of making these tribes who don't have any money hire anthropologists, prove for every 10-year period since they were last recognized that they have functioned as a government when it is impossible. You know, the 1930s, people were striving just to say alive, picking tomatoes somewhere. It is a very bad procedure and it needs a lot of attention, but this is a good bill that you are doing.

I want to tell you the story of my client. I think you have heard it before and I will be brief about it. I have been representing the Muwekma Ohlone Tribe in California, in the San Francisco Bay area. They were mission Indians. They worked at the Mission San Jose. In the Mexican times, the missions were abolished. That left these people without any land at all. They then settled somewhere near the Hearst estate and they were called the Verona Indians because that was the name of the train stop there.

They were federally recognized through the—the Department of Interior has affirmed that they were federally recognized through the 1920s. They were on a list where Congress had appropriated money to buy land for them, but they never got around to buying the land for them. Their kids right through the 1940s went to Indian schools and they did their best to function as an Indian tribe.

When the official list was published in 1979, I think it was, they were left off. In 1989, they had gotten themselves together enough to go to the BIA and say, what do we have to do to get on the list? The BIA told them they had to go through this whole 25 U.S.C. 89 procedure, even though they had been previously recognized, no official action had ever made them not recognized, and they were the same people. The same people who were there in 1927 were the people going there now, except it was the grandparents who were there in those times.

Well, it took years for them to scrap up the resources to hire anthropologists and all that kind of thing. They filed their intent to go through the procedure in 1989. They got their documents all filed, these thousands of pages that everybody talks about, and it shouldn't require thousands of pages, but that is what Interior required. They got that in 1995. They were recognized a year or two later as ready for action and nothing happened at all.

And I should say, this is a group also that had strong local support. They had been working with—they preserved an Indian cemetery. They had been working with Indian remains. They worked with Stanford University. There are letters in here of recommendation, a beautiful letter from Condoleezza Rice, who was then the Provost of Stanford University, letters from the City of San Francisco, from the City of San Jose, from San Jose State, et cetera, et cetera, all saying that they should be recognized.

By 1997 or 1998 when they came to us, we looked into the rate at which—the same kind of thing you are doing now—we looked into the rate of how they are getting to these petitions. It would have been 19 years before they would have gotten to this petition.

So we filed a lawsuit under the Administrative Procedure Act that requires—this is Congress requiring all Federal agencies, not just the BIA, to decide issues in a reasonable time that shall not be unreasonably delayed. Decisions shall not be unreasonably delayed. This is clearly unreasonably delayed.

The District Court decided for us and the District Court ordered exactly what you are saying in your bill, that it had to be—the preliminary within 6 months and final decision in a year. The District Court also said, and these are its words, that the Department had been glaringly disingenuous in its defense of its procedures.

So the Muwekma petition then has to be considered. Well, who is considering it? The very people who we fought against for 2 years, the lawyer, Scott Keep, the head, Mr. Fleming, who was here, who signed all sorts of affidavits against us in that. So it is turned over to them, so they rule against the Muwekma Tribe in a 100-some-odd-page thing that looked like an antitrust brief, taking every piece of evidence that we had done and holding it to a standard that I think is somewhere beyond a reasonable doubt. Their own regulations say you have to take into account the historical situation, that evidence is hard to obtain and sort of thing. So they denied recognition.

One reason your bill is important is you shouldn't have to fight an agency to get them to decide your case and then go to the exact same people for the substantive decision where they already see you as the enemy. So I support this bill.

We are now in Federal Court and it will be another two or 3 years before we get a decision out of the Federal Court, and the saddest thing about this is that when this tribe started this procedure, there were 15 or 20 or 30 of the tribal members still alive who were there from the 1920s, when it was recognized. There are now two people, two old, old ladies who are there. Everyone else has died off, seen their tribe not get recognized. It is pitiful and should be corrected. Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Sachse follows:]

Statement of Harry R. Sachse, Partner,
Sonosky, Chambers, Sachse, Endreson and Perry, LLP

My name is Harry R. Sachse, I am one of the founding partners of Sonosky, Chambers, Sachse, Endreson and Perry, LLP, a law firm that specializes in representing Native American Tribes. We have offices in Washington, D.C., Alaska, California, and New Mexico. Before that I was an Assistant to the Solicitor General of the United States and argued several key Indian cases in the Supreme Court, and I have taught Indian law at Harvard and the University of Virginia.

I am pleased to speak in favor of H.R. 512. This bill addresses one of the worst abuses inherent in the Department of the Interior's handling of tribal recognition: unreasonable delay, and an attitude that no one has the right to question it. There are other abuses that need to be corrected—unreasonable standards for recognition, and an intrenched bureaucracy that functions without any real supervision within the Department. See the Testimony of Kevin Gover, former Assistant Secretary for Indian Affairs Before the Committee on Indian Affairs, United States Senate concerning S. 297, dated April 21, 2004 attached. This bill is a step in the right direction.

My experience with this process came from my representation of the Muwekma Ohlone tribe of California, in their attempt to become recognized. A little of that history will demonstrate the problem.

The Muwekma Ohlone have lived in the San Francisco Bay area since before the Spanish arrived. During the Spanish period, ancestors of the Muwekma were forced

to live and work at or near the Mission of San Jose and were called the Mission San Jose Indian Tribe. Prior to the incorporation of California into the United States, the missions were abolished, and the tribes who lived there were rendered largely landless and destitute. In the late nineteenth century and early twentieth century, the Muwekma settled in villages known as Alisal and El Molino, located within the Tribe's aboriginal territory in Alameda County, California.

The federal government repeatedly recognized the Tribe in the twentieth century. Congress has never enacted legislation terminating the trust relationship with the Muwekma Ohlone Tribe. Nor has a court, the Department or any division of the Executive Branch terminated the Tribe.

Nevertheless, sometime after 1927 the Department began largely to ignore the Tribe. Then when it began publishing a list of federally recognized tribes in 1979, the Department failed to include it on the list.

Notwithstanding the Department's neglect, the Tribe's leaders organized the tribe to enroll under the California Claims Act, repeatedly between 1929 and 1970. Throughout the 1960's, the Tribe worked to preserve from destruction the Ohlone Cemetery, an Indian cemetery of Mission San Jose, an effort which succeeded. Since the late 1970's the Tribe has been active in working to preserve and ensure proper treatment of archeological resources and ancestral human remains uncovered as land development expanded in the San Francisco Bay area. In 1989 the Tribe persuaded Stanford University to return Ohlone remains stored in its museum to the Tribe for reburial.

The Tribe has received wonderful local support, with letters in the record from the Sacramento Area Office of the Bureau of Indian Affairs, from Condoleezza Rice, when she was Provost of Stanford University, from Congresswoman Zoe Lofgren, the Tribe's representative, and many, many others.

Given all of that, you would not believe what has happened to this tribe in seeking return to the list of recognized tribes.

In 1989, the Tribe asked advice from the Department of the Interior on how it could be returned to the list of recognized tribes. It was told that it had to go through the procedures of 25 C.F.R. Part. 83. No suggestion was made to it that there was any other way to be returned to the list of recognized tribes. The Tribe filed its letter of intent to petition for federal acknowledgment in 1989. In 1995 the Tribe submitted a documented petition with the extraordinary detail required by the Department—which required hiring historians, anthropologists, and genealogists. In 1996, the Department concluded that the Tribe had been recognized previously. In 1998 the Bureau placed the Muwekma petition on the "ready for active consideration list."

The Secretary of Interior in 1994 restored the Ione Band of Miwoks, another small California tribe that had been previously recognized then ignored, to the list of federally recognized tribes without requiring it to go through the procedures of 25 C.F.R. Part 83 at all. Similarly, in 2000, the Lower Lake Rancheria, another small California tribe which had been previously recognized and then ignored, was restored to the list of federally recognized tribes by administrative action without being required to go through the 25 C.F.R. Part 83 procedures. In addition, two Alaska tribes were similarly restored. Nevertheless, when Muwekma in 1992, 1996, 1998 and 2000 requested the Secretary to return it to the list of recognized tribes by administrative correction, the Department refused or ignored the request, and said wait in line.

In 1999, although "ready for active consideration" the Department of the Interior had not yet set a date for consideration of the Muwekma petition for recognition, and reviewing the list of tribes ahead of it and the rate at which Interior got to the petitions, we determined it could be 19 more years before Interior got to its petition. Muwekma then brought suit in the Federal District Court for the District of Columbia under the Administrative Procedure Act (APA) "to compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The Court's rulings in that action are published at Muwekma Tribe v. Babbitt, 133 F.Supp.2d 30 (D.D.C. 2000) and 133 F.Supp.2d 42 (D.D.C. 2001).

The Department vigorously opposed Muwekma, maintaining its right to handle these procedures one at a time at its own pace.

On June 30, 2000, the district court ordered Interior to propose a schedule for reaching a final determination on the Tribe's petition. The Department, despite the Order, proposed a schedule without any definite termination date. In subsequent orders, all initially opposed by Interior, the Court set a firm time schedule for Interior to rule on the Tribe's petition. See 133 F.Supp.2d at 51. This was the first action in which a tribe successfully challenged the Department's slow pace of deciding petitions and failure to reduce its backlog. The Court held that the fact that the Tribe was previously recognized, that it has been required to go through this long

procedure when other tribes have not, and that, as applied to Muwekma, the procedure may be in contravention of an act of Congress, required an expedited decision. Id. at 36-42. The Court also found that the Department had been "glaringly disingenuous" in its pleadings before the Court. Id. at 49. As a result of this decision, other tribes also brought suit against the Department for agency action unreasonably delayed, to the consternation of the Interior officials.

On July 30, 2001 the Assistant Secretary for Indian Affairs issued a "Proposed Finding on the Ohlone/Costanoan Muwekma Tribe" in which it proposed to decline recognition of the Tribe. 66 Fed. Reg. 40,712 (2001). It made no reference to the issues raised by the Court.

The Tribe submitted comments and substantial new evidence. On September 6, 2002, the Department issued its Final Determination denying recognition. 67 Fed. Reg. 58,631 (2002). Again, it made no reference to issues raised by the Court concerning violations of federal law by the Department of the Interior or the lack of equal protection in requiring Muwekma to go through this long process while administratively correcting the omission of the other tribes. The Department findings were like a brief against Muwekma, and the same team at Interior that had fought so hard against the Administrative Procedure Act suit, were deeply involved in the determination against Muwekma.

We have appealed that decision to the Federal District Court in the District of Columbia, and face more years of litigation.

H.R. 512, which in many ways adopts legislatively what Muwekma had to obtain through litigation, will save a great deal of money for the United States in not having to defend APA suits based on failure to decide cases in a reasonable time. It will also save money for tribes applying for recognition the same way. But more than that it will help eliminate the bias that occurs when Interior first fights in court to defeat a tribal applicant and then has the right to determine whether to recognize it or not.

[NOTE: Testimony of Kevin Gover before the Senate Committee on Indian Affairs dated April 21, 2004, submitted for the record by Mr. Sachse has been retained in the Committee's official files.]

The CHAIRMAN. Mr. Gumbs?

STATEMENT OF LANCE A. GUMBS, TRIBAL TRUSTEE, SHINNECOCK INDIAN NATION

Mr. GUMBS. Chairman Pombo, Ranking Member Rahall, members of the House Resource Committee, my name is Lance Gumbs and I am the current Tribal Chairman of the Shinnecock Indian Nation. Thank you for this opportunity to again address the Committee on this important issue.

When I stood before this Committee less than 1 year ago, it was the first time a member of the Shinnecock Indian Nation had testified before Congress since the 1900s. Nothing would make me happier than to be able to report back to you that the Department of Interior had made progress on our application, which was first filed in 1978, some 27 years ago. So if my frustration over the current Federal recognition process is evident in my testimony, it is because it was forged by the blood, sweat, and tears of too many members of our tribe.

As I look back in time, it is hard to believe that it was 1978 when our tribe created the Federal Recognition Committee to file our petition. Now, nearly three decades later, it merely gathers dust in a file, and regrettably, 13 of those original members will never see our tribe attain recognition. They have all passed on.

Our Nation is one of the oldest continuously self-governing tribes in the country. Experts in the recognition process tell us that we have the most compelling and complete case of any tribe, and we are the most documented Indian Nation on record. That is because

in 1792, the State of New York enacted a law taking away our traditional governance, replacing it with a trustee form of government. Each April for the past two centuries, the Clerk of the Town of Southampton has meticulously recorded our elections.

We have been in our present location on Eastern Long Island, land which once stretched from Montauk Point to Manhattan, for thousands of years. This land has dwindled over the past 365 years, beginning with the early settlers who illegally seized these lands in the 17th century. Remarkably, we are still fighting every day to protect our land, despite the fact that the Shinnecock Indian Nation predates the birth of America and that the Shinnecocks have had a formal relationship with the State of New York since its inception in 1788, some 317 years ago.

In 1974, the New York State Legislature called on Congress to grant our tribe Federal recognition. In fact, in a number of documents prepared by the Department of Interior, the Shinnecock Indian Nation was listed as a tribe in 1941, 1960, and 1966. Mr. Chairman, there is no reason that the Department cannot acknowledge us immediately.

The status of our petition sits in what I call the "black hole," the ready for active consideration list. I call it the black hole because in September 2003, the Shinnecocks were told we were number 21 on the current list, and according to BIA, and I quote, "It may take the OFA up to 15 years to decide all completed applications," end quote.

Mr. Chairman, it has been nearly a year and a half since receiving the information from BIA. We have not heard from them since and we are still number 12 in the never-ending queue. It is simply a fact that OFA is getting further behind in the process of reviewing and acting on pending applications. At this rate, without major changes to the process, the Shinnecock Nation will languish in an unrecognized status indefinitely.

We have provided evidence and more evidence to the BIA above and beyond what is required, which is because BIA staff interprets the results as they see fit. This is not what Congress intended.

To comply with the BIA process, a variety of professional services are required—genealogist, anthropologists, legal counsel, computer analysts, and the list goes on and on. It has cost us nearly $1 million so far, and this is money that could have been spent to provide housing or to improve education or health care for our people.

Last year, I witnessed testimony before this Committee calling for a moratorium on the Federal recognition of Indian tribes. For a tribe like mine who has provided BIA with a tremendous amount of documentation and redirected its limited resources toward this process, a moratorium would only amount to punishing all the tribes that have played by the rules.

What is needed, Mr. Chairman, is to fix a system that is clearly broken and it should start with the immediate recognition for tribes like the Shinnecocks, those that have languished too long and have done everything asked by the BIA. And in our case, we have been recognized by New York for 317 years. Isn't it ironic that the two tribes who helped the first settlers to this land survive, the Shinnecocks and the Mashpees, have yet to be formally recognized by the Federal Government?

For thousands of years, we have lived on our native lands. Most tribes in this country were moved to so-called reservations. We have never moved, and over 600 members of our Nation live on our territory. Through the strength of Mother Earth and the perseverance of our people, we are still here.

My mission is to realize the dream of my ancestors and see the seventh generation has a better life than the generations before it. Now is the time for the U.S. Government to recognize the Shinnecock Indian nation.

Mr. Chairman, thank you for your efforts on Indian issues and thank you for this opportunity to speak to this Committee and the members.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. Gumbs follows:]

Statement of Lance Gumbs, Chairman, Shinnecock Indian Nation

Chairman Pombo, Ranking Member Rahall and Members of the House Resources Committee, my name is Lance Gumbs, and I am the Chairman of the Tribal Trustees of the Shinnecock Indian Nation. Thank you for the opportunity to again address the committee on this important issue.

When I stood before this committee less than one year ago, it was the first time a member of the Shinnecock Indian Nation had testified before Congress since 1900. Nothing would make me happier than to be able to report back to you that the Department of Interior had made progress on our application which we first filed in 1978, some 27 years ago.

So if my frustration over the current federal recognition process is evident in my testimony, it is because it was forged by the blood, sweat and tears of too many members of our tribe. As I look back in time, it's hard to believe that it was 1978 when our tribe created the Shinnecock Federal Recognition Committee to file our petition. Now, nearly three decades later it merely gathers dust in a file. And regrettably, thirteen of those original members will never see our tribe attain recognition—they have all passed on.

Our Nation is one of the oldest, continuously self-governing tribes in the country. Experts in the recognition process tell us that we have the most compelling and complete case of any tribe. And, we are the most documented Indian Nation on record. That's because in 1792 the State of New York enacted a law taking away our traditional governance replacing it with a trustee form of government. Each April, for the past two centuries, the Clerk of the Town of Southampton has meticulously recorded our election.

We have been in our present location on Eastern Long Island—land which once stretched from Montauk Point to Manhattan—for thousands of years. This land has dwindled over the past 365 years, beginning with the early settlers who illegally seized these lands in the 17th century. Remarkably, we are still fighting every day to protect our land, despite the fact that the Shinnecock Indian Nation pre-dates the birth of America and, that the Shinnecock have had a formal relationship with the State of New York since its inception in 1788—some 317 years ago.

In 1974 the New York State Legislature called on Congress to grant our tribe federal recognition. In fact, in a number of documents prepared by the Department of Interior, the Shinnecock Indian Nation was listed as a tribe in 1941, 1960 and 1966.

Mr. Chairman, there is no reason that the Department cannot acknowledge us immediately.

The status of our petition sits in what I call the "Black Hole"—the "Ready for Active Consideration list." I call it a black hole because in September 2003 the Shinnecock were told we were number 12 on the current list and according to BIA,

[And I quote]

"it may take the OFA up to 15 years to decide all completed applications"

[End quote].

Mr. Chairman, it's been nearly a year and a half since receiving the information from BIA. We have not heard from them since and we are still number 12 in the never-ending "queue." It's simply a fact that OFA is getting further behind in the process of reviewing and acting on pending applications. At this rate, without major changes to the process, the Shinnecock Nation will languish in an unrecognized status indefinitely.

We provided evidence—and more evidence—to the BIA above and beyond what is required, because BIA staff interprets the results as they see fit. This is not what Congress intended.

To comply with the BIA's process, a variety of professional services are required: genealogists, anthropologists, legal counsel, computer analysts—the list goes on and on. It has cost nearly one million dollars so far, money that could have been spent to provide housing or improve education and health care for our people.

Last year, I witnessed testimony before this Committee calling for a moratorium on the federal recognition of Indian tribes. For a tribe like mine, who provided BIA with a tremendous amount of documentation, and redirected limited resources toward this process, a moratorium would only amount to punishing all the tribes that have played by the rules.

What is needed, Mr. Chairman, is to fix a system that is clearly broken. And it should start with immediate recognition for tribes like the Shinnecock—those that have languished for too long and have done everything asked by the BIA. And in our case, we've been recognized by New York for 317 years. Isn't it ironic that the two tribes who helped the first settlers survive- the Shinnecock and the Mashpee- have yet to be formally recognized by our federal government?

For thousands of years we have lived on our native lands. Most tribes in this country were moved to so-called "reservations", but quite simply we've never moved—and over 500 members of the Nation live on our territory today. Through the strength of Mother Earth and the perseverance of our people, we are still here.

My mission is to realize the dream of my ancestors and see that the "seventh generation" has a better life than the generations before it. Now is the time for the United States government to recognize the Shinnecock Indian Nation.

Mr. Chairman, thank you for your efforts on Indian issues, and thank you for the opportunity to speak to the committee.

The CHAIRMAN. I thank both of you for your testimony.

Mr. Gumbs, would H.R. 512 directly help the Shinnecocks to obtain a decision?

Mr. GUMBS. That would be our hope. I think it would go a long way in this process, considering the fact that when we started this process, I was a senior in high school, and over half my life, I have watched and waited and hoped. So yes, to answer your question directly, I think it would help.

The CHAIRMAN. I would like to ask both of you a question in light of the testimony that we have received at this hearing and at previous hearings on this topic. What would be your opinion of taking the recognition process away from the BIA and from the Department of Interior and doing something like what we did on the base closure commission or something like that, where you set up a completely outside group to review all of the petitions and make decisions based on that and take the politics out of it and just base it on a predescribed criteria and do it through the legislative branch versus the executive branch?

Mr. GUMBS. I personally think it would help a great deal. I think that in cases—it should be based on the merits. It should be based on the facts, not politics, not anybody's personal agendas, and not on this whole casino issue. We are one of the tribes that did not go out and get financial backing, so we have been in this process, and yet it seems like we are being penalized now because of the new so-called gold rush to casinos. So I think that it would help a great deal if tribes were allowed to go through this process based on the merits, based on their facts, based on their history, and not on outside personal agendas.

The CHAIRMAN. Mr. Sachse?

Mr. SACHSE. I agree with that. I think Interior has had their shot at this and they have made a horrible mess of it. It is in the

courts now, whether people want it to be there or not, because of the delays. Once we won our case, they everybody else could file a case like that.

But the substantive issues, where it is wrong, these thousands of pages of documentation and so on and so forth, I think if a tribe has been recognized for many, many years by a State, the Federal Government should just recognize it. It shouldn't be that they have to go prove all kinds of things.

And I also think that where a tribe has been previously recognized and the people are the direct descendants of those people, and let us say previously recognized within the last 100 years or something, and some of the people from the recognized time are still alive, it should just be recognized.

And here is the odd thing, and the court is going to have to deal with this, but it is important. In California, there are all these little tribes like the Muwekma Tribe. The Department of Interior in 19—let me get the dates right. The Department of Interior in 1994 told the Ione Band of Miwoks that they didn't have to go through this procedure at all. They had been previously recognized and they would just recognize them again, and they did it. And then in the year 2000, the Department of Interior did the exact same thing with the Lower Lake Rancheria and they are recognized, just by correcting their records, you see.

Well, the records should be corrected for a tribe like Muwekma or for other tribes that were just dropped from the list without there being a formal finding by the Department of Interior that this is not a tribe or Congress doing something or some agreement where two tribes merge and one no longer exists.

So if you are going to set up a different procedure, there ought to be some way to weed out the tribes like Shinnecock, like Muwekma, not make them go through this procedure. For years, Muwekma had to go through this simply because Interior told them that that was the way to do it. And while Muwekma is going through this, Interior just corrects its records on other tribes.

The CHAIRMAN. I don't know if I necessarily agree with you in terms of changing what the criteria is, and that is something I would have to look at. I can tell you, and I am sure both of you have seen this, some of the groups that have applied for recognition probably don't qualify, and there are others that do. I just think it is unconscionable, whether you think they qualify or not, to hold somebody out there for 20 years and not give them an answer. I mean, once they have turned in all their documents, it is yes or it is a no. You are either qualified or you are not.

With the Shinnecocks and others that I have worked with, it has been, tell them yes or no, but don't make them wait for another 20 years. That is the part that gets to me, because I know that there are groups that have applied that probably aren't tribes and they shouldn't be recognized as a federally recognized tribe.

And there are, and I can tell you there are major differences between a State recognition process and the Federal recognition process and it has impacts—once we recognize someone as a federally recognized tribe, it has an impact on all the other federally recognized tribes. So it is not something that I believe we can take lightly, but it is something we have got to give them a decision on.

I don't quarrel with treating everybody the same and having the same recognition process and going through what we have done, but I do quarrel with making somebody wait for decades to tell them yes or no, and that is the part of this whole process that I have a real problem with, because I have heard stories like this for a number of years and I just think that we need to clear the decks. We need to figure out a way to allow everybody the opportunity to apply for recognition and in a timely manner give everybody an answer.

If we do that through—once this legislation is enacted, when we deal with everybody else, if we do that through some kind of a different process, that is fine. It is going to cost money. We are going to have to hire people and we are going to have to do it, but I just can't imagine going on with this for another 20 years or 30 years and leaving these poor people hanging out there like what we have done.

I am going to recognize Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Sachse, you mentioned that the legal document which the Department issued in response to the Muwekma petition was a very lengthy document. You compared it to some other legal document. You know, if they were to expend the same time and effort as they obviously put in that denial document for seeking some help for the nations like the Shinnecock, that would be helpful. Apparently, they had time to prepare a rather lengthy document to deny your petition in December of 2002, right?

Mr. SACHSE. I think that is the right date, yes.

Mr. KILDEE. But they must have had time and professional staff to prepare a rather lengthy denial. My point is that I would hope that they would spend the same assiduous effort in trying to ascertain affirmatively those that have been there for many, many years.

Mr. SACHSE. One would hope. One of the reasons I think this bill is good, though as I say, it doesn't affect my client, is that every tribe can go to the Federal District Court and under the Administrative Procedure Act get an order that requires Interior to decide within a reasonable time because the law is on the books right now that every agency has to decide an issue before it within a reasonable time, and ten, 15 years is no reasonable time on anybody's part.

But a tribe shouldn't be forced to do that, because in doing that, you buildup the animosity of the people who are going to decide your case. It is much better for Congress just to say every tribe has this right and tell Interior to do it.

Mr. KILDEE. I have been, as I say, a number of years here in Washington. I have attended one function here where the BAR process did recognize a Michigan tribe, the Huron Band of Potawatomi. I recall that. But I think the last time, according to my records here, and I could be corrected, the last time that the BAR process did affirmatively uphold the recognition of the sovereignty was 2002 with the Cowlitz Tribe of Indians in Washington. So there hasn't really been much in the last 3 years affirmatively recognizing a tribe. It would seem to me with the number of petitions and my knowledge of some of these tribes that there certainly

are tribes that are truly sovereign Indian Nations under Article 1, Section 8 of the Constitution and it has been 3 years since they found one. I think that is one of the reasons that Mr. Pombo has introduced his bill.

Again, I am determined—I carry with me wherever I go, I carry the Constitution and I carry John Marshall's decision. I never leave home without it. I read Article 1, Section 8, and John Marshall says the Indian Nations had always been considered as distinct, independent political communities, retaining their original natural rights as the undisputed possessors of the soil from time immemorial. The very term "nation" shall generally apply to them. It means a people distinct from others.

Now, as an unsophisticated 7-year-old, I could recognize an Indian tribe in Northern Michigan. But the BIA could not. So we went through the Congressional process and reaffirmed their retained sovereignty.

Thank you, Mr. Chairman. I yield back the balance of my time.

The CHAIRMAN. Thank you, Mr. Kildee.

Mrs. Napolitano?

Mrs. NAPOLITANO. I don't know where to start other than I agree with some of the testimony that has been given. And like I mentioned, I do not have any tribes within my area, but I have dealt with tribes for a number of years, since I was in State legislature, and the frustration of those that have come before Congress to become recognized is not new to us.

Is there anything either one of you can recommend or state to this body that might help expedite, if you will, the process with BIA? What is it that we need to know that is a problem in identifying or being able to expedite or being able to determine with clarity what needs to be done so they can move forward? You have heard their testimony. There is an issue with the necessary personnel. Whatever else, what is it that you feel we need to know to be able to see that we can move forward?

Mr. GUMBS. One of the problems that I see in particular is the lack of communication coming back from them as to what may be some of the problems in your petition. You get a TA letter, or technical assistance letter, but then there is no further follow-up. Once you have put in information, it doesn't seem to be a two-way street of information. So that would really help to expedite it.

One of the other things that I see in this whole FOIA process, I am sure that most of the tribes would be willing to give their information to whoever wants it in the process of expediting this, but they seem to get bogged down with the whole FOIA process.

My last problem that I personally have with it is the continual changing of, I won't say the regulations, but how they interpret information. We actually had to go back in the community part of the process, and even though there is a specific criteria that you have to have, it wasn't acceptable. We had completed it, it was done, and then we were notified that it wasn't acceptable. But by the guidelines, we had completed it exactly as to their specifications, but we were informed that it wasn't complete and so we had to spend an additional 2 years redoing the community aspect of our petition.

So these are the problems that I personally see in being part of this process that lengthens the whole situation itself.

Mrs. NAPOLITANO. Would you have felt that those were change of personnel and personnel interpretation, or is this an agency interpretation?

Mr. GUMBS. I think it is a little of both, I mean, to be honest with you. I think it has to do with both the change of personnel, the inconsistency, and the inconsistency of the people doing this. There is no consistency. There is no rhyme or reason. There is no method. It is like whoever chooses to do it at that particular time and how they read or interpret the rules and regulations, and I think that is a big problem.

Mr. SACHSE. I don't know that I know how to fix this, but I know what part of the problem is. Part of the problem is that the process is so complicated, with all the anthropologists and everything like that, that it is turned over to this little branch called the BAR, the Bureau of Recognition, whatever it is, and they work on these things at their speed and their way for years and years and years.

And the Assistant Secretary, who is usually somebody who would like to improve things, doesn't have any control over it. For instance, when they make a recommendation to the Assistant Secretary, it is so long and so complicated that the Assistant Secretary can't go back and judge, was this right or was this wrong, and they just rubber stamp it. And so that little bureau gets more and more powerful.

What I saw in our case, and it is still going on, is when the decision was made against the Muwekma Tribe, we thought it was so patently wrong that we went back to the Assistant Secretary, who then was an acting person, Aurene Martin, who you might have met, who is a very good person. We talked to her and she said she wanted to reconsider all this and how long did we need. This was in December. We said, how about setting up some procedure to reconsider it by the end of January?

Well, we don't hear anything from her, and we don't hear anything in February and March. Then we talk to her and she says that she is waiting to hear from Scott Keep. Scott Keep is the lawyer who does all of the legal work for the recognition procedure. And Scott never did get back to her. And we kept talking to her and she kept talking to Scott.

In the end, she is out of office, Scott is still there, and he has just out-waited the process of reconsideration. We then talked to Mr. Olsen about the same thing and got the same answer just a week or two ago. Well, I would like to think about this but I have to get—and Scott Keep hasn't gotten back to me yet on it.

I just think it is too broken to fix. I think the idea of taking it out of Interior altogether is a good idea.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

The CHAIRMAN. Ms. Herseth?

Ms. HERSETH. Thank you, Mr. Chairman. I don't have any questions for our witnesses today but I would like to commend both of you as well as those that testified before the Committee as well as Chairman Pombo for having these hearings and the importance of moving these matters. It is important to tribes across the country. Whether we are dealing with the Department of Interior mismanagement of the trust for Indian lands and the need for trust reform, whether we are dealing with matters as it relates to

Federal recognition and the years and the decades that have gone by without the kind of accountability that you deserve, I think it is important that we are having these hearings today and that these issues have been prioritized by the Committee, so thank you.

The CHAIRMAN. Mr. Udall?

Mr. TOM UDALL OF NEW MEXICO. Thank you, and let me also echo that. First, let me thank the witnesses for being here, but Chairman Pombo, I think this is an important issue. It is an issue that needs to be addressed and I compliment you and the Committee for doing that.

There is one question I want to ask. In one of your answers, you talked about going to court and doing things in court. This is a very expensive process for tribes, is it not? Do you have an estimate of the average cost for a tribe to go through the process or, rather, what it costs them to pull everything together and get it done?

Mr. SACHSE. I think I will defer it to the Chairman here—

Mr. GUMBS. It has cost us over a million dollars right now and it is still going up. And if it hadn't been for the Native American Rights Fund, who, as most of you know, does the Federal recognition pro bono, it would probably be upwards of probably $2 or $3 million. For a tribe like ours that does not have any income, that is an inordinate amount of money.

Mr. SACHSE. I second that. I think that is correct. It is very expensive to litigate things. You need to hire a private attorney to litigate. I am not talking about the process in the BIA. I am talking about if you need to litigate to get BIA to get to it or then to appeal what they do. You are talking about $700,000 or $800,000, a million dollars in litigation costs.

Mr. TOM UDALL OF NEW MEXICO. Thank you. Thank you, Chairman Pombo.

The CHAIRMAN. Thank you. I want to thank the panel for their testimony. It, I believe, was very valuable for the members of the Committee. I intend on moving forward with this legislation in a timely manner. I look forward to working with you and with the administration in order to be able to do that.

I would like to say to Mr. Gumbs, I appreciate you making the effort to be here. I know that we have asked other witnesses to come forward that have gone through the same process that you have and many times they are very reluctant to appear and to testify and I appreciate you having the courage and the willingness to come here and share your story with us. It is something that I believe the Committee needs to hear, and I know that you have been going through this for a long time so I appreciate you making the effort to be here.

Mr. GUMBS. Thank you for having us.

The CHAIRMAN. If there is no further business before the Committee, the Committee stands adjourned.

[Whereupon, at 11:24 a.m., the Committee was adjourned.]

[A statement submitted for the record by The Honorable Edward Roybal, II, Governor, Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, follows:]

Statement submitted for the record by The Honorable Edward Roybal, II, Governor, on behalf of the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, Las Cruces, New Mexico

Chairman Pombo and distinguished members of the House Resources Committee, thank you for the opportunity to provide written comments for the official hearing record for H.R. 512, a bill to require the prompt review by the Secretary of the Interior of longstanding petitions for Federal recognition of Indian tribes.

My name is Edward Roybal, II and I am Governor of the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe of Las Cruces, New Mexico ("Tribe"). First, I would like to provide some background information on the Tribe and our efforts to restore our government-to-government status with the federal government and then I will comment on the intent and provisions of H.R. 512.

Background

The Tribe is the inheritors of the culture, traditions, tribal form of government and land of the aboriginal Piro, Manso, and Tiwa people of southern New Mexico, southwestern Texas and northern Mexico. Oral tradition tells of how our people have lived in the area since time immemorial and have traditions and ceremonies tied to the mountains, river, plants, animals and storm and cloud movements of the region.

The Tribe, although unrecognized, is a traditional Pueblo with its own ceremonial and civil governing structures. Our Cacique, who serves for his lifetime, is the sacred core barrier of thousands of years of tribal traditions and ceremonies. The position of Cacique is documented in Spanish, Mexican and American records as being in my family for 300 years, or since the late 1700's. My grandfather served as Tribal President for 25 years and my great uncle served as Cacique from 1935 until his death in 1978. Their father, my great-grandfather was cited in the Las Cruces newspaper as the "Cacique of the Pueblo of Indians in Las Cruces" in 1908. It was during his tenure, from 1890 to 1910, that the Tribe received Federal services as an Indian tribe and over 110 children from our Pueblo were taken, against their parent's wishes, to Indian boarding schools in Albuquerque, Santa Fe, California, Oklahoma, and Arizona.

Today, the Tribe has 206 enrolled members who descend from the original families that maintained the government-to-government status with the United States back in the 1890-1910. In addition, more than 75% of our enrolled tribal members reside within the eight (8) square mile area in or near the old traditional community in Las Cruces, New Mexico.

Federal Recognition Efforts

Prior to any development of federal regulations or policies dealing with unacknowledged Indian tribes, the Piro/Manso/Tiwa sought clarification of their relationship with the United States. In 1971, a letter was sent to the Department of the Interior requesting they acknowledge the government-to-government relationship with the Tribe as federally recognized Indian tribe. In 1976, Senator Domenici introduced legislation to recognize the Piro/Manso/Tiwa Tribe. Unfortunately, no action was taken on this legislation. During this time, the Tribe also sought judicial relief in order to receive Snyder Act services in the Avalos v. Morton case. However, the court held that it was unable to determine our status judicially. Two years later, in 1978, the Bureau of Indian Affairs promulgated and implemented the federal acknowledgment regulations found at 25 CFR Part 83.

In 1992, the Tribe submitted a revised documented petition to the Department of the Interior pursuant to 25 CFR Part 83. The documentation we submitted in 1992 was extensive and included the Tribe's history, references in local newspapers and Spanish, Mexican and American documents, genealogical records, tribal events and meetings, named political and religious leaders, maps, and examples of how the Tribe and its members have interacted. In 1993, the Department conducted a preliminary assessment of the petition and advised the Tribe of its "obvious deficiencies" assessment. In January, 1997, the Tribe was notified that the Department deemed the petition to be complete and since 1997 the Tribe has been on the "Ready, Waiting for Active Consideration" list. In fact, the Tribe has been in a holding pattern—at number seven (7)—since 2000. Thus, in almost five (5) years, the Tribe has not moved any closer to having its petition reviewed by the Office of Federal Acknowledgment ("OFA").

What is most tragic about this situation is that our elders continue to age while our petition remains in the Department's holding pattern. With each day, important federal services are inaccessible to our elders because our Tribe has yet to receive federal acknowledgment of the government-to-government relationship.

H.R. 512

The prior related story of the Piro/Manso/Tiwa Tribe and its people illustrates the paramount need for H.R. 512 to be enacted. Although we were one of the first petitions to seek federal recognition in 1971, we have spent almost 34 years fighting, with very little resources, to gain the federal recognition that is due to the Tribe. Without reform in the Federal acknowledgment process, it is possible that in the year 2010, the Piro/Manso/Tiwa Tribe could still be number seven (7) on the Ready, Waiting for Active Consideration list. I hope that is not an accurate prediction of the future, but it is an unfortunate possibility.

Therefore, the Tribe strongly supports the intent of H.R. 512 which is to establish reasonable and mandatory time frames in which the Secretary of the Interior would be required to publish a proposed finding and a final determination for the eligible petitioners. This type of directive is exactly what is needed to alleviate the backlog in petitions at the Department.

However, the Tribe has a few concerns with the bill regarding the intent of how the review of the "Eligible Tribe" category will be implemented.

1) First, the bill defines the terms "Eligible Tribe" to be a Tribe that has made an "initial application" for recognition as an Indian to the Department of the Interior before October 17, 1988. As you are aware, the regulations at 25 CFR, Part 83 do not define the term "initial application" rather the terms "letter of intent" and "documented petition" are utilized. The bill would need to clarify whether "made an initial application" means the submission of a letter of intent pursuant to 25 C.F.R. Part 83.4 or the submission of the documentation petition required in 25 C.F.R. Part 83.6. We would request the "made an initial application" be clarified to mean the submission of a letter of intent. As you know, the Piro/Manso/Tiwa submitted their letter of intent in 1971 and their petition in 1992.
2) Second, it related to the order of review of the "Eligible Tribe" petitions by the Department of Interior in the expedited procedure. The Tribe believes that it is important that the order of review be established to allow for those Tribes who have been in the bureaucratic system the longest to proceed first in the expedited alternative. The Tribe believes there would be no justification to have other Tribes leap frog over our petition since we have been waiting for 34 years. Alternatively, it appears the bill allows for simultaneous review by the OFA staff which could create other issues related to our third concern.
3) Finally, the bill is silent regarding any appropriations increases for the workload envisioned for the OFA. The Tribe would be concerned that the Department would declare the bill an unfunded mandates and cause more litigation defenses. As an alternative, a directive earmark of the Office of the Secretary—Indian Affairs budget to mandate use of their funding for the project would be effective to ensure adequate staffing. Other creative monetary ideas could be developed to forestall critics of the bill.

Conclusion

In closing, the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, thanks you for the privilege of submitting written testimony on H.R. 512. We would like to work with your staff to address our concerns and to assist in the final passage of H.R. 512. Please feel free to contact us. Finally, we deeply appreciate the efforts Chairman Pombo and the Committee to champion the voices largely not heard—that of unacknowledged tribes.