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PROCESS OF FEDERAL RECOGNITION OF INDIAN TRIBES

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

SEPTEMBER 19, 2007

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PROCESS OF FEDERAL RECOGNITION OF INDIAN TRIBES

WEDNESDAY, SEPTEMBER 19, 2007

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

The Committee met, pursuant to notice, at 9:30 a.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. The hearing will come to order.

This hearing of the Committee on Indian Affairs is a hearing on the process of federal recognition of Indian tribes. This morning the Committee will meet to hear testimony regarding the administrative process for the Federal recognition of Indian Tribes. This is intended to be the first of several hearings on the Federal recognition process. My own feeling is that the process does not work very well at this point and needs to be repaired and fixed.

Today we are going to focus on the experiences that petitioners have encountered in the administrative process that have led them to seek legislative recognition. We will also hear from the Department of the Interior, and I intend to hold a hearing at a later date that will focus on proposed recommendations for change and reform of the process.

There were a number of tribal groups and organizations who wished to participate in today's hearings. The four witnesses here today represent tribal groups whose Senators have introduced recognition bills on their behalf. I should note there are others who wish to testify. We had a limited capability today. But I believe that the hearing today will have tribal groups and organizations who are representative of a broader group.

The Federal acknowledgement process was established in 1978 by the Department of the Interior at the request of the American Indian Policy Review Commission. It was not a process expressly required by statute, although there has been considerable Congressional interest in that process over the years. It was developed through consultation with Indian tribes and other interested parties.

During the initial development of the regulations, there were over 400 meetings and discussions and conversations, I understand. That consultation resulted in what is an administrative process requiring petitioning groups to meet seven criteria to prove

that they had a "substantially continuous tribal existence since historical times."

The recognition process, for better or for worse, has evolved over the years into a lengthy—an unbelievably lengthy—and costly process requiring substantial research, substantial documentation. I'm told that some petitions can fill an entire room. It is unbelievable to me that two of our four witnesses today have waited nearly 30 years for the Department of the Interior to make a decision.

I think it is important, if tribes are seeking recognition, that there be a complete and a substantial record. I understand the requirements that must go into making that record. So I'm not suggesting that we shortchange the requirement to establish the historical record. I am saying that a process that in many cases lasts 20 or 30 years for tribal recognition or for a decision on tribal recognition is a process that's broken and ought to be fixed. We're not serving anybody's interest with those kinds of lengthy, lengthy delays.

So we will be holding the hearing this morning, we will hold other hearings as well on this process and recommendations for trying to fix this process.

Let me call on my colleague, Senator Tester, from Montana, for comments.

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Mr. Chairman. Just very briefly, I appreciate your kindness.

As I look at this whole process, which I knew very little about before Chairman Sinclair approached me about a year ago. He asked me to carry a bill to legislatively recognize the Little Shell Tribe. It is absolutely apparent to me the process is totally broken and overburdened with bureaucratic red tape. A decision needs to be made in a lot of these areas on a timely basis yes or no and move forward. So if there's ways through this hearing, Mr. Chairman, if we can get the Department of Interior in a better position to make a timely decision on this particular topic so that the process serves our Native Americans better and creates better government.

Thank you, Mr. Chairman. I look forward to hearing from our witnesses.

The CHAIRMAN. Senator Tester, thank you very much.

As I indicated, the four witnesses today represent tribal groups whose Senators have introduced recognition bills on their behalf. There are two ways to be recognized as a tribe. One is recognition by the legislative authority and the second is going through the process at the Department of the Interior. When I talk about the process not working, I'm talking about that Department of the Interior process. It is not unprecedented that Congress has passed legislation in these areas. My preference would be that we have a process that works at the Department of the Interior, rather than the U.S. Congress taking up these bills and passing them on an individual basis. We are talking today about the process at the Department of the Interior.

But we are joined today by Senator Dole and Congressman McIntyre. They have been involved in a legislative initiative on behalf of a tribal government, and they've asked if they could make a comment at the beginning of this hearing. We're pleased to have our colleague Senator Dole join us. Senator Dole, why don't you proceed?

STATEMENT OF HON. ELIZABETH DOLE, U.S. SENATOR FROM NORTH CAROLINA

Senator DOLE. Thank you very much, Mr. Chairman, for holding this hearing and for giving me the opportunity this morning to introduce my friend, the Lumbee Tribal Chairman, Jimmy Goins. I've been proud to work with Chairman Goins over the years on our shared goal: full Federal recognition of the Lumbee Tribe.

It's apparent that Chairman Goins is driven by his strong desire to serve his fellow Lumbee tribal members, his country, and his family. He was awarded the Purple Heart for his distinguished service and sacrifice in Vietnam. A man of faith, he teaches Sunday School and serves as a trustee, board member and steward at Union Chapel Holiness Methodist Church. And he is dedicated to his wife, Diane, three daughters and five grandchildren.

Chairman Goins has long been a leader for the Lumbee Tribe in its quest for Federal recognition. As a member of the tribal council, he oversaw the Federal recognition committee and as the Chairman of the tribe, he has traveled across North Carolina and to Washington to educate policymakers on the importance of Federal recognition, not only for the Lumbee, but also the southeastern region of North Carolina where most of the tribe's 55,000 members reside. In fact, since my arrival in the Senate in 2003, this is the fourth hearing Chairman Goins has journeyed to Washington to attend.

The Lumbee Recognition Act was the very first bill that I introduced in the U.S. Senate. I have continued to champion this cause alongside Chairman Goins and other Lumbee leaders and allies, because I passionately believe that Congress should act to provide the tribe full Federal recognition. It is a matter of fairness.

North Carolina formally recognized the tribe in 1885, and 3 years later, in 1888, the tribe began its quest for Federal recognition. In 1956, Congress finally passed legislation recognizing the tribe, but it included a terribly unfair caveat: the Lumbee were denied the benefits that every other federally recognized tribe receives. Moreover, the 1956 Lumbee Act actually prohibits the tribe from going through the Bureau of Indian Affairs process for full recognition. As the law now stands, the Lumbee Tribe can only be recognized by an act of Congress.

Just one other tribe, the Tiwas of Texas, faced a similarly unfair situation following the passage of a comparable bill in 1965. But in 1987, Congress enacted special legislation to recognize them. This makes the Lumbee the only tribe in the Country still trapped in this limbo.

The BIA process is reserved for tribes whose legitimacy cannot be established. But the Lumbees' legitimacy has been established time and time again in studies by the U.S. Department of Interior beginning as early as 1912, then again in 1914, and yet again in

1933. Furthermore, the Government Accountability Office has documented that getting through the BIA is an arduous and lengthy process, as the Chairman has pointed out.

I welcome the attention the Committee is giving this problem. However, it is clear that even if the Lumbee could legally go through the BIA, this would only impose yet another delay. Earlier this year, the Lumbee cleared a significant hurdle. The House passed the Lumbee recognition bill sponsored by Congressman Mike McIntyre, who's here with us this morning. It has been my joy to work with Mike over these many years.

The Lumbee are now this close to securing the recognition for which they and their ancestors have tirelessly fought. The ball is in the Senate's court. Now is the time for us to do what is fair and right. In the last two Congresses, this Committee has approved my Lumbee Recognition Bill. I strongly urge again that this Committee report the bill to the full Senate. The Lumbee deserve better than a partial nod to their legitimacy. They deserve full recognition and the time is now.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Dole, thank you very much.

I would like to recognize the Vice Chair, who has joined us, for an opening statement.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

I am very pleased that we are holding this hearing on the Federal recognition process for Indian Tribes.

We recognize that it has been 3 decades since the American Indian Policy Review Commission issued its final report regarding recommendations on the Federal Indian policy. Over the past 30 years Congress has made strides in developing a more progressive Indian policy and improving the government-to-government relationship with Indian Tribes, but one area that has lagged is the Federal recognition process. Since 1978 the BIA office has reviewed and resolved some 62 petitions for Federal recognition, unfortunately this is only about 20 percent of the 324 petitions that have been submitted for Federal recognition.

Three of the four tribes that are testifying before the Committee today have been waiting at least 13 years for action to be taken on their Federal petitions. The good news for these tribes is that they've got the ability to go through the Federal recognition process. But as Senator Dole has mentioned this morning, for some, such as the Lumbee Tribe, the administrative recognition process is not available, thus forcing them to seek legislative recognition.

I too would like to extend a warm welcome to the Lumbees this morning. The Native people of Alaska have long supported the Lumbees in their quest for Federal recognition. I was proud to support your legislation in the 109th Congress.

One of the issues that I hope that we will review today is whether an examination of the staffing levels at the OFA and whether their budget is adequate for their large and complex workload. Another issue is whether the Federal recognition process itself, does it need to be changed, either by Congress or by the Secretary

through rulemaking, to provide for deadlines and standardized criteria for the OFA to determine which tribal petitioners are appropriate for Federal recognition.

I appreciate those witness that have traveled so far to be with us today. And with that, Mr. Chairman, I look forward to the testimony from those who will be here.

The CHAIRMAN. Senator Murkowski, thank you very much.

Congressman McIntyre, we're pleased that you've joined us.

STATEMENT OF HON. MIKE MCINTYRE, U.S. REPRESENTATIVE FROM NORTH CAROLINA

Mr. MCINTYRE. Thank you, Mr. Chairman. Thank you for holding this very important hearing on Federal recognition and the Federal process for Indian tribes.

Mr. Chairman, fellow members of the Committee, I was born and raised in Robeson County, North Carolina, which is the primary home for the Lumbee Indians, in addition to several counties that adjoin it. I have the high honor to represent the Lumbees in the U.S. House of Representatives which, after a century of delay, recently passed a bill to grant the Lumbee Tribe Federal recognition by a bipartisan two-thirds margin in the U.S. House this summer.

I am especially pleased today to welcome the Chairman, Jimmy Goins, who will shortly be testifying. Jimmy is a decorated Vietnam veteran, a successful businessman and an outstanding leader for the Tribe, as well as an outstanding citizen in our county and our State.

As you will hear from Chairman Goins, there is no question the Lumbee Indians constitute an Indian tribe. In response to numerous bills introduced in the U.S. Congress over the last century, the U.S. Department of Interior has already studied the Tribe 11 times and has always concluded that the Lumbees are Indian.

As you will hear from Chairman Goins, Congress itself—51 years ago this summer—in fact, on the very day that the House remedied this situation in passing the recognition bill, 51 years ago this past June, Congress put the Lumbee Tribe in Indian no-man's land with the enactment of the 1956 Lumbee Act, which according the 1989 Solicitor General's ruling, precludes the Tribe from going through the regular BIA process.

There is exact legal precedent to remedy this situation. In two similar situations where Congress has precluded two other tribes from going through the BIA process, Congress passed special legislation correcting the problem by extending full Federal recognition to those tribes. Thus, the Lumbees are now the only tribe in America left in this legal limbo.

Congress should now do the same with the Lumbees to go ahead and correct this inequity which Congress caused back 51 years ago in 1956. The House indeed took action this summer to correct this injustice. It is our hope now that the Senate will do the same this session of Congress, so for once and for all, after 100 years, this matter can finally be resolved.

Mr. Chairman, thank you for this opportunity to welcome Mr. Goins today and others who are here from the Lumbee Tribe. I look forward to continuing to work with you and with all of you on this Committee and our colleagues in the Senate to pass Lumbee Fed-

eral recognition that—after a century of delay—recognition may finally proceed.

Thank you, and may God bless you.

The CHAIRMAN. Congressman McIntyre, thank you for venturing to this side of the Capitol once again. We appreciate having you. You and Senator Dole are certainly welcome to stay as long as you wish. We know that you have to leave at some point for other business.

Let me call the first panel to the table, if I might. The Honorable Jimmy Goins, and Mr. Goins, you have had a pretty substantial introduction here by your Senator and Congressman. Tribal Chairman, Lumbee Tribe of North Carolina. You may take your seat.

The Honorable John Sinclair, the Tribal President of the Little Shell Tribe of Chippewa Indians of Montana, Great Falls, Montana. The Honorable Ann D. Tucker, Tribal Chairperson, Muscogee Nation of Florida, in Bruce, Florida. And the Honorable Ron Yob, the Tribal Chairman of the Grand River Band of Ottawa Indians in Grand Rapids, Michigan.

We welcome all of you. We will have Mr. Fleming with us as well. Mr. Fleming, would you proceed to take a seat at the table as well? We were going to do two panels, but because of the timing here, I hope you will all recognize we want to hear from all of you. My understanding is we have a vote beginning at about 10:30 today, so we may have a brief recess. But we'll proceed as well as we can.

Mr. Goins, as I indicated, you've had a very substantial introduction. We appreciate your appearance before our Committee and appreciate your having served our Country in so many ways. Why don't you proceed? And then I will go down the row to Mr. Sinclair, Ms. Tucker and Mr. Yob.

STATEMENT OF HON. JAMES ERNEST GOINS, CHAIRMAN, LUMBEE TRIBE OF NORTH CAROLINA

Mr. GOINS. Thank you, Mr. Chairman and members and guests of the Committee. I appreciate the opportunity to appear today on behalf of the Lumbee Tribe of North Carolina.

The CHAIRMAN. Let me interrupt you just to say that your entire statement will be part of the record—for all of you—and we will ask that all of you summarize today. Thank you very much.

Mr. GOINS. Let me begin by extending the Tribe's gratitude to Senator Burr and Senator Dole for their support for the Tribe's cause. With their help, and of course that of Congressman McIntyre, whose bill to recognize the Tribe recently passed the House of Representatives, it is our fervent hope that our long quest for Federal recognition is about to come to an end with the enactment of Mr. McIntyre's bill into law.

The Committee has asked out our experience with the BIA acknowledgement process. We have no experience with the present process. There's a simple reason why. The Lumbee Tribe is not eligible for the BIA present process. In 1956, the Congress enacted the Lumbee Act. This is one the nearly a dozen bills that had been introduced since 1899 to achieve Federal recognition for the Tribe. Congress amended it, though, at the request of the BIA. The BIA wanted to make sure that the Lumbee Tribe was not eligible for

Federal services, so it asked Congress to add termination language to the bill. Congress did so, basically acknowledging us and terminating us at the same time.

In 1989, the Solicitor's Office ruled that the 1956 Lumbee Act bars the Tribe from the present BIA process. By that time, the Tribe had already submitted a documented petition. But the BIA has not and cannot process it. Some have proposed that the answer for the Lumbees is to repeal the 1956 Lumbee Act and send the Tribe through the BIA process now. That is not the answer. It is not fair, it is not necessary and it will not work.

Why is it not fair? Only a few other tribes have experienced anything like we did in the 1956 Lumbee Act. And in every such case, Congress has enacted special legislation to recognize the tribe. The Ysleta del Sur Pueblo is the best example. That tribe was subject to an unusual act like the 1956 Lumbee Act that also left it ineligible for the BIA recognition process. Congress fixed this for the Ysleta del Sur Pueblo, or the Tiwas, by enacting special legislation in 1987. Congress should in all fairness do the same for the Lumbee Tribe, the only, the only tribe left in the Country in this position.

Why is it not necessary to send the Lumbee Tribe through the BIA process? The whole purpose of the BIA process is to study a tribe's history and community, something that's already been done repeatedly at Lumbee. In response to all the Federal bills to recognize the Lumbee Tribe, the BIA testified to Congress about the Tribe's history and community and several times sent special Indian agents to Robeson County to study the Tribe. This produced numerous Congressional hearing reports and 11 BIA studies on the Tribe. Every single one of these reports and studies concludes that we are an Indian community, one that descends from the coastal North Carolina tribes and one that has resided near the Lumber River, formerly known as Drowning Creek, since the time of white contact.

Since Congress and the Department have already studied the Lumbee Tribe so many times and find a longstanding Indian community there, there is no reason yet for another study of the Lumbee. Why won't the administrative process work for the Lumbee? We have not gone through the present BIA process, but we've been dealing with the BIA and recognition since 1890. Our experience convinces us that the present BIA process just won't work for the Tribe. In 1934, the BIA specifically told Congress that the Lumbee Tribe descends from the historic Cheraw and related Siouan-speaking coastal North Carolina tribes. But now the head of the present BIA process says there may be insufficient documentation of the Tribe's descent from this historic Cheraw community.

How can this be? Certainly the Lumbee Tribe's history has not changed since 1934, when the BIA was confident of the Tribe's Cheraw descent. This must be because of the limitation in the present BIA process. It depends completely upon documentary evidence by the Indian groups generated by the dominant society.

Documentary evidence is sparse for many Indian groups at the time of early contact for very good reasons. For example, we Lumbees took refuge in the swamps of Drowning Creek to avoid

non-Indian settlements. This protected us, but it also meant that very few documents about us were generated in the early contact period. Dr. Vine Deloria observed that the Lumbee Tribe is in a difficult position under the present regulations, because limited contacts produce limited documents. But Dr. Deloria had no doubt that the Lumbee Tribe is entitled to and should be recognized by Congress.

The bottom line is that the BIA's recognition process has nothing to do with the Lumbee Tribe and should have nothing to do with the Lumbee Tribe. John Shepard, retired BIA employee, who wrote the acknowledgement regulations and set up the acknowledgement process, said it best recently in a letter to the Committee: "The Government does not need to waste any more time or money for additional assurances of the Lumbee's background and credentials." There is enough research material on file now about the Lumbees for Congress to enact solid legislation, certainly with the knowledge that it has all been documented.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Goins follows:]

PREPARED STATEMENT OF HON. JAMES ERNEST GOINS, CHAIRMAN, LUMBEE TRIBE OF NORTH CAROLINA

Mr. Chairman and members of the Committee. I appreciate the opportunity to appear before you today on behalf of the Lumbee Tribe. The Lumbee recognition issue is pending before this committee once again and our people have high hopes that this Congress, after nearly 120 years of effort, we will finally achieve Federal recognition of the Lumbee Tribe of North Carolina. I bring with me the deepest gratitude of our people for the efforts of Senator Burr and Senator Dole on behalf of our people for their support for our cause. Of course, I also bring with me our people's joy at the passage of the Lumbee recognition bill in the House of Representatives, H.R. 65, on June 7 of this year by a two to one margin—all due to the hard work of Congressman McIntyre.

The Committee has asked the Tribe to comment on the process of Federal recognition of Indian tribes. This is something with which the Lumbee Tribe has considerable experience: it has sought Federal recognition since 1888. Since that time, the Tribe has sought Federal recognition from the Department of the Interior through administrative processes and from Congress directly through the enactment of special recognition legislation. This experience is rooted deep in our history.

Our experience has not yet resulted in Federal recognition for the Tribe. However, in 1956, Congress passed a peculiar statute dealing with the Lumbee Tribe—a statute that makes the Tribe ineligible for the administrative process for recognition of tribes. Some have proposed that the answer for the Lumbee Tribe is to repeal this act of Congress and send the Tribe to the current administrative recognition process. That is NOT the answer—this solution would be unfair, it is not necessary, and it will not work. The only fair solution is the enactment of special recognition legislation for the Tribe.

Federal Recognition—The Lumbee Experience

The Lumbee Tribe first sought Federal recognition in 1888. That year, tribal leaders submitted to Congress a petition seeking Federal Indian education assistance for the Lumbee Indian Normal School that had been created by the State of North Carolina the previous year. The school was established to train Indian teachers for the all Lumbee school system that had been established in 1885, but the State provided too little funding for the normal school. The Congress referred the Tribe's petition to the Department of the Interior and the Commissioner of Indian Affairs told the Tribe:

> While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate, I find it quite impractical to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provision for less than half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance

> to the Croatans [as the Tribe was then denominated under state law] or any other civilized tribes.

In other words, the Department acknowledged that we were an Indian community but denied assistance because of the cost of services.

So the Tribe then turned directly to Congress. Between 1899 and 1956, approximately a dozen bills were introduced in Congress to recognize the Tribe. The Department of the Interior testified on these bills and consistently acknowledged that we constituted an Indian community that has been on the Lumber River, formerly known as Drowning Creek, since the time of sustained white contact. Yet the Department consistently opposed recognition of the Tribe, usually on the grounds of cost.

During this same period, the Department also undertook its own direct studies of the Lumbee Tribe and community, sometimes at the direction of Congress. Altogether, the Department produced 11 reports on the Lumbee Tribe between 1912 and 1956. The 1924 report prepared by James Henderson, Superintendent of the Cherokee agency in North Carolina, is representative. He found that, "There are many to be found among them who to all appearances are full blood Indian." Henderson observed that the Lumbee were similar to other tribes and recommended that Lumbees be allowed to attend Haskell Institute, at a minimum. Once again, though, the Department testified against recognition of the Tribe.

The Lumbee Tribe also sought to avail itself of other administrative processes. After the passage of the Indian Reorganization Act in 1934, Commissioner Collier wrote to the Tribe and suggested we might organize under that act if some of our members were certified as one-half or more Indian blood. The Tribe requested that the BIA send a physical anthropologist to the community, but only about 200 members agreed to submit to the required physical examination. The BIA did certify 22 half-bloods out of those members it examined, but the BIA ultimately refused to take land into trust for these individuals so that they were not able to organize.

1956 Lumbee Act—Lumbee Tribe Ineligible for Administrative Acknowledgment

Congress finally enacted one of the many Lumbee bills in 1956 at the height of the Federal termination policy for Indians. Like the others before, the 1956 bill had been introduced as a recognition bill. The original bill tracked verbatim the language of the most recent state recognition legislation passed in 1953 that recognized the Tribe under the name Lumbee. However, the Department opposed enactment of the bill, once again because of its concern about providing Federal Indian services to the Tribe:

> We are therefore unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department. The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition . . . If your committee should recommend the enactment of the bill, it should be amended to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.

The Senate adopted the Department's recommendation and amended the bill to include classic termination language before enactment. Pub. L. 570, Act of June 7, 1956, 70 Stat. 254.

Since 1956, Federal agencies and courts have reached different conclusions regarding the purpose and effect of the 1956 Lumbee Act. In 1970, the Joint Economic Committee of Congress described the Lumbees as having been officially recognized by the act, although not granted Federal services. *See* "American Indians: Facts and Future," *Toward Economic Development for Native American Communities,* p. 34 (GPO 1970). Also in 1970, the Legislative Reference Service of the Library of Congress described the 1956 Lumbee Act as legislative recognition of an Indian people. *See* Memorandum, April 10, 1970, on Extending Federal Jurisdiction and Services to Hill 57 Indians, LRS, Library of Congress. And in 1979, the Comptroller General ruled that the 1956 act left the Lumbees' status unchanged, *i.e.,* it neither recognized the Tribe nor terminated the Tribe's eligibility for services it might otherwise receive. The one court to construe the statute concluded that it was intended "to designate this group of Indians as 'Lumbee Indians' and recognize them as a specific group . . ." but not to take away any rights conferred on individuals by previous legislation. *Maynor v. Morton,* 510 F.2d 1254, 1257–1258 (D.C. Cir. 1970) [holding

that the so-called half-bloods certified under the Indian Reorganization Act were eligible to receive BIA services]; *see also* September 28, 1988 CRS Memorandum, reprinted at S.Rep. No. 100–579, 100th Cong., 2d Sess.

One thing is certain about the 1956 Lumbee Act—it makes the Lumbee Tribe ineligible for the administrative acknowledgment process. Under the acknowledgment regulations, the Secretary of the Interior cannot acknowledge tribes that are subject to legislation terminating or forbidding the Federal relationship. 25 C.F.R. sec. 83.3(e). In a formal opinion issued on October 23, 1989, the Solicitor for the Department of the Interior concluded that the 1956 Lumbee Act is such Federal legislation and, as a result, the Department is precluded from considering any application from the Lumbee Tribe for Federal acknowledgment.

Sending the Lumbee Tribe to the Administrative Recognition Process—Unprecedented and Unfair

Congress has very seldom done what it did to the Lumbee Tribe in 1956—*i.e.,* acknowledge the tribe as Indian but simultaneously prohibit the application of Federal Indian statutes and services. And in no such case has Congress ever repealed the termination-type statute and then required the tribe to seek acknowledgment from the Department of the Interior. In every single other such case, the Congress has enacted special recognition legislation for the Tribe. It would be fundamentally unfair to treat the Lumbee Tribe any differently from any other tribe that Congress has placed in this peculiar position.

The most directly analogous situation is that of the Ysleta del Sur Pueblo of Texas. Like the Lumbee Tribe, this tribe had been long recognized by Texas before Congress passed special legislation acknowledging them as Indian. This special statute, enacted in 1968 for the Tiwas of Texas (as Ysleta del Sur was then called) was modeled on the 1956 Lumbee Act. *See* S.Rep. No. 1070, 99th Cong. 2d Sess. The Department of the Interior concluded that the 1968 Tiwa Act made that tribe ineligible for the administrative process, the same determination it made regarding the 1956 Lumbee Act. And for that reason, Congress enacted special legislation to recognize the Ysleta del Sur Pueblo in 1987. Pub. L. 100–89, Act of August 18, 1987, 101 Stat. 667.

The Lumbee Tribe is the only tribe left in the country that was placed in this peculiar position by Congress. Congress should fix it the same way it has for every other tribe in this position. There is no fair or rationale basis for treating the Lumbee Tribe differently.

Sending the Lumbee Tribe to the Administrative Acknowledgment Process—Unnecessary

There is no good purpose to be served by requiring that the Lumbee Tribe go through the current administrative process. That process gives the Department an opportunity to examine a group's history and community to determine whether the group is, in fact, an Indian tribe. The Department of the Interior and Congress have already made that inquiry regarding the Lumbee Tribe. As noted above, there are numerous congressional reports and 11 BIA studies on the Lumbee history and community. All of these reports consistently conclude that Lumbee is an Indian community that has been in the same place—on the Lumber River—since the time of sustained white contact. Not a single congressional report or BIA study doubts these fundamental facts.

Recently, the committee received a letter on this from John Shapard, a retired BIA employee who wrote the acknowledgment regulations, set up the acknowledgment office, and ran that office for its first 9 years. Mr. Shapard concludes that there is no need to send the Lumbee Tribe to the current administrative process for yet another study:

> It must be clearly understood that the Lumbees are not "Johnnies-come-lately." They have been actively seeking recognition for more than one hundred years. They have been studied by sociologists, anthropologists, and by historians. Their personal and tribal lineage has been anatomized by genealogists. Books have been written about the tribe and its plight. Bureaucrats and legislators have wrestled with the "Lumbee problem" since the 1890s. The Interior Department and the bureau's files are packed full of reports, survey, studies, and miscellaneous documents relating to the Lumbees. The State of North Carolina, which recognizes the Lumbees as a tribe, is equally cumbered with documents about the tribe. The government does not need to waste more time or money for additional assurances of the Lumbees' background and credentials.

Letter of Johan A. Shapard to Chairman Dorgan, dated September 5, 2007. Because of this record, no point is to be served by sending the Lumbee Tribe to the administrative acknowledgment process.

Sending the Tribe to the Administrative Acknowledgment Process—It Will Not Work

The administrative acknowledgment process is intended to verify the tribal status of Indian groups so that legitimate groups can be recognized. But the process depends completely upon documentary evidence generated by the dominant society to establish the seven mandatory criteria that define a tribe under those regulations. If a tribe fails to produce the necessary documents, the tribe is not recognized. Sometimes, though, documents are not available, even if the Indian group actually is an Indian tribe. There can be several reasons for this—suppression of Indian identity for periods of history due to particular state or Federal policies, or avoidance of record keepers by the Indian groups for reasons of self-protection or even survival. When this happens, the administrative acknowledgment process fails to identify or recognize all legitimate Indian tribes. The Lumbee Tribe may be such a tribe.

As noted above, the BIA testified repeatedly to Congress over a fifty year period that the Lumbee are an Indian people. In 1934, the BIA witness, relying on a report by the eminent John Swanton, explicitly advised Congress that the Lumbee descend from the historic Cheraw and related Siouan speaking tribes from coastal North Carolina. But those who administer the current acknowledgment process have recently testified that there may be too few documents proving Cheraw descent for the Lumbee Tribe under the acknowledgment regulations. In other words, the BIA may now change its mind about the ancestry of the Lumbee Tribe only because the current regulations require rigid reliance on a mass of documents that may not have been generated about a group.

Current scholars outside the BIA have noted this problem. Dr. Vine Deloria, for example, testified to Congress in 1988 in support of special legislation to recognize the Lumbee Tribe. He told Congress that the Lumbees may be in a difficult position on this issue under the regulations for a very good reason—in the early 18th century, the ancestors of the Lumbees took refuge in the swamps around Drowning Creek (now Lumber River) in order to minimize contact with nearby white settlements and protect themselves. Nonetheless, Dr. Deloria had no doubt that the Lumbees constitute an Indian tribe and urged Congress to recognize it as such.

If the Lumbee Tribe descended from the Cheraw and related Siouan speaking tribes in 1934, it still descends from the Cheraw and related Siouan speaking tribes. The BIA said so then and it is still the truth of Lumbee history. The Congress should not tolerate picking and choosing of processes and results only for the purpose of avoiding recognition of the Lumbee Tribe. That is clearly the purpose of those who urge the Congress to "protect the integrity of the administrative process" by requiring the Lumbee Tribe to go to the BIA: it's really about opposition to Lumbee recognition, not about preserving any process.

Recommendation Regarding the Administrative Process

The Lumbee Tribe has no direct experience with the current administrative process. Eighteen months after the Tribe submitted a petition for acknowledgment under the regulations, the Solicitor's Office concluded that the Tribe is precluded from that process because of the 1956 Lumbee Act. Soon thereafter, it became clear to us that the BIA was prepared to repudiate much of what it had said to Congress over the last fifty years about Lumbee history and ancestry. If the regulations require this, then the regulations cannot be relied upon to identify every legitimate tribe that should be recognized.

But the Lumbee Tribe has a long and unhappy history with the BIA on the recognition issue before the current regulations were adopted. Our history teaches us one truth: the BIA has an institutional bias against non-federally recognized Indian tribes and should not be the agency charged with processing petitions for acknowledgment from such tribes. This is not intended as a criticism of any particular Administration or BIA employee. Rather, it simply reflects the mission of the BIA to serve and protect the interests of federally recognized Indian tribes. As the Commissioner of Indian Affairs put it to us in 1890, his first obligation was to provide services to those tribes already recognized. This being so, it is not fair to either the BIA or non-federally recognized tribes to expect the BIA to also pass on the status of other Indian groups. Based on this experience, we would urge the committee to consider transferring the tribal acknowledgment process to another agency or an independent commission, one without any ties or obligations to federally recognized tribes.

Conclusion

Since the early days of the Republic, the Congress has been in the business of recognizing Indian tribes. If the Alaskan native villages (which were acknowledged in modern times by the Department of the Interior) are excluded, then the overwhelming majority of tribes recognized today achieved that status directly from Congress. Neither has Congress passed an act or expressed it judgment that it should never again directly recognize an Indian tribe. The question, then, is under what circumstances should Congress exercise its authority, not whether Congress should ever recognize an Indian tribe.

If any tribe should appropriately be recognized by Congress, it is the Lumbee Tribe. The Lumbee Tribe is unique in all of Indian country—it is the only tribe left in the kind of legal limbo imposed by the 1956 Lumbee Act and it has surely been studied as often as any other tribe (and concluded to be an Indian community) by the BIA. There has been sufficient process. Instead of singling the Tribe out for unfair treatment unlike any other tribe, the Congress should simply recognize the Lumbee Tribe of North Carolina.

The CHAIRMAN. Mr. Goins, thank you very much. Mr. Chairman, your remarks are, as always, on point, and we appreciate the contribution you've made.

We are joined by Senator Levin, and I believe Senator Levin wishes to make a comment to introduce the witness from the State of Michigan. I will recognize Senator Levin to speak of the Chairman from Michigan, and then I will call on Senator Tester, who I will ask to introduce the next witness, who is Chairman Sinclair from Montana.

Senator Levin, we knew that you were coming and I know you wish to make a comment about the witness from Michigan.

STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM MICHIGAN

Senator LEVIN. Mr. Chairman, thank you and the Committee for allowing me to spend a couple of minutes introducing Chairman Yob of the particular group of Native Americans, the Grand River Bands of Ottawa Indians, who have spent such a long time awaiting Federal recognition. I just want to spend a few minutes to welcome him on behalf of the Committee.

I want to thank the Committee for giving tribes an opportunity to share their experiences and their frustrations with the Federal recognition process. I hope that this hearing brings us closer to fixing a broken system.

One of the tribes here today, the Grand River Bands of Ottawa Indians, is from my home State of Michigan. I am pleased to introduce its Chairman, Ron Yob, to the Committee. The Grand River Bands has been in some form indigenous to the State of Michigan for over 200 years. The Grand River Bands consist of the 19 Bands who occupy the territory along the Grand River in which is now Southwest Michigan, including the cities of Grand Rapids and Muskegon, Michigan.

The members of the Grand River Bands are the descendants and political successors to signatories of the 1821 Treaty of Chicago and the 1836 Treaty of Washington. They are also one of the six tribes who are original signatories of the 1855 Treaty of Detroit.

However, the Grand River Bands is the only one of those six tribes which is not recognized by the Federal Government and still cannot benefit from a number of Federal programs. Earlier this year, they lost millions of dollars when they were unable to take

part in a Federal judgment fund because they were still waiting in this long, arduous Federal recognition process.

The Grand River Bands first started their Federal recognition effort in 1994 and they have since been waiting for the Bureau of Indian Affairs at the Department of Interior to make a Federal recognition determination for 13 years. Currently, they are still waiting to be moved to active status. This is totally unacceptable, and unfortunately, it is not unusual for tribes caught in the Federal recognition process, as you will hear today from other tribes who have been waiting for far too many years for a determination.

I hope that what we will learn from today's hearing will result in a more efficient and timely Federal recognition process. Again, I want to thank you and the Committee, Mr. Chairman, for allowing me to interject myself in this way in the middle of your hearing this morning. I want to thank you and the members of the Committee for all the good work that you do. And I particularly again want to welcome our constituent, Ron Yob, and to introduce him to the Committee.

[The prepared statement of Senator Levin follows:]

PREPARED STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM MICHIGAN

Good Morning. I would like to thank the Chairman and the Indian Affairs Committee for giving me the opportunity to appear before you today.

I would also like to thank the Committee for giving Indian Tribes the opportunity to voice their experiences with the Federal recognition process. I hope that this means we are one step closer to fixing this broken process.

One of the tribes here today, the Grand River Bands of Ottawa Indians, is from my home state of Michigan.

The Grand River Bands has been in some form indigenous to the State of Michigan for over 200 years. The Grand River Bands consists of the 19 bands of Indians who occupied the territory along the Grand River in what is now southwest Michigan, including the cities of Grand Rapids and Muskegon. The members of the Grand River Bands are the descendants and political successors to signatories of the 1821 Treaty of Chicago and the 1836 Treaty of Washington. They are also one of six tribes who are original signatories of the 1855 Treaty of Detroit. However, the Grand River Bands is the only one of those six tribes which is not recognized by the Federal Government and still cannot benefit from a number of Federal programs. Earlier this year, they lost millions of dollars when they were unable to take part in a Federal judgment fund because they were still waiting in this long arduous Federal recognition process.

The Grand River Bands first started their Federal recognition process in 1994 and have since been waiting for the Bureau of Indian Affairs at the Department of Interior to make a Federal recognition determination for 13 years. Currently, they are still waiting to be moved to "Active" status. This is unacceptable, and unfortunately, is not unusual for tribes caught in the Federal recognition process as you will hear today from other tribes who have also been waiting for far too many years for a determination. I hope that what we learn from today's hearing will translate into recommendations for a more efficient and timely Federal recognition process for the future.

Attachment

United States Senate
WASHINGTON, DC 20510–2202

MEMORANDUM

To: Byron Dorgan, Chairman
From: Carl Levin
Date: Sept. 18, 2007
Re: Bureau of Indian Affairs

Earlier this year, I introduced a bill (S.1058) that would have required the Bureau of Indian Affairs to review the Grand River Bands of Ottawa Indians' (Grand River Bands) petition for Federal recognition. This bill would not have Federally recognized the tribe nor would it have addressed the issue of gaming, and is now pending before the Committee on Indian Affairs.

The Grand River Bands began their Federal recognition process in 1994. This was more than 13 years ago. Recently they were not able to take part of funds set aside for them in a Federal consent judgment because they still had not been Federally recognized.

The Grand River Bands has been in some form indigenous to the State of Michigan for over 200 years. The Grand River Bands consists of the 19 bands of Indians who occupied the territory along the Grand River in what is now southwest Michigan, including the cities of Grand Rapids and Muskegon. The members of the Grand River Bands are the descendants and political successors to signatories of the 1821 Treaty of Chicago and the 1836 Treaty of Washington. They are also one of six tribes who are original signatories of the 1855 Treaty of Detroit. However, the Grand River Bands is the only one of those six tribes which is not recognized by the Federal government and still cannot partake in Federal programs.

I urge you to act favorably on S.1058 this year. In addition, I look forward to introducing the Grand River Bands of Ottawa Indians at tomorrow's hearing. I hope the Committee will review the BIA's procedural processes and find ways to ensure that the Federal recognition process is not as lengthy as it has historically been. The unintended consequences of this lengthy and time consuming process have been unfair to waiting tribes.

The CHAIRMAN. Senator Levin, thank you very much. I know Chairman Yob will testify in a bit, but I know he appreciates your introduction.

I know you have other business with the Armed Services Committee right now, so we appreciate your stopping in to give us that introduction.

Let me recognize Senator Tester, who will introduce the next witnesses from the State of Montana.

Senator TESTER. Thank you, Mr. Chairman. Indeed, it is an honor for me to introduce the Honorable John Sinclair, President of the Little Shell Tribe of Chippewa Indians of Montana. John is following in the footsteps of his grandfather and father as President of the Little Shell Tribe.

I have worked with John in the State legislature and it truly is a pleasure to work with him at this level. Our work at the State level was to pass resolutions in favor of recognition of the Little Shell Tribe. Those resolutions passed, if my memory serves me correct, by a resounding vote. There is good support within the State government.

And just to dovetail on what folks have been saying around the table today, I think John feels a certain amount of frustration with being caught up in the process. And they have waited for a long time and they have done the work at their end. Hopefully, he will, and I am sure he will tell that story, and hopefully this Committee hearing will end up in some decisions being made by the Department of Interior. Because quite honestly, I don't mind a bit carrying the legislation through the Senate. But the fact is, it really shouldn't have to come to that.

So I want to welcome John to Washington, D.C. and to this Committee, and we look forward to your comments, John.

The CHAIRMAN. You may proceed, Mr. Sinclair.

STATEMENT OF HON. JOHN SINCLAIR, PRESIDENT, THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA

Mr. SINCLAIR. Thank you. Chairman Dorgan, Vice Chairman Murkowski and honorable members of the Senate Committee on Indian Affairs, I thank you for the opportunity to testify this morning.

To my good friend, Jon Tester, I thank you for your tireless efforts on behalf of the Little Shell Tribe.

My name is John Sinclair, and I am the President of the Little Shell Tribe of Chippewa Indians of Montana. Like my father and grandfather before me, I have had the honor the serve as President of the Little Shell. I am here today to share with you our experience with the Federal acknowledgement process, or FAP.

We have a long history with the U.S. Government. My written testimony goes into more detail, but I want to note that my tribe, which is sometimes referred to as the Landless Indians, or Trash Can Indians, has been the subject of Federal legislation since the early 1900s. We sought recognition from the Federal Government for decades, filing a letter petitioning for Federal acknowledgement in April, 1978.

This date, almost 30 years ago, represents more than a generation. Our efforts to achieve recognition through the BIAs administrative process predate the enactment of the Indian Gaming Regulatory Act, and in fact, predate the birth date of some of the people in this room. We have worked hard to play by the recognition rules, and up to this point have been successful. We have submitted tens of thousands of documents to the BIA. Each of these documents was submitted to satisfy the seven mandatory criteria. Because we are a very poor tribe, we have had to rely on pro bono help of others to amass these documents.

In 2000, the Department of Interior proposed to acknowledge the Tribe. Interior found that we had satisfied each one of the criteria. So you might ask, why are we seeking Federal legislation when we are so far along in the process? The answer is simple: we don't

trust the Federal Government to see that everyone else can see that we are now a tribe and have always been a tribe.

Kevin Gover, the Assistant Secretary of Indian Affairs, who concluded that we satisfied BIA's criteria, said that Little Shell's was somewhat different from the previous acknowledgements. The difference was in the weight given to various types of evidence. He concluded that taken together, the evidence as a whole showed that Little Shell is a tribe. He acknowledged that more documentation could be helpful, but he said, "To rigidly impose a mechanistic burden of proof on a people whose lack of formal organization is attributable to misguided Federal policy would be manifestly unjust and inconsistent with the regulations." In our case, I think this means that BIA should not be rigid in always requiring extensive documentation. Our history is that of a buffalo-hunting society, and the Government's own policies worked against us.

We weren't worried about keeping records when we were living in tar paper shacks and eating out of garbage piles. But this kind of mechanistic burden of proof is what we and many tribes have labored under. We have worked for years, submitted tens of thousands of pages of documentary evidence, received a proposed favorable finding, concluding that we had enough evidence to prove we are a tribe, submitted thousands more pages of reports and appendices, supported by boxes of documents. And still, the Office of Federal Acknowledgement is not done.

Others already recognize us as a tribe. Our Congressional delegation supports our recognition. Montana State and local governments support us. The Turtle Mountain Band of Chippewa Indians in North Dakota and federally recognized tribes in Montana support us. We are the only non-federally recognized tribe that has been invited to sit on the Montana–Wyoming Tribal Leaders Council, and the Council of Large Land-Based Tribes.

Shouldn't the fact that others recognize us as a tribe be persuasive? The administrative process is terribly burdensome and expensive, and it provides no guarantee of success. We know that in this Administration, there is at least one instance in which the BIA withdrew Federal recognition to a tribe even after it had issued formal final determination recognizing that tribe.

In short, we are concerned that BIA has forgotten that different tribes have different kinds of histories. A cookie-cutter approach to the seven mandatory criteria doesn't work. Those criteria often can't be met when historically, it was others, often hostile, who created and kept the documentary evidence of our existence.

In 30 years, the Department of Interior has collected tens of thousands of documents. But it has not yet finally concluded that we are a tribe. We urge you to help us by enacting legislation that will force this paper chase to come to an end and bring justice to our people.

In closing, you may think that a glacially slow process is a fair price to pay for the return to recognition. But with delay comes a terrible human cost. Let me share a story about those costs. You may have read this story in the press, and I'm sorry I have not shared it with you first. This story has many details that I would like to share with you, but because the time is short, let me just say this.

There were three Little Shell children that were taken away from their mother. She was not healthy and could not provide for them. These three children were placed in a non-Native family, but that family was an unfit foster home. These children were badly abused, the foster mother made one little girl, two and a half year old Tamisa, put her hands in boiling hot squash. The two older girls were abused, both mentally and physically.

This story had no happy ending. Tamisa, the two and a half year old baby, was beaten to death. She had injuries all over and inside her body. This happened to our people because we had no Federal support. We didn't have a Federal right to know where the children were and we had no tribal infrastructure to deal with such problems. We lost that baby and so many others because we could not provide for our people as a federally recognized tribe.

Thank you for your time.

[The prepared statement of Mr. Sinclair follows:]

PREPARED STATEMENT OF HON. JOHN SINCLAIR, PRESIDENT, THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA

Chairman Dorgan, Vice Chairman Murkowski, and honorable members of the Senate Committee on Indian Affairs, I thank you for the opportunity to testify this morning. To our good friend and strong advocate Senator Jon Tester, I thank you for your tireless efforts on behalf of the Little Shell Tribe.

My name is John Sinclair, and I am the President of the Little Shell Tribe. Following in the footsteps of my father and grandfather, I have had the honor to serve as President of my Tribe for the past 4 years. I am here today to share with you our history with the Federal Government, our experience with the Federal Acknowledgment Process (FAP) and our request that this honorable body act to ensure Federal recognition for my people. The recognition for which we ask you today has been promised to us for more than seventy years. The following 1935 letter from the Department of the Interior from which I quote below is just one piece of a large volume of documentation reflecting the Federal Government's long, but as of yet unsuccessful, efforts to provide official recognition and a land base for the Little Shell people:

> This [letter] acknowledges your letter of January 28, [1935] written in behalf of landless Indians in northern Montana and suggesting that a certain tract of land be set aside for their use.
>
> This Office [the Lands Division for Indian Affairs] in general and the commissioner [John Collier] in particular are thoroughly cognizant of the unfortunate situation in which these landless Indians find themselves. To no other groups of Indians is so much constructive thought and persistent effort being directed, for it is fully realized that theirs is the greatest need.
>
> Also it is most heartening to read in your letter your forthright assurance that, once lands are placed to your use, you will be proud to make good.
>
> All government enterprises move slowly in spite of the best of intentions, but it is hoped and believed that in the not too distant future a satisfactory plan will be consummated for landless Indians in general, including, of course, the group to which you belong.

Letter to Joseph H. Dussome from J.N. Stewart, Chief, Land Division, Indian Affairs, Department of the Interior (March 2, 1935) (emphasis added).

Federal recognition for our Tribe enjoys long-standing broad, bi-partisan support. Identical legislation to recognize the Little Shell Tribe has been introduced this Congress by Senators Tester and Baucus in the Senate (S. 724) and by Congressman Rehberg in the House (H.R. 1301). Tribes in Montana and our cousins the Turtle Mountain Band of Chippewa Indians in North Dakota, have expressed their support of our Federal recognition.

Governor Schweitzer and the Montana State Legislature, by Joint Resolution, have expressed their support for our Federal recognition. Hill, Cascade, Glacier and Blaine County as well as the city of Great Falls, the local governments most directly impacted by our recognition, have expressed their support of legislation to recognize the Little Shell Tribe. In fact, over the past year the State of Montana has provided

us land from which we can provide essential governmental services—something the Federal Government had promised to do throughout the twentieth century but has yet to succeed in doing.

The Department of the Interior has issued a proposed finding in favor of Federal recognition for our Tribe. Within the next year, we anticipate that the Department of the Interior could issue a final determination as to whether to recognize our Tribe. On the surface, it may seem odd that we would seek Federal legislation when we appear to be so far along in the administrative process. The answer is simple. First, as leader of the Little Shell Tribe, I cannot in good conscience let another day go by without doing everything in my power to secure recognition that has been wrongfully withheld. Every day that passes has real life consequences for my people, consequences that never make the headlines in Washington, D.C.—tribal members denied the most basic health care services, a tribal government without a federally secured land base or Federal funding to provide and maintain essential governmental services.

Second, the Department has acted on our petition in a unique manner. The Department concluded in its proposed favorable finding that we are a Tribe, but it "encouraged" us to submit more documentation. Basically, the Department found that the available evidence supported its findings on each of the criteria, that no evidence was submitted in opposition to the particular finding, but that the Department would prefer to have additional records for certain time periods before the 1930's. We took the Department's suggestions to heart, submitting approximately 1,000 pages of additional reports and appendices supported by several boxes of documentation.

We are therefore in a situation where the Department essentially stated in 2000 that it believes we are a tribe but that without additional documentation it could walk away from its favorable finding. Concerned with its application of the regulations to our Tribe, the Department expressly invited comment on the consistency of the proposed finding with the existing regulations. To the best of our knowledge, not a single recognized tribe or state governmental entity commented on or objected to the Department's proposed favorable finding as inconsistent with the regulations. We now find ourselves in an uncertain situation where we fear that the Department may reverse its finding even though we have submitted thousands of pages of additional evidence and neither the State, its local governments nor other federally recognized tribes have submitted evidence to the contrary or objected to the Department's proposed favorable finding.

Third, our legislation does more than simply confirm Federal recognition. It addresses many of the issues newly recognized tribes and local communities struggle with for decades after formal Federal recognition—the establishment of a land base, a tribal service area and certainty that our recognition will not be revoked. It is well documented that it takes years and sometimes more than a decade for the Department of the Interior to take land into trust for newly recognized tribes. For example, it took 8 years after the Jena Band of Choctaw Tribe was recognized before Interior took that Tribe's cemetery and governmental offices into trust. Some of this delay is due in part to the application of the National Environmental Policy Act to these acquisitions. Further, many tribes suffer from the years it takes for the Department to establish a service area for the newly recognized tribe. For example, after completion of administrative challenges to the Department's final determination acknowledging the Cowlitz Indian Tribe in 2002, the Cowlitz Tribe still does not have a BIA-designated service area. Thus, we know that even if Interior issues a decision within the year, the Tribe could be forced to endure many additional years in legal limbo as it struggles to establish a land base and service area.

Although the State of Montana, the federally recognized tribes within Montana and local governments support our recognition, it is becoming increasingly common for parties to challenge the Department's acknowledgment decisions. And most recently, the Department reversed its decision to acknowledge a tribe because of such a challenge. While we do not expect a challenge from a governmental entity within the State of Montana, we cannot say with certainty that a decision by Interior to acknowledge our Tribe will not be challenged. Such challenges typically take years to resolve. Thus, we believe that legislation makes sense even if Interior is on track to issue a decision within a year. The legislation reflects the desires of the Tribe, the State and the local governments most directly impacted by our recognition. That is why we seek legislative recognition.

I. Our History With the Federal Government

My Tribe, historically often referred to as the "landless Indians," has been the subject of Federal legislation since the early 1900's. The Little Shell Band is the successor in interest to the Pembina Band of Chippewa Indians in North Dakota. We

were buffalo hunters who lived and hunted around the Red River and the Turtle Mountains in North Dakota in the early 1800's. The Pembina Band was recognized by the United States in an 1863 Treaty ratified by the Senate. This treaty gave the United States possession of the section of our lands near the Red River. After that treaty, while some members of the Pembina Band settled on reservations in Minnesota others followed the buffalo herds into western North Dakota and Montana, eventually settling in Montana and in the Turtle Mountains of North Dakota.

In 1890, the United States authorized the creation of a commission to negotiate for a cession of land from the Turtle Mountain Chippewa and provide for their removal. Chief Little Shell and his followers walked out on the negotiations and refused to accept the terms of the eventual agreement. In the years that followed the 1892 Agreement, some of Little Shell's followers moved to Montana and joined with other members of the Pembina Band that had settled in Montana. After their traditional livelihood came to an end with the disappearance of the buffalo, Little Shell people were left to barely eke out an existence in a number of shantytowns across Montana, competing with both local reservation Indians and white settlers for resources. The Little Shell became known as the "landless Indians" of Montana. Like many American Indian people, we faced severe racism and discrimination throughout Montana, some of which continues today.

A. Congressional Efforts to Assist the Little Shell Band 1900–1920

Congress began appropriating money to buy land for the landless Little Shell as early as 1914, when it set aside funds to be used for "support and civilization of Rocky Boy's Band of Chippewas, and other indigent and homeless Indians in the State of Montana[.]" 38 Stat. L. 582. Every year thereafter until 1925, Congress consistently appropriated funds for the Rocky Boy's Band and the "homeless Indians in the State of Montana." Nearly simultaneously, in 1916, Congress enacted legislation establishing a "reservation for Rocky Boy's Band of Chippewas and such other homeless Indians in the State of Montana as the Secretary of the Interior may see fit to locate thereon . . .." Shortly after the reservation was set aside, the Department established a tentative roll of the Indians of the reservation. The initial list consisted of 657 individuals. In preparing the final roll, Interior eliminated 206 applicants from the list. The Indian Inspector reported that he had "given first consideration to the needs of the older and homeless Indians, without means of support." Department of the Interior, Proposed Finding for the Little Shell Tribe of Chippewa Indians of Montana, Technical Report ("Technical Report") at 86. Shut out by the Department, Little Shell members were forced to subsist on vacant lands in north-central and north-western Montana.

B. The Little Shell Band's Repeated Pleas for Assistance: 1920–1934

Newspaper articles of the 1920s chronicled the plight of our ancestors. Newspapers in the Great Falls area reported the City's failed attempts to remove "the Indians who have been long encamped" on the edge of town. Technical Report at 90. In December 1931, Little Shell Tribe/Homeless Indians leader Joseph Dussome explained to the Commissioner of Indian Affairs that the landless Indians of Montana lived on the "dump piles of our Towns . . . going to the back allies, digging down the swill barrels for their daily bread." Mr. Dussome pleaded for help, stating "that a great injustice has been done to my fellow Chippewa and Cree Indians of Northern Montana. Are we not entitled to a Reservation and allotments of land in our own Country, just the same as other Indians are[?]"

Less than 2 weeks after receiving Dussome's plea for assistance, Interior responded that because we had refused to sign a Treaty and had removed from the land in North Dakota, we did not retain rights to land at Turtle Mountain:

> The Indians referred to are Chippewas of the Turtle Mountain Band. They were under the leadership of Little Shell who became dissatisfied with the treaties of the United States and the Turtle Mountain Band of Chippewas. He accordingly refused to accede thereto . . .. The disaffected band, by its failure to accede to the terms of the treaty and remove to the reservation is now unable to obtain any rights thereon for the reason that the lands of this band are all disposed of, and the rolls became final[.] . . . There is now no law which will authorize the enrollment of any of those people with the Turtle Mountain band for the purposes of permitting them to obtain either land or money.

The Little Shell Tribe thus remained homeless.

C. Interior's Efforts to Establish a Reservation and Reorganize our People Under the Indian Reorganization Act

Reflecting the significant shift in modern Federal Indian policy, 3 years after Interior's rejection of Dussome's plea, Congress sought to remedy situations such as ours

through the enactment of the Indian Reorganization Act (IRA) in 1934. We had continued our pursuit of a tribal land base by meeting with Interior Department officials shortly before the passage of the IRA. During one trip, tribal leader Dussome impressed upon the Commissioner of Indian Affairs the dire straits of our people. This trip, combined with passage of the IRA, triggered a flurry of activity by the Department to acquire lands for the Little Shell. Initially, Interior officials in Washington, D.C. pursued lands near the Ft. Belknap Reservation, stating:

> The Office [of Indian Affairs] referred to certain plans to purchase tracts of land in Montana which could be set aside for the use of the Chippewa Indians, special mention being made of a project to acquire "some 20,000 acres near the Fort Belknap reservation." Plans for the use of this area do not in any sense contemplate the mixing of the Chippewa Indians with those now on the Fort Belknap reservation. The area under negotiation is not part of the Fort Belknap reservation and justification for its purchase is not based on the needs of the Fort Belknap Indians. If it is purchased it will be available for the use of the Chippewa Indians exclusively[.]

Plans for settling the Little Shell Band on the parcel near Ft. Belknap were abandoned by the Department based on the belief that our ancestors were not willing to settle on that land.

In the mid 1930s, the Department expended considerable effort to acquire land near the Rocky Boy's Reservation for our people. Assistant Commissioner Zimmerman explained that the land could be established as a new reservation for the landless Indians or added to the Rocky Boy's Reservation. Although original estimates suggested that the acquisition would be sufficient for approximately 100 families, the Department ultimately concluded that the purchased land could only accommodate 25 families.

The conclusion that the parcel near the Rocky Boy's Reservation was insufficient to meet existing needs did not deter the Department from its efforts to find land for the Little Shell. Interior officials underscored the Department's determination to secure a land base for our people, explaining:

> The landless Indians whom we are proposing to enroll and settle on newly purchased land belong to this same stock, and their history in recent years is but a continuation of the history of wandering and starvation which formerly the Rocky Boy's band had endured.
>
> Out of the land purchase funds authorized by the Indian Reorganization Act, we are now purchasing about 34,000 acres for the settlement of these Indians and also to provide irrigated hay land for the Indians now enrolled on Rocky Boy's Reservation. The new land, if devoted wholly to that purpose, would take care of only a fraction of the homeless Indians, but it is our intention to continue this program through the years until something like adequate subsistence is provided for those who cannot provide for themselves. . . . The fact of these people being Indian and being entitled to the benefits intended by Congress has not been questioned.

The Department realized that although "it would be highly desirable to secure a single area or reservation which would meet the needs of all the Chippewa Indians of Montana . . . this seems to be impossible at this time . . . [and] the Indians must adjust their plans to take advantage of the best that we can secure for them." Reflecting this sentiment, during this time period, the Bureau of Indian Affairs acquired a 42-acre tract of land near Great Falls, Montana. The land was acquired for the benefit of landless Indians located in the vicinity of Great Falls. Although Little Shell members were ready to move to the parcel, Interior explained that "[l]ocal public opinion forced the abandonment of the project. Local residents of the vicinity did not wish the Indians as their neighbors." In 1950, Congress enacted legislation providing for the sale of those lands. P.L. 714, 81st Congress, 2d Session, August 18, 1950.

D. The Roe Cloud Roll—The Department of the Interior Prepares an Indian Roll to Facilitate Organization Under the IRA

In addition to its efforts to secure a reservation near the Rocky Boy's Reservation, Interior took steps to prepare a detailed census of our people who were one-half or more Indian blood. In December 1935, the Commissioner of Indian Affairs submitted a proposed form of enrollment under the IRA. The Commissioner explained that the form was modeled upon a number of other tribal enrollment forms. In his memorandum seeking approval, the Commissioner emphasized the plight of the Little Shell people, stating:

> It is very important that the enrollment of homeless Indians in the State of Montana be instituted immediately, and it is proposed to use this form in the determination of Indians who are entitled to the benefits of the Indian Reorganization Act.

This enrollment process resulted in the Roe Cloud Roll, named after Dr. Henry Roe Cloud, an Interior official who played a large part in the enrollment project. Leaders of the Little Shell Tribe provided invaluable assistance to the enrollment project. As one Indian Affairs official explained, Joseph Dussome's "services were indispensable in identifying the Indians and in advising us where to locate them."

Our current members are generally the descendents of Indians who were either on the Roe Cloud Roll or immediate kin to someone on the roll. The Roe Cloud Roll is important for a number of reasons, including that it is a Federal document certifying our ancestors as being one-half or more Indian blood and it reflects the efforts and intentions of the Department to provide for the reorganization of our Tribe. These efforts were taken to reverse the destructive Federal policies of previous decades.

E. State and Federal Efforts to Secure Federal Recognition for Our People: 1940–1950

As Interior moved forward on the enrollment project, its progress in acquiring lands for the Little Shell slowed largely because of the lack of Federal appropriations to acquire land. In other words, had appropriations been sufficient to acquire land, it appears that both the Department and the State of Montana strongly supported establishment of a reservation for our people. Had a reservation been established, we would be recognized today.

Records from this time period provide ample evidence that the lack of appropriations prevented our recognition. For example:

- Assistant Commissioner Zimmerman explained to Senator Murray in 1940, "[t]he Indian Office is keenly aware of the pressing need of the landless Chippewa Cree Indians of Montana. The problem thus far has been dealt with only in a very small way. I sincerely hope that additional funds will be provided for future purchases in order that the larger problem remaining can be dealt with in a more adequate manner." May 13, 1940 Letter from Assistant Commissioner Zimmerman to Senator James E. Murray.
- In 1941, the Montana State Senate and House highlighted our plight of "living in makeshift dwellings on the outskirts of our various Montana Cities" and sent a Joint Memorial to the U.S. Congress urging the Congress "to immediately enact appropriate legislation to create an Indian Reservation for all Montana landless Indians."
- In response to the local Superintendent's request for funds so that tribal leader Dussome could travel to Washington to advocate for the purchase of land, Commissioner John Collier (largely credited as the architect of the IRA) explained:

  > [Our] Office, as you know, has been sympathetic toward the desires of these people to secure land upon which they could settle and build homes. Unfortunately appropriations have not been sufficient to permit us to do much in the way of rehabilitating this group upon newly acquired lands. Various Members of the Congressional delegation from Montana have been interested in the condition of these people . . . [l]ittle can be accomplished by the Indian Office until funds have been made available by Congress for their rehabilitation[.]

- That same year, Assistant Commissioner Zimmerman underscored the Department's dilemma—that it desperately wanted to assist our people but that it could not do so because of a lack of appropriations.

  > We have on several occasions studied this problem and can see no way in which any solution can be arrived at without specific, adequate appropriations. There are more than 500 families in the State without resources of any kind, who have no equity in any reservation, and who constitute a serious social problem. Essential to any scheme of self-support for them is an adequate land base. . . . To provide necessary land for this number of families would require a million dollars, in addition to some lands now part of the public domain. Another million would be required for loans and grants for cattle purchases, machinery, homes, and farm buildings. . . .
  >
  > We are ready to undertake this task if the Congress is willing to provide the necessary funds. . . . The project is perfectly feasible; the Indians un-

> doubtedly are in great need; they deserve some effort on the part of the Federal Government. We shall be happy to cooperate in any way.

- Responding to a petition requesting that a nearby ranch be purchased for our benefit, the Office of Indian Affairs explained their predicament to Joseph Dussome:

> As mentioned in prior correspondence there are no funds available with which to enter into a land purchase program for the benefit of the landless Indians of Montana. We fully appreciate the land needs of these Indians, and it is our desire to aid them at the first opportunity. As stated before, such action will be dependent upon the availability of funds. . . . As previously intimated, a large sum will be necessary to take care of the land needs of the group in which you are interested, and until such time as Congress appropriates the necessary funds for this purpose, we will be able to do very little.

- In 1949, the Department reiterated its desire to assist my people and its inability to establish a land base because of the lack of appropriations. In a letter to Representative Mike Mansfield, Acting Commissioner William Zimmerman explained:

> Receipt is acknowledged of your letter of February 1, enclosing one from Hon. John W. Bonner, Governor of Montana, concerning the landless Indians of Montana with particular reference to their destitution and need for rehabilitation.
>
> Our files contain considerable correspondence concerning the needs of these Indians and suggested plans for their rehabilitation, but due to lack of funds this office has been unable to do very much to relieve the situation. . . . Before anything can be done for the relief of these Indians, it will be necessary for Congress to appropriate adequate funds for that purpose.

In 1940, a tribal representative of the Little Shell Tribe perfectly summarized the quandary of the Tribe, stating:

> [Assistant Commissioner] Zimmerman . . . told us that we couldn't have any allocation or organization or corporate charter under this act until we have land. He said "we haven't got money to buy land and appropriations have been drastically cut from year to year and there is nothing we can do." Summing up our negotiations with the Interior Department we come to this conclusion: First, we are entitled to rights as an Indian but as to forming an organization, borrowing from the revolving loan, we must first have a charter. We can't get a charter unless we have land. We can't have land because the Indian Office is broke . . .

Because adequate funds were never appropriated to acquire land for my people, the Tribe continued to struggle over the decades that followed to satisfy the basic needs of our members. As you know, in the late 1970s the Department of the Interior formulated an administrative process. Because we are in the final stages of that process, I do not feel it is in the best interest of my Tribe to criticize the process or the Department. I will, however, provide a few general observations regarding our petition for acknowledgment.

II. Our Experience With the Administrative Process

We originally filed a letter petitioning for Federal acknowledgment on April 28, 1978, *almost 6 months before* Interior's administrative process for acknowledgment was created. The process has proved to be extremely resource intensive. I believe that the lack of available resources greatly hinders both the tribes in the process and the Department.

Over the past 29 years, we have been fortunate to receive the services of the Native American Rights Fund. Without their assistance, it's unfathomable that we could have found the funds necessary to retain legal counsel and consultants for this extended period of time. Over the past 15 years, NARF has spent over 3,400 attorney hours on our administrative petition. Consultants and graduate students put in thousands and thousands of additional hours. Tribal consultants, such as historians, genealogists and graduate students, donated substantial amounts of time pro bono or worked at substantially reduced rates in compiling large portions of the petition. Even with this generosity, however, the total cost for consultants and associated expenses over the last fifteen years exceeds $1 million dollars. Literally tens-of-thousands of documents have been provided with regard to our petition.

The lengthy process also inflicts an immeasurable human cost, wherein the acknowledgement torch is passed from one generation to another. The task of securing professionals to assist us with our petition and the collection of documents from repositories across the United States, Canada and England is itself demanding, but it pales in comparison to the demands of providing for my people without the protection of Federal recognition, without a land base. And our current status impacts the prospects for our future generations. Moreover, it is heartbreaking to consider the idea that after nearly 30 years in the administrative process, in the politically charged atmosphere of Washington, D.C., the Department could reverse its proposed favorable finding and decide not confer Federal acknowledgment.

Our tribal status is well documented. Interior's proposed finding documents include a 234 page technical report that provides evidence to satisfy each of Interior's mandatory criteria. Interior expressly concluded that each of the mandatory criteria were satisfied, requesting the Tribe to search for *additional* evidence to supplement the evidence that already exists. We have submitted additional documentation, as requested by the Department. Notably, we have provided additional documentation to demonstrate that 94.4 percent of our members descend from a historic tribe. In all, we estimate that we have submitted thousands of pages of additional documentation for our petition.

One criterion that the Congress may wish to consider for modification is criterion (a)—since 1900, identification of a Tribe by external sources. Although we clearly satisfy this factor (as the Department concluded in its proposed finding), we submit that it is nonsensical that a petitioner could satisfy all of the other criteria, thus demonstrating that it is a Tribe, and yet potentially fail to be recognized simply because a non-Indian never documented the Tribe in the early 1900s or that documentation no longer exists.

III. This Honorable Body Should Act to Recognize the Little Shell Tribe

I respectfully implore this honorable Committee to act favorably on the legislation introduced by Senators Tester and Baucus to confirm our Federal recognition. I submit that this Congress should complete the efforts of previous Congresses to secure to us a fraction of the Indian lands lost by our people over time. Congress undertook this honorable effort in the 1910s and 1920s, appropriating money for the purchase of land for our ancestors but, as Interior officials acknowledged, it was woefully inadequate to meet our desperate needs. In the 1930s and 1940s, the Department of the Interior made substantial efforts to enroll our ancestors and acquire land for us, but Congress never appropriated the funds necessary to secure a land base for us. This Congress has an opportunity to finish what it started by acting on our pending legislation. Legislation that will cost the public very little, but will be a giant first step in putting our Tribe on an equal footing with our sister Tribes.

From time to time, representatives in this honorable institution have rightly questioned Congress' ability to determine whether a particular group constitutes an Indian tribe. I submit that this Congress has a more than ample record on which to enact this legislation. In addition to the tens of thousands of records held by the Department in connection with our Petition, the Congress has a long legislative record of acting for our benefit. Congress also has a history of enacting similar legislation. In recent history, Congress enacted such legislation for tribes like the Little Traverse Bay Band and the Little River Band—Tribes for whom Department attempted to recognize in the 1930s but because of the lack of appropriations recognition was never completed. And unlike other tribes acknowledged by Federal legislation, here the Congress can rely upon the Department of the Interior's proposed favorable finding to recognize our Tribe.

Our strong historical record is reinforced by the fact that our recognition is not politically controversial in the State of Montana. Our Congressional delegation supports this legislation. Montana's State and local governments support our recognition. And in addition to the Turtle Mountain Band of Chippewa Indians, every federally recognized Tribe in the State of Montana supports our recognition. Indeed, we are the only non-federally recognized tribe included in two significant inter-tribal organizations—the Montana–Wyoming Tribal Leaders Council and the Council of Large Land Based Tribes. Area tribes recognize our legitimacy. Indeed, we know of no opposition to this legislation by any recognized governmental entity within the State.

As I've previously mentioned, Senator Tester and Baucus' legislation resolves more issues than our recognition. The legislation also addresses issues that often present significant challenges to tribes and local communities after a tribe is recognized through the acknowledgment process. This legislation provides certainty to all interested parties regarding land acquisition and establishes a service area in which the Tribal members can immediately begin to receive long over-due Federal services.

And finally, the bill provides the certainty of Federal acknowledgment. While we fully expect to the Department to affirm it favorable finding—particularly since to the best of our knowledge no party has submitted a single historical record that would undermine Interior's previous finding—such certainty is understandably important. For almost 100 years we have relied on the Federal Government's promises to take the steps necessary recognize our government and secure a home for our people. We often get so very close and then something goes awry. This legislation is your opportunity to ensure that previous mistakes are not repeated.

Every day that passes has concrete impacts on the Tribe. For example, even though we are eligible for Indian Health Care services, for several years now over 1,200 Little Shell members have been taken off of the Indian Health Service rolls because they were not on the original roll the Little Shell Tribe presented to the Bureau of Indian Affairs in 1989. Many of these members were not even born at the time of the original roll or are not on the rolls because of clerical oversight. Federal recognition would alleviate this situation and ensure that all of our tribal members receive necessary health services.

IV. Conclusion

I greatly appreciate the opportunity to provide this Committee with an overview of our history, our experience with the Federal Acknowledgement Process, and why this honorable Committee should favorably report S. 724 out of Committee. I am happy to answer any questions from the Committee.

The CHAIRMAN. Chairman Sinclair, thank you very much for your testimony. I understand the passion and the emotion and I very much appreciate your being here today on behalf of your tribe.

Next we will hear from Chairperson Ann Tucker, from the Muscogee Nation of Florida in Bruce, Florida. Chairperson Tucker, thank you for being here.

STATEMENT OF HON. ANN DENSON TUCKER, CHAIRWOMAN, MUSCOGEE NATION OF FLORIDA

Ms. TUCKER. Chairman Dorgan, Vice Chairwoman Murkowski, members of the Committee, I am Chairwoman Ann Denson Tucker of the Muscogee Nation of Florida. I am honored to represent my tribal government and my people on the subject of Federal recognition.

As Petitioner Number 32 in the Office of Federal Acknowledgment, we now have the dubious distinction of being one of the three oldest petitioners. We have seen many things. This year marks 60 years since the longest serving community leader, my great grandfather, wrote to the BIA and explained that our people should share in land claim settlements under the Treaty of Fort Jackson. The BIA's written response: well, you are mistaken, you cannot possibly be who you say you are, because the members of that tribe are either dead or removed.

Ten years later, the BIA admitted they were wrong. But it took until 1971 to receive a notice of settlement. By then, my great-grandfather had been dead for 2 years. Telling you this today is important, because in 1852, State law made it illegal to be an Indian living freely in the State of Florida. So the settlement letter was our mechanism to confirm our racial identification in a place where Jim Crow laws had forced us to become either white or black. Indian wasn't allowed where we lived. And I guess today that would be called ethnic cleansing.

We continued with a petition submitted in the mid to late 1970s. That was returned because the rules had been restated. And we started again.

But in our case, this Federal recognition is not only about self-determination. It is about our very survival as a community of Indian people. My tribe has the same desperate needs that it had 30 years ago. Little has changed in this respect. But the urban sprawl of the Gulf of Mexico coastline has pushed newcomers into the rural interior, and that seriously threatens our community's integrity. It has come at us from all sides, and we are running out of time.

We cannot afford property taxes that come with coastal subdivisions. It is a way of life that we have never had to be a part of. So in our world, we worry about where are we supposed to remove to this time, when we are priced out of our home land and still waiting for an answer from the OFA.

Time, a lack of money, new precedents, urban sprawl, inaction when this process first needed fixing, these are our enemies. It is our understanding that you want to know why our tribe came to this Committee with legislation. We are here because no American, particularly the first Americans, should have to wait across generations to be recognized. We are a poor community. We have no more resources to battle the OFA. There are no grants that pay for recognition. There is no grandfathering in. Old tribes must follow current regulations without regard to what the regulations were when we started.

There is little to no staff assistance, no written communication. Our universe becomes 100 years of 10 year increments, scanned and digitized, sorted 4 ways and subject to interpretation by people who have never left their office to understand the nature of our community. For them, our world is a paper trail put together by highly educated and expensive professionals. But that is not our world. We have buried two generations of people waiting for self-determination. I would like to not have to bury the last survivors of the third generation. They are in their 80s.

So I am here. I have traveled from Bruce, Florida to tell you that we are a 150 year old community of this Country's indigenous people and we are still waiting for justice. Our quality of life matters. The preservation of our culture and our tradition matters. Righting a 150 year old wrong matters, and it matters now. It doesn't matter 10 years from now when a limping agency can maybe make a decision that may or may not be just and may or may not be reversed.

We are here because we are an Indian government. We are a people who have managed to survive Andrew Jackson as a territorial Governor. We have survived Indian removal and genocide, the Civil War, the Jim Crow laws, and a battle to prove that we were not eradicated, we still exist. These things we have faced and survived for 150 years as an Indian community. But if we cannot get resolutions to problems inherent in the OFA process, we honestly do not believe that our tribal population will survive Federal recognition.

From the age of four, when I remember my first council meeting, it was taught to me that Congress is where tribal governments go to seek relief for their people. It is as you said, Chairman Dorgan, you can delegate authority, but you cannot delegate responsibility. On behalf of the tribal government and the people of the Muscogee

Nation of Florida, thank you for allowing our voice to be heard today.

[The prepared statement of Ms. Tucker follows:]

PREPARED STATEMENT OF HON. ANN DENSON TUCKER, CHAIRWOMAN, MUSCOGEE NATION OF FLORIDA

I. Introduction

Chairman Dorgan, honorable Committee Members, my name is Ann Denson Tucker. I am Chairwoman of the Muscogee Nation of Florida, the Florida Tribe of Eastern Creek Indians. I am honored to be here representing my Tribe and my people to testify about my Tribe's experience with the Federal recognition process.

My Tribe needs and deserves Federal recognition, and we appreciate this Committee's interest in reviewing the flaws in the Bureau of Indian Affair's (BIA) current recognition procedures.

My Tribe is not just another victim of the recognition bureaucracy—Petitioner Number 32 in the Office of Federal Acknowledgement—we are also the second oldest. We have been trapped in the BIA recognition system since the mid-70s. After filing multiple Petitions and surviving a number of rule changes over 25 years, we were finally classified as "Ready, Waiting for Active Consideration." That was 4 years ago. We are still on the list, without any indication of when the BIA will act on our Petition. All told, we have been trapped in BIA's bureaucracy for over 30 years and we have nothing but expense and frustration to show for it.

My Tribe has exhausted its resources. It can no longer pursue or respond to the BIA's failed process—a process that requires applicants to re-do and re-file papers and studies and to comply with rules, regulations, and interpretations that did not exist when our initial application was made—a process whose pace can be characterized, at best, as glacial or, perhaps, as no pace at all. My Tribe has worked, waited, struggled, and sacrificed in this process for over 30 years. At every turn, we have learned that the BIA tribal recognition process is enormously burdensome, confusing and unfair. The recognition process represents a clear failure of the Federal Government's trust responsibility to Indian Tribes and should be addressed by Congress.

II. Background on the Muscogee Nation of Florida

The Muscogee Nation of Florida, also known as the Florida Tribe of Eastern Creek Indians, is a Tribe of Creek Indian people whose home is centered in Bruce, in Walton County, Florida. Our ancestors were one of the Tribes that made up the Historic Creek Confederacy, and were signatories to the 11 treaties with the United States between 1790 and 1833 that led to the Creeks forced removal from their traditional homelands. In response to attempts to remove our community, our ancestral tribal leaders left their Indian enclave in Daleville, Alabama and followed the Choctawhatchee River south to Bruce Creek, where they re-established our community, traditions and homes. Since that time—150 years ago—my Tribe has lived, fished, hunted, farmed cooperatively, raised cattle, and practiced our traditional ceremonies on this land as a community and as a distinct cultural, social and political unit.

By the time we migrated from Daleville to Bruce, *Jim Crow* laws had been enacted in Florida. By 1850 it was illegal to trade with Indians. And in 1852, it became illegal—under penalty of death—for Indians to be "Indian," unless the Indian was confined to a Reservation. Under the general outlawing of Indians, people could be white or "colored," but could not be openly Indian. Because my Tribe had no formal reservation, the *Jim Crow* laws made it nearly impossible for us to openly embrace our cultural heritage and community. We survived until the *Jim Crow* laws were repealed only by cooperatively maintaining our communal anonymity. Allow me to repeat this, for nearly 100 years our Tribe was forced to hide its government, traditional ceremonies, and culture. As a result, under the best of circumstances, satisfying BIA's tribal recognition requirements became difficult. The fact that BIA continuously changes its tribal recognition requirements, and ignores the impact of the *Jim Crow* laws, has made the task almost impossible.

Most of my Tribe's members continue to live in and around Bruce, just as our ancestors did after migrating from Alabama. We have lived together, worked together, married one another, and buried one another as a community. We have our own rules and we have our own leaders. We have kept our ways and our ceremonies. We even built our own school in which our people teach our children about our traditions.

III. The Muscogee Nation of Florida's Experience with the Recognition Process

My Tribe's experience with BIA's recognition process is not unique. Let me tell you our story.

It has been 60 years since our community leader—my great grandfather—wrote to the BIA and explained that our people deserved compensation for lands taken under the Treaty of Ft. Jackson. BIA's response, which is on file in the Federal Archives, was dismissive, declaring curtly, "You are mistaken. You cannot possibly be who you say you are because the members of that Tribe are either dead or removed. . ." Fast forward 10 years to 1957 (the same year the Seminole Tribe of Florida was granted Federal recognition), when the BIA finally acknowledged that it had not rid the Southeast of the Florida Tribe of Eastern Creek Indians; the same year the Seminole Tribe of Florida was granted Federal recognition. Fast forward again 14 years, to 1971, when BIA finally verified our racial identification to the U.S. Government and, in turn, to the State of Florida. By then, my great grandfather had been dead for 2 years, and we had already spent 24 years getting the BIA to acknowledge our existence as Indians. Now, 36 years later, I am here to tell you that our Indian community and tribal government are still waiting for the BIA to acknowledge that we are a Tribe, and, with no end to the regulatory process in sight, we need Congress to intervene.[1]

Because we are one of the oldest Tribes still seeking Federal recognition, having sought recognition before there even was a formal process, and because we have ridden the tail of the regulatory tiger as it has run haphazardly through change after change, we can offer the following specific examples of some of the problems that have crippled the BIA tribal recognition process:

The lack of an accountable standard of interpretation—Staff members' interpretations are inconsistent; and when inconsistencies arise, staff is not accountable.[2] Additionally, in making its findings and final determinations, BIA does not apply the standards set forth in BIA's own regulations, electing, instead to cite to standards for review and have been developed by academics. Rather than observing the intent and letter of applicable Federal regulations, BIA's process has become an *ad hoc* jumble of regulatory interpretation in which Federal regulations are ignored.[3]

- *Undue influence by "parties of interest" before a factual determination is made.* OFA no longer defers comments by parties opposing acknowledgment petitions until OFA has made its factual determination based on the evidence submitted by the Tribe. Protesters now are free to oppose petitions and wage public relations campaigns even before BIA has fully considered the Tribe's petition. These activities make it impossible for the process to be a fair, factually-based evaluation.
- *OFA's unwillingness to provide documentation that it possesses.* The sheer magnitude of the BIA's requirements regarding the format, size and amount of documentation are not justifiable and cause the cost of preparing a filing a petition for acknowledgment prohibitive. To make matters worse, if evidence of conditions precedent to recognition is not available to the tribal petitioner but is in OFA's possession, OFA will reject a Tribe's petition for lack of evidence rather than supplementing the Tribe's petition with evidence OFA has in its files.[4]

Please allow me to identify one final, overarching problem that has impacted us dramatically: *the ever shifting goal line.*

In 1978, when my Tribe filed its first petition for acknowledgment, Tribes were not required to do multiple filings. However my Tribe has been required to contin-

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[1] The following is a brief summary of my Tribe's efforts to achieve recognition through the administrative process:

- 1978—The Tribe submits an initial petition for recognition. The petition is returned later that year purportedly because of changes to BIA regulations.
- 1978–1995—The Tribe prepared three separate petitions for recognition. The first two petitions were not submitted because of continuing changes to agency regulations and policies. The third was submitted to BIA in June, 1995.
- 1996—The Tribe received a "Technical Assistance" letter from BIA requiring additional research and document preparation. The Tribe submitted its response in 2002.
- 2003—The Tribe was placed on the "Ready, Waiting for Active Consideration" list. At the same time, the Tribe was notified that because of additional changes to agency regulations the Tribe needed to electronically submit in excess of 840,000 pages of documents.

[2] The Acknowledgment Precedent Manual offered as a guide has a qualifying statement that its contents do not serve to constraint the staff or any decisions made.

[3] Final Determinations and other formal findings from OFA cite historical, anthropological and genealogical standards. The only standards of these type are academic communities, not the regulations.

ually file new papers to address changes in BIA's regulations, changes in BIA's "internal operating procedures" of the BIA and changes in BIA's own interpretations of evidence in support of our petition that we previously submitted to it.

My Tribe has expended untold human and financial resources trying to satisfy the BIA. We have been forced by the process to retain attorneys, historians, genealogists, archaeologists and other experts to satisfy the BIA's requirements ad new legal precedents. And we have done it all over again when the BIA's requirements changed. After each attempt we have been met with new demands and no substantive action. After more than 30 years of trying to satisfy changing BIA demands of our initial Petition approaches, it is clear that the BIA's process is patently defective and terminally inefficient.

IV. The Importance of Fair and Efficient Federal Recognition Regulations

The BIA's rules and procedures cause it to withhold recognition from Tribes who have made proper application for, and who are entitled to, recognition. The BIA's intransigence threatens the survival of Tribes and the well-being of Tribal members. I understand that this hearing is not being held to hear my Tribe's argument for Federal recognition. However, understanding the importance of Federal recognition makes it easier to see that my Tribe's frustrations with BIA are neither unique nor inconsequential.

Federal recognition acknowledges the significance of tribal governments and the U.S. government's responsibility to Tribes. It also opens opportunities to Tribes under various Federal programs reserved for federally recognized Tribes, facilitates economic development and enables Tribes to qualify for Federal funding. As Congress has stated:

> "Recognized" is more than a simple adjective; it is a legal term of art. It means that the government acknowledges as a matter of law that a particular Native American group is a Tribe by conferring specific legal status on that group . . . This Federal recognition is no minor step. A formal political act, it permanently establishes a government-to-government relationship between the United States and the recognized Tribe as a "domestic dependent nation," and imposes on the government a fiduciary trust relationship to the Tribe and its members. Concomitantly, it institutionalizes the Tribe's quasi-sovereign status, along with all the powers accompanying that status such as the power to tax, and to establish a separate judiciary. Finally, it imposes on the Secretary of the Interior specific obligations to provide a panoply of benefits and services to the Tribe and its members. In other words, unequivocal Federal recognition of tribal status is prerequisite to receiving the services provided by the BIA and establishes tribal status for all Federal purposes.[4]

The Department of the Interior's website boasts that "[t]he scope of Indian Affairs programs is extensive and includes a range of services comparable to the programs of state and local government, *e.g.,* education, social services, law enforcement, courts, real estate services, agriculture and range management, and resource protection."[5] None of these services and benefits is available to my Tribe so long as it is trapped in the BIA's recognition process.

The importance of Federal recognition cannot be overstated. Tribes have endured forced relocation, aggressive and open government discrimination, and years of neglect by government bureaucrats. In spite of these trials, Tribes have worked, and continue to work diligently to address pressing economic, education, and resource issues. We should be able to avail ourselves of programs intended to support our efforts. We should not be thwarted by the ineptitude and further neglect of the BIA.

V. Conclusion

Congress must take action to reform the tribal recognition process. Put simply, it is unreasonable for the BIA to have a regulatory review process that takes decades to complete, requires Tribes to pay exorbitant sums for attorneys, historians, genealogists, archaeologists and other experts and relies on a body of regulations that constantly change, making compliance nearly impossible.

Applicants should not be made to wait decades for fair BIA action. Federal recognition is not only about self-determination. It is about our very survival as a community of Indian people. My Tribe has the same desperate needs that it had 35 years ago: housing, health care, education, elderly services and emergency management. These needs—critical to the survival of our Tribe's members—have been compounded by the passage of time and the BIA's neglect.

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[4] H.R. Rep. 103–7811 103d Cong., 2nd Sess. (1994) at 2; 1994 U.S.C.C.A.N. 3768, 3769.

[5] Available at: *http://www.doi.gov/benefits.html*

As each year passes my Tribe struggles to care for its members needs as it becomes more and more difficult to imagine when we will receive the Federal recognition to which we are entitled. The tribal leaders who began the recognition process in their youth are now tribal elders. Our elders, like my mother, deserve to be recognized before they pass leaving the burden of engaging the BIA bureaucracy to the next tribal generation.

I appreciate the invitation to speak to you today on behalf of the Muscogee Nation of Florida. My Tribe hopes that Congress will take action to ensure that Federal recognition process is reformed and streamlined in ways that produce timely, fair, and predictable responses to petitions for recognition.

Thank you.

The CHAIRMAN. Chairperson Tucker, thank you very much for coming to Washington and offering that testimony. We appreciate it.

And Chairman Yob, you have been properly introduced as well by our colleague, Senator Levin. So you may proceed with your testimony. Your formal testimony will be part of the permanent record.

STATEMENT OF HON. RON YOB, CHAIRMAN, GRAND RIVER BANDS OF OTTAWA INDIANS OF MICHIGAN

Mr. YOB. Good morning, Mr. Chairman and members of the Committee. My name is Ron Yob and I am Chairman of the Grand River Bands of Ottawa Indians of Michigan. With me this morning is Fran Compo, Vice Chairman of the Tribe.

I am honored to appear before the Committee this morning to talk about why tribes such as Grand River are seeking legislation to resolve their Federal status. The short answer is that the process at the Bureau of Indian Affairs is too slow, too expensive and too cumbersome for all groups in the Federal acknowledgement process.

Quite simply, I would not be here today except that the BIA failed to meet a statutory deadline for considering our petition. Congress set the deadline by law in 1997. Unfortunately in that law, Congress did not include any provisions for making the BIA accountable for failing to meet the deadline. And there is no penalty against the BIA for not doing their job. It is only the Grand River Bands that suffers.

We are lucky to live in the same places that our ancestors lived and those are the very same ancestors who signed treaties in 1821, 1836 and 1855, ceding vast amounts of territory to the United States. Last year we were proud to bring home the original 1855 Treaty of Detroit to the Gerald Ford Museum in Grand Rapids where the signing was exactly 150 years ago. I happen to have a great, great, great, great-grandfather that signed that treaty.

We are a treaty tribe, and our members trace from ancestors who signed those treaties. In 1997, Congress enacted the Michigan Indian Lands Claims Settlement Act to provide for distribution of Ottawa and Chippewa judgment awards for payment of lost lands. The Grand River Bands of Ottawa Indians was eligible to receive funds if the tribe submitted its full petition by December, 2000. The BIA had to complete action on the petition before the deadline for distribution of the funds to individuals, which was March 2007.

Unfortunately, while the Grand River met the legal date for filing its petition, the BIA failed to act on our petition by the deadline

set in the bill. Our own members voluntarily did the very technical work of verifying the memberships through authenticated birth, death, baptism and marriage records. We provided a full response to the BIA in May 2006 and were placed on the ready for active list 9 months later. This was 4 months before the BIA actually paid out the judgment funds to individual members in June 2007.

This payment, while welcomed by many of our members, means that the Tribe will not receive either the statutory 20 percent of judgment funds or the bonus money for newly recognized tribes authorized by the 1997 Act while $3 million will revert to the U.S. Treasury. Senators Levin and Stabenow introduced legislation in the 109th Congress to require a timely review of our petition by the BIA. This Committee held a hearing in June 2006 and the members seemed very sympathetic to our plight. However, the Committee did not report the bill to the Senate for action.

Again, early in this 110th Congress, Senators Levin and Stabenow re-introduced the legislation, and we are grateful to them for their unfailing support. However, while the time has now passed for the Tribe to receive the judgment funds, we feel strongly that the BIA should be held accountable to act on our behalf. Congress should require the BIA to review our petition on an expedited basis.

There is no mistake: we are a tribe by any objective measure and should be federally recognized. We were never terminated and we have been mentioned in several statutes enacted by Congress in the past 50 years. We are recognized by the State of Michigan and by other recognized tribes in our State. Our ancestors signed three treaties with the United States. Our reservation lands were taken from us. The only positive here is that the Tribe has survived with its culture, language and tribal traditions intact. We are in grave danger now of losing our Tribe if we are forced to wait another 15, 20 or 25 years for the BIA to act on our petition.

The first petitioner on the ready for active list was placed there 11 years ago, and we are number 10 on that list. Our children do not have the health and education benefits that their cousins now enjoy. Our inland hunting and fishing rights in the State of *U.S. v. Michigan* are being negotiated by others as we speak because the Tribe cannot be at the table. Our jurisdiction over our children under the Indian Child Welfare Act could be eroded and our ability to provide for re-burial of our ancestors' remains under NPCRA is also in danger.

There is enormous pressure on our members to enroll in other tribes where benefits are available to them. The BIA is slow in the process and inherently biased against recognition. It is also very, very expensive. We believe the bias should be the other way around. It should be in favor of recognition unless there is strong evidence that the petitioning group is not a tribe.

Again, I want to thank the Committee members for your interest in helping Indian tribes who purely by accident of history are not now part of the Federal family of Indian tribes. We are ready to help in any way possible to make recognition a reality for all legitimate Indian groups.

Megwich.

[The prepared statement of Mr. Yob follows:]

PREPARED STATEMENT OF HON. RON YOB, CHAIRMAN, GRAND RIVER BANDS OF OTTAWA INDIANS OF MICHIGAN

Chairman Dorgan, Vice Chairman Murkowski and members of the Senate Indian Affairs Committee, it is an honor to be asked to testify this morning on behalf of the Grand River Bands of Ottawa Indians on the very important topic of how Indian tribes are granted recognition by the United States.

Overview: There are three ways Tribes are granted recognition: by Congress, by the Administration or by a Federal court. In recent years, Congress has been reluctant to enact bills to grant tribes recognition status though numerous tribes were recognized by statute before the advent of gaming. Since the beginning of this Administration in January 2001, the Secretary of the Interior has recognized two groups as Federal tribes but has denied recognition to ten tribes. Recent Court cases are few, but some have resulted in negotiated settlements that deal with timing of review of petitions by the Administration.

The Federal acknowledgment process (FAP) is governed by regulations found at 25 C.F.R. 83 that were first published in 1978. *It is important to note that Congress has never weighed in on either the criteria outlined in the regulations, or on the process used by the Bureau of Indian Affairs (BIA) to implement those regulations.* There is no clear statutory underpinning for the regulations administered by the Office of Federal Acknowledgment (OFA) at the BIA, the office that processes petitions from Indian groups to determine whether or not they meet the seven criteria in the regulations.

The Grand River Bands of Ottawa Indians Story: The Grand River Bands of Ottawa Indians is petitioner #146 in the Federal acknowledgment process at the BIA. In February 2007, our petition was placed on the OFA "Ready" list—we are number 10 on that list. The group at the top of the list was placed there in 1996, so we do not anticipate early review of our petition. In fact, we are told that it will be 15 to 20 years at least, maybe longer, before our petition will be reviewed if the current pace of review is not changed.

We are fortunate that our Michigan Senators Levin and Stabenow support recognition for the Grand River Bands of Ottawa Indians and introduced legislation in both this Congress (S. 1058) and in the 109th Congress (S. 437). The legislation would require the BIA to expedite review of our petition because of our unique circumstances. We will discuss those circumstances briefly here but we also refer you to our testimony at a hearing before this Committee on June 21, 2006 on S. 437.

The Grand River Bands of Ottawa Indians ("Tribe") is located in south central Michigan. Our tribal ancestors signed three treaties with the United States: the 1821 Treaty of Chicago, the 1836 Treaty of Washington and the 1855 Treaty of Detroit. Our members trace their ancestry to signatories of these treaties and we have maintained continuous tribal relationships to this day. In the mid-1930's, we sought to organize under the 1934 Indian Reorganization Act but there was no money for land purchases which the BIA believed was necessary for us to organize. By then all of the Tribe's treaty lands in Michigan had been wrongfully alienated. BIA's Commissioner at that time, John Collier, determined that the Tribe was eligible for reorganization under the 1934 Indian Reorganization Act (25 U.S.C. 461). The Tribe, thus, has never received the Federal health, education, welfare and housing services that its members so desperately need.

Nevertheless, in 1976, BIA Commissioner Morris Thompson said in a letter to the Solicitor at DOI that the Grand River Bands of Ottawa Indians were "functioning as or at least are accepted as tribal political entities by the Minneapolis Area and Great Lakes Agency." See: Senate Report 103–260 that accompanied S. 1357, a 1994 bill to recognize the Little River Bands of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians (P.L. 103–324; 25 U.S.C. 1300k). While the Grand River Bands is mentioned throughout the Report on the bill to recognize its two sister Ottawa Tribes, the final bill did not include the Grand River Bands of Ottawa Indians.

This Senate Committee report concludes that "the Bands were not terminated through an act of the Congress, but rather they were unfairly terminated as a result of both faulty and inconsistent administrative decisions contrary to the intent of the Congress, Federal Indian law and the trust responsibility of the United States . . . the Committee strongly affirms that the trust responsibility of the United States is not predicated on the availability of appropriated funds. Further, the possession of a tribal land base is not the foundation for determining tribal status."

The Final Report of the American Indian Policy Review Commission (AIPRC) chartered by Congress listed the Grand River Bands of Ottawa Indians among the tribes who had suffered from "the inequitable administration of Federal programs

and laws and . . . the accidents and vagaries of history." Attached is a summary of the AIPRC Report and Recommendation on Recognition prepared by our attorneys. You will note that very little has changed since then except that the process has become almost impossible to navigate.

Even though Grand River was not recognized in 1934, we have continued to act as a Tribe. For example, our leaders were instrumental in forming the Northern Michigan Ottawa Association (NMOA), the group that brought land and accounting claims before the Indian Claims Commission in the late 1940's and early 1950's. Those claims took many years to process and the Grand River Bands' first judgment award was enacted by Congress in 1976. (P.L. 94–540, October 18, 1976) The Tribe continued to work on these claims and in 1994 we filed a letter with the BIA stating our intent to file a documented petition for recognition. In that same year, Congress legislatively recognized two of our sister tribes: the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Our elders preferred the BIA process because they feared that if we were not successful, we might be precluded from going through the BIA/OFA process.

In 1997, Congress passed the Michigan Indian Land Claims Settlement Act (P.L. 105–143) which, in addition to providing for distribution of judgment funds to the successor recognized treaty tribes, also provided for distribution to treaty tribes not yet recognized, particularly the Grand River Bands. The proviso was that the tribe had to submit its full petition by December 2000 and the BIA had to complete its action by the statutory deadline for distribution of the funds to individuals (March 2007).

Unfortunately, while the Grand River Bands of Ottawa Indians met its statutory deadline in filing its petition, the BIA failed to act on our petition. We did not even receive a technical assistance letter until January 2005 and by then we had approached Congress seeking help to secure a review of our petition. It took the Tribe nearly 17 months to gather the necessary documentation to respond to the technical assistance letter. We accepted money from investors to pay for the work of our historians and anthropologists. Our own members voluntarily did the very technical work of verifying our memberships through authenticated birth, death, baptism, and marriage records. We provided a full response to the BIA in May 2006.

We were placed on the "Ready for Active" list 9 months later in February 2007, just 4 months before the BIA paid out the Judgment Funds to individual members in June 2007. This payment, while welcomed by many of our members who have waited a lifetime for payment, means that the tribe will not receive either the statutory 20 percent of judgment funds or the bonus money for newly recognized tribes authorized by the 1997 Act. Those funds, about $3 million, will revert to the U.S. Treasury. For some, this would seem to mean less incentive to pursue expedited recognition, but we disagree. While the time is now past for the Tribe to receive the judgment funds, we feel strongly that the BIA should be held accountable for its failure to act on our behalf and should be required to provide expedited review of our petition.

The Grand River Bands of Ottawa Indians are in grave danger of losing our Tribe if we are forced to wait another 15, 20 or 25 years for the BIA to act on our petition. The first petitioner on the Ready for Active list was placed there 11 years ago. Our Tribe is the tenth tribal group on that list. Our children do not have the health and education benefits that were promised in our treaties and that their cousins from Little River and Grand Traverse now enjoy. Our elders are dying without being sure that the Grand River Bands of Ottawa Indians will survive. Our hunting and fishing rights are being negotiated by others because the Tribe cannot be at the table due to its unrecognized status. The Tribe's jurisdiction over our children under the Indian Child Welfare Act could be eroded and our ability to provide for the reburial of our ancestors' remains under NAGPRA is also in danger. The State of Michigan is also considering the elimination of its higher education assistance to Michigan Indians. Most Indians in the State are now recognized and can access Federal and tribal education benefits.

In fact, there is significant pressure on our members to enroll in other tribes where benefits are available. Since the judgment funds were paid in June 2007, at least two or three members each week have advised us that they are giving up their membership in the Tribe. They all continue to believe that the Grand River Bands of Ottawa Indians is their tribe, yet they become members at Little River or at Little Traverse or at Grand Traverse in order to be eligible for services. However, not all our members are eligible for membership in these other tribes. The Grand River Bands of Ottawa Indians must survive and to do so it must be recognized by the United States.

In the years since the Tribe first filed its petition, we have observed the process closely and have reach several conclusions we would like share with the Committee:

Accountability: A serious problem with the Federal acknowledgment process is that the OFA often does not follow its own regulations and there is no accountability of any kind for its failure to do so. Indian groups seeking Federal recognition have no recourse when OFA does not meet the requirements of 25 C.F.R. 83. For example, the regulations say that "Within 1 year after notifying the petitioner that active consideration of the documented petition has begun, the Assistant Secretary shall publish proposed findings in the Federal Register. The Assistant Secretary has the discretion to extend that period *up to an additional 180 days*." (25 C.F.R. 83.10(h)) An objective read would say the Department is entitled to one extension but the Department has interpreted this rule to mean that the Assistant Secretary can extend the time for proposed findings for multiple 180 day periods. In one recent case, the Department has extended the review period three times—an additional one and one-half years and counting. Unless Congress enacts statutorily enforceable rules, the BIA will continue to proceed at its own very slow pace with no recourse by petitioning tribes. And, as the Committee might imagine, petitioning groups are naturally reluctant to object because they can object only to the very people who will ultimately decide the fate of the tribe.

Inherent Bias at the BIA: Another fundamental problem is the inherent bias against recognition of new tribes within the agency tasked with granting recognition. This bias is evidenced by the numbers of positive determinations and negative determinations in recent years. Recognized tribes are not anxious to share with newly recognized tribes the scarce money available at the BIA for tribal programs. The BIA, an Indian preference agency, serves only recognized tribes and Indians who can show that they are one-half Indian blood. An independent agency with recognition authority would be more suitable for this purpose.

The burden of proving each and every detail of its existence over many decades—even hundreds of years—should not be on the petitioning tribe. If a group is recognized as a tribe by other tribes, if it is recognized by the state, if it can show dealings with the United States through treaties and statutes, and if its members can show that they descend from an historic tribe—these items should be sufficient to show the group is entitled to recognition. Any reasonable person looking at an unrecognized group of Indian people now, in the early 21st Century, should be amazed that the group has preserved its tribal traditions, culture and sometimes even its language. This survival alone deserves much weight, given the poverty and other obstacles that unrecognized groups face, but there is seemingly no consideration given to such issues.

The Grand River Bands of Ottawa Indians believes that if a *prima facie* case can be made to show that a group has held together as a tribe, despite the tremendous pressures against survival, then the burden should be on others to prove that the group is not, in fact, an Indian tribe deserving of Federal recognition. Grand River is a treaty tribe, our members descend from treaty signatories, we have our language, we have our tribal traditions, we have demonstrated tribal leadership, we have our land and accounting claims. In fact, we have everything but recognition and the Federal services our members so desperately need. It is taking hundreds of thousands of dollars to prove our case and, until our petition is acted upon, we do not know if we have proved it to the BIA's satisfaction.

Certainly, a very critical issue is the subjective way in which the BIA/OFA staff review and interpret the documents that have so diligently been assembled for them. One tribe, the Miami Nation of Indiana, was told that, in the opinion of the BIA, their tribal picnic held annually from 1917 was not in fact a tribal event but merely a social gathering of related people. Thus, documenting the gatherings was pointless because even though the tribal members themselves believed they came together regularly as a tribe, some staff researcher "believed" otherwise. Like any community of people, tribes are organic and they do not put up walls to keep people in or keep people out.

Influence of Gaming: The allegations made by some critics that the petitioning groups are in the process because of gaming are absurd and insulting. It would be short work indeed to weed out the groups that do not belong in the process and who are only looking at the gaming rainbow. But the fact is that many petitioning groups, including the Grand River Bands of Ottawa Indians, have to rely on gaming investors to cover the costs of the basic research needed to document the Tribe's existence. While it can be argued that many of the petitions filed after enactment of the Indian Gaming Regulatory Act were influenced by gaming, we can flatly state that ours was not. Grand River is a very traditional Tribe of Ottawa Indians and most members have never supported any attempts by out of state gaming developers to invest in us for gaming purposes. About 4 years ago, a group in Muskegon approached us because the City had agreed by referendum to explore gaming as a way to counter the growing economic decline in that area. The Tribe accepted their

help because we needed the financial support and because the investors are our neighbors who solidly support our recognition efforts. If the Tribe can develop a gaming and resort complex, it would mean a great deal to the entire area. We are grateful, not just to our investors, but to the numerous civic groups and officials and even ordinary citizens who are rooting for us to become recognized.

On the gaming point, our attorneys have done an analysis of the petitions submitted to the OFA. They found that on the average 10 or 11 groups have filed every year since the regulations were first published in 1978. There is no sign of a huge influx because of Indian gaming that began in earnest in the early 1990's. While we do agree that there may be marginal groups that would not have filed except for the lure of gaming, those petitioners can probably be dispensed with rather quickly under the current procedures.

One Size Does Not Fit All: Another finding of our attorneys is that 23 percent of the petitioning groups are from California. As the Committee knows, the Indian tribes in California have a very special, and often dark, history of relations with the United States. We are not experts on their history but we know there was a concerted effort by the U.S. Government to exterminate the Indian people in California. Like many Indian groups in the Eastern United States, who basically went underground to survive racist laws, California Indians groups were quiet for decades and that quietness allowed them to survive. Now they are ready to take their rightful place among federally recognized tribes but the seven criteria do not always fit the small groups remaining on the Rancherias that were set aside for them. The Federal acknowledgment process needs to honor the special circumstances of these Indian tribes and to provide a system for acknowledgment that fits their needs and their culture.

Conclusion: The Grand River Bands of Ottawa Indians believes our situation is very unique and is deserving of Congressional action. In addition, we would like very much to assist the Committee in understanding and addressing the Federal acknowledgment issues presented today by us and by other witnesses. When the regulations were first formulated, petitions were less than 100 pages with minimal documentation. Now they are thousands of pages, dozens of boxes of documents and backup CDs, and the process has gone from a few months per petition to 20 or 30 years per petition. It is no longer tenable. We hope that the Committee and the Congress will act very soon to remedy this process that is strangling in minutiae.

Attachment A

RECOGNITION REVISITED—NOTES FROM THE FINAL REPORT OF THE 1977 AMERICAN INDIAN POLICY REVIEW COMMISSION—PREPARED BY VIRGINIA W. BOYLAN, ESQ., DRINKER BIDDLE & REATH, ATTORNEY FOR THE GRAND RIVER BANDS OF OTTAWA INDIANS

Introduction: Public Law 93–580 established the American Indian Policy Review Commission. The Commission was Chaired by Senator James Abourezk (SD),* and was directed to undertake a comprehensive review of the historical and legal status of the Indians' relationship with the Federal Government and to make recommendations on policy and program revisions needed to meet the Federal Government's responsibility to Indian people. The Commission established 11 Task Forces; Task force 10 was devoted to "Unrecognized Indians."

The findings of the Commission are as instructive and relevant today as when they were made to the House and Senate in 1977. The Final Report ("Report") said that "the past must be used as a backdrop, rather than as an indictment." (p. 1, vol. 1, FR) The Commission addressed the historical ambivalence of the Federal Government toward Indians where, on the one hand, multiple methods were employed to force them to stop being Indians and, on the other hand, promises were made that the United States would protect their right to live as Indians and to practice their beliefs in accordance with their own tribal traditions. In developing recommendations to resolve problems and to insure that the United States would keep its promises, the Commission heard—for the first time in history—directly from the Indian people themselves.

The recommendations contained in this seminal Final Report led Congress to restore virtually all of the tribes that were terminated in the 1950s. The Report also led the Congress to enact the Indian Child Welfare Act, the Indian Civil Rights Act,

*The Commission's other members were Representative Lloyd Meeds (WA), Vice Chairman; Senators Lee Metcalf (MT) and Mark Hatfield (OR); Representatives Sidney Yates (IL), Sam Steiger (AZ) and Don Young (AK) and five tribal leaders, John Borbridge (Tlingit-Haida), Louis Bruce (Mohawk), Ada Deer (Menominee), Adolph Dial (Lumbee) and Jake White Crow, (Quapaw-Seneca-Cayuga).

and numerous other laws to protect and enhance the right of American Indian tribes to determine for themselves how to operate their governments and to provide for their citizens. The importance of the Commission and its recommendations can hardly be overstated, particularly in conjunction with the virtually simultaneous enactment of the Indian Self Determination and Education Assistance Act, P.L. 93–638, that was signed by President Ford in January 1975, the same month that he signed P.L. 93–580. Taken together, these initiatives helped to lift the heavy hand of the Federal bureaucracy from the backs of tribal governments and allow them to move ahead financially and socially, while still preserving the trust responsibility of the United States for Indian resources.

Unfortunately, Congress has failed to address the recommendations of the Commission on Federal recognition of Indian tribes. Given the other areas of such great success, it is unfathomable that Congress has neglected to give the Department of the Interior any statutory guidance about this very important issue. The rights of Indians everywhere in this Nation are being trampled daily by the failure of the Congress and the Department to even understand the extent of this failure or the very urgent need to remedy it.

Summary of Recognition Recommendations: Fourteen of the Commission's 206 recommendations (numbers 164 to 177) to the Congress on Indian issues deal with recognition issues. The most pertinent recommendations are shown below:

> 166. To insure that the above declaration is carried out, Congress, by legislation, create a special office, for a specific period of operation, such as 10 years, independent from the present Bureau of Indian Affairs, entrusted with the responsibility of affirming tribes' relationships with the Federal Government and empowered to direct Federal Indian programs to these tribal communities. . . .
>
> 168. A tribe or group or community claiming to be Indian or aboriginal to the United States be recognized unless the United States acting through the special office created by Congress, can establish through hearings and investigations that the group does not meet any one of the following definitional factors:
>
> > (a) The group exhibits evidence of historic continuance as an Indian tribal group from the time of European contact or from a time predating European contact. "Historic continuance" includes any subsequent fragmentation or division of a specific tribe or group, and any confederation or amalgamation of specific tribes, bands, or groups and subdivisions.
> >
> > (b) The Indian group has had treaty relations with the United States, individual States, or preexisting colonial and/or territorial governments. "Treaty relations" include any formal relationship based on a government's acknowledgment of the Indian group's separate or distinct status.
> >
> > (c) The group has been denominated an Indian tribe or designated as "Indian" by an Act of Congress or executive order of State governments which provided for, or otherwise affected or identified the governmental structure, jurisdiction, or property of the tribal groups in a special or unique relationship to the State government.
> >
> > (d) The Indian group has held collective rights in tribal lands or funds, whether or not it was expressly designated a tribe. "Lands" includes lands reserved for the group's exclusive use, occupancy, or related general purposes which have been acquired by the group through Act of Congress, Executive or administrative action, or through such related acts by preexisting colonial and/or territorial governments, or by State governments or through the purchase of such lands by the group. "Funds" includes money designated for the group's exclusive use, possession or related general purposes by Act of Congress, Executive or administrative action, or by such related acts of preexisting colonial and/or territorial governments, or by State governments, or by judgment awards of the U.S. Court of Claims, U.S. Indian Claims Commission, Federal or State courts.
> >
> > (e)The group has been treated as Indian by other Indian tribes or groups. Such treatment can be evidenced by relationships established for purposes connected with crafts, sports political affairs, social affairs, economic relations, or any intertribal activity.
> >
> > (f)The Indian group has exercised political authority over its Members through a tribal council or other such governmental structure which the Indian group has determined and defined as its own form of government.
> >
> > (g)The group has been officially designated as an Indian tribe, group, or community by the Federal Government or by a State government, county (or parish) government, township, or local municipality.

> 169. If the United States finds that the claimants do not meet any of these definitional factors, such a determination must be made in writing to the claimants and the decision shall be reviewable by a three-judge Federal district court with the burden remaining upon the 'United States to establish that the claimants are not an Indian tribal community.
>
> 170. If the United States affirms through the special office that a claimant tribe or group meets any one of the standards set forth above, it shall promptly begin negotiations with the tribe or group for purposes of extending all benefits and protections of the laws of the United States directed toward Indians to the extent agreed to by the tribe or group. The agencies designated to provide for the negotiation of protection and benefits shall submit to the Congress such additional requests for appropriations as are necessary to fulfill these obligations.

The key to the Commission's recommendations was that Congress itself should adopt a statement of policy directing the executive branch to serve all Indian tribes and, further, that Congress should create a special Office *outside the BIA* to establish, by hearings and investigations, that a group met *any one of seven* factors. The recommendation was that if a group met any one of the seven enumerated factors, the Tribe should be recognized by the United States and its members should receive services. Only if the Office found that the group did "not meet any of these definitional factors" would the group not be considered an Indian tribal community. That would be subject to appeal.

Compare this to the system at the BIA's Office of Federal Acknowledgment where there are also seven criteria (that are far more rigid) and where the Department demands that a group meet *all* of the seven criteria. And while the criteria were developed by the Department, not the Congress, the intent of the drafters is not to be faulted. In 1978, staff who drafted the criteria with no statutory underpinnings believed it would take 2–3 months to review each petitioner's file. Compare that to the current time range of 15 to 20 years for the Office of Federal Acknowledgment at the BIA to complete its work on any single petition, as well as the amount of expensive and even excessive documentation required by the OFA—which is simply numbing.

Highlights of Task Force 10 Findings: With the exception of specific termination acts of Congress, the Commission found no "legitimate foundation for denying Indian identification to any tribe or community. The BIA has no authority to refuse services to any member of the Indian population." The Final Report found that nonrecognition was incomprehensible to Indians who had been neglected and forgotten. The major indictment was the Department's inconsistent determination about which groups it chose to recognize or not. "Trying to find a pattern for the administrative determination of a federally recognized Indian tribe is an exercise in futility. There is no reasonable explanation for the exclusion of more than 100 tribes from the Federal trust responsibility." (p. 462, F.R.)

The Final Report determined that before treaty-making was outlawed, treaties were the usual predicate for the special Federal–Indian relationship. However, the Report found that some tribes with treaties were not recognized while some tribes without treaties were recognized. Similarly, tribes mentioned in legislation sometimes received no Federal attention while tribes which never received any mention in legislation did receive services. The Report found that the BIA "never . . . rationalized its vague policy of excluding a particular tribe." Further, "there is no foundation for the executive branch's refusal to serve any tribe." (p. 462, F.R.)

The Final Report quotes the following from the Task Force 10 Report at page 1695:

> The results of "nonrecognition" upon Indian communities and individuals have been devastation . . . : The continued erosion of tribal lands, or the complete loss thereof; the deterioration of cohesive, effective tribal governments and social organizations; and the elimination of special Federal services, through the continued denial of such services which Indian communities in general appear to need desperately. Further, the Indians are uniformly perplexed by the current usage of "Federal recognition" and cannot understand why the Federal Government has continually ignored their existence as Indians. Characteristically, Indians have viewed their lack of recognition as Indians by the Federal Government in utter disbelief and complete dismay and feel the classification as "nonfederally recognized" is both degrading and wholy (sic) unjustified.

The Final Report discussed the impact of colonialism, post-colonial treatment including removal, and various other Federal Indian policies on the tribes that are not recognized. The criteria expressed by Felix Cohen in his *Handbook of Federal In-*

dian Law in 1940 apparently gave guidance to the Department for determining whether a group is a tribe and those criteria were:

(a) Tribe had treaty relations with U.S.;
(b) Tribe was mentioned in a Federal statute;
(c) Tribal members have collective rights to tribal lands or funds;
(d) Tribe is treated as a tribe by other Indian tribes;
(e) Tribe exercises political authority over members.

The Department's adherence to these guidelines was inconsistent and/or arbitrary and the Report notes that Members of Congress, "especially when they are not members of the House or Senate Interior Committee . . . have been as confused by recognition policy as their tribal constituents are." (p. 478, F.R.) In one early 1970's court case, the Department stipulated that the tribe was an Indian tribe but that because it was "unrecognized", the Department was not required to prosecute the tribe's claim against a state. The court found that the Department had a trust obligation to the tribe.

The Commission's policy recommendations included the following:

There must be a firm legal foundation for the establishment and recognition of tribal relationships with the United States.

There must be a valid and consistent set of factors applied to every Indian tribal group which seeks recognition.

Every Indian tribal group which seeks recognition must be recognized; every determination that a group is not an Indian tribal group must be justified soundly on the failure of that group to meet any of the factors which would indicate Indian tribal existence. (p. 479, F.R.)

Subsequent treatment of unrecognized groups by the Department has turned these recommendations upside down so that groups are not recognized unless they meet each and every one of the seven criteria found in the regulations drafted by the BIA (see: 25 C.F.R. 83).

Conclusion: The Final Report recommends that Congress act in the area of recognition by establishing, for a specific period (*e.g.,* 10 years), a special Office that is independent of the BIA. The Office would be responsible for affirming a tribes' relationship with the Federal Government and ensuring that duties are spelled out in the recommendations (see #166 through #171). It is not too late for Congress to implement the directives of this Commission. In fact, it is even more urgent that Congress act—and act soon—because the system now in use even is more broken than the one visited by the Commission in 1976 and 1977.

Attachment B

QUESTIONS ABOUT FEDERAL RECOGNITION OF INDIAN TRIBES—PREPARED BY VIRGINIA W. BOYLAN, ESQ., DRINKER BIDDLE & REATH LLP, ATTORNEY FOR THE GRAND RIVER BANDS OF OTTAWA INDIANS

What does Federal Recognition Mean?

Only Indians who are members of federally recognized tribes are eligible for the services provided by the United States through the Bureau of Indian Affairs and the Indian Health Service.

Tribes that are federally recognized enjoy a government-to-government relationship with the United States and, under self-determination, can contract to operate Federal programs for Indian people.

There is a trust relationship from the United States to each of the recognized tribes .

Where are the Tribes located that are Recognized by the Federal Government?

According to the latest list published by the Secretary of the Interior in December 2003, there are 565 federally recognized tribes:

Fully 58 percent of all tribes are located in just two states: 40 percent in Alaska (229 Native Villages and tribal entities) and 18 percent in California (103 tribes).

Another 20 percent of the tribes (111 tribes) are located in just five other Western states: Washington, Oregon, Oklahoma, Arizona, and New Mexico.

Less than 4 percent of the total number of recognized tribes (21 tribes) are located in Eastern states such as Florida, South Carolina, Connecticut, Alabama, and Louisiana.

The other 18 percent (101 tribes) are located in 17 other states that span Nevada, Idaho, the Great Plains, the Great Lakes, and the mid-West.

What is the Process for Achieving Recognition?

Most tribes were "formally" recognized by the Secretary of the Interior after passage of the 1934 Indian Reorganization Act, although many did not actually organize under that Act.

Since 1978, regulations have been in place to allow Indian groups who believe they are eligible for Federal status to petition the Office of Federal Acknowledgment (OFA) for recognition. The group will be granted Federal status if it fully meets seven enumerated criteria regarding its history, its identification, its cohesion as a political entity, its descendancy from an historic Indian tribe and certain other requirements.

Since 1934, through legislation, the U.S. Congress has recognized a number of tribes or has restored to recognized status tribes that had been previously terminated.

In some cases, the Bureau of Indian Affairs (BIA) at the Department of the Interior has recognized tribes after it determined that an administrative error was responsible for the tribe not being on the "list" of federally recognized tribes.

Some courts cases led to the restoration of tribes, particularly in California, through negotiated settlements of lawsuits.

How Does the OFA Process Petitions?

As of February 2007 a total of 309 groups had sent letters of intent to petition since the criteria were first published in 1978.

The OFA maintains four "lists" that indicate the stage of review for each petitioning group.

The first list is the "Active" list of 8 petitions. These are the petitions that the OFA is actively considering for either a proposed finding (positive or negative) or a final determination (positive or negative) based on whether (or not) the petitioner meets the seven criteria.

The second list is the "Ready for Active" register of nine (9) petitioners that have fully documented petitions ready for review. The earliest petition was placed on the Ready register in February 1996 and the last was added in 2003 (another group was transferred from the Incomplete list to the Ready list in May 2007, the first in 4 years to make any movement to this list).

The third list is the "Register of Incomplete Petitions" which includes the 78 groups that have provided some documentation to the OFA. OFA has provided some technical assistance to all but 29 of these petitioners.

The final is the "Register of Letters of Intent"—as noted, there are 147 groups on this list that have only sent letters indicating their intent to file a petition; of these, 26 were sent before 1990.

What is the Status of the Petitions?

Over a period of nearly 30 years, the BIA has "resolved" 75 petitions or about 2.5 petitions per year (4 of these are in post-determination appeals). There are now 95 groups that have submitted all or part of their documentation that are awaiting BIA review. At the current rate, it will take 38 years to finish these. In reality, the BIA/OFA actually reviewed only 40 petitions when the number of petitions addressed by Congress or resolved in another manner is taken into account. *The real rate of BIA/OFA review is just over 1.3 petitions per year. Therefore, unless the Congress steps in, it will take 73 years to address the 95 petitions that have already provided some documentation to the BIA.* And of course the 147 petitioners with only letters of intent will never receive any review or attention unless the Congress alters the system. In addition, some of the 26 petitioning groups that were denied acknowledgment by OFA are seeking opportunities to appeal those denials, some of which many observers agree were grossly unfair.

The average number of groups filing letters of intent to petition has remained fairly constant at an average of 10 or 11 each year from 1978 through 2006.

Since 1978, the Secretary of the Interior has acknowledged 16 groups as Federal tribes; another 26 groups have been denied acknowledgment-of these, two are in litigation and two have appeals pending before the Interior Board of Indian Appeals.

Congress legislatively recognized 10 tribes that had filed petitions with the OFA.

Another 23 groups have either withdrawn their petitions (5), merged with another group (4), are no longer in touch with the OFA (11), dissolved (1), been administra-

tively recognized (1), or been determined not to be an Indian group (1). Six other petitioners are not eligible to go through the OFA process unless Congress acts to allow them to do so.

Where are the Petitioners Located?

Of the 309 total petitioning groups, 72 (or 23 percent) are located in the State of California.

There are 128 petitioners (41 percent) from 22 states east of the Mississippi.

The CHAIRMAN. Chairman Yob, thank you very much for your testimony as well.

Finally, we have representing the Bureau of Indian Affairs and the Department of the Interior Mr. Lee Fleming, Director of the Office of Federal Acknowledgement with us today, Mr. Fleming, would you please proceed?

STATEMENT OF R. LEE FLEMING, DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGEMENT, OFFICE OF THE ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. FLEMING. Good morning, Mr. Chairman and members of the Committee. My name is Lee Fleming, Director of the Office of Federal Acknowledgement, and I am submitting the Administration's statement on the process that the Federal Government follows when it receives a petition from a group seeking Federal acknowledgement as an Indian tribe under 25 C.F.R. Part 83 and changes we are undertaking to expedite this process.

The acknowledgement of the continued existence of another sovereign entity is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgement enables that sovereign entity to participate in Federal programs for Indian tribes and most importantly, acknowledges a government-to-government relationship between an Indian tribe and the United States.

These decisions have significant impacts on the petitioning groups, the surrounding communities and Federal, State and local governments. Acknowledgement carries with it certain immunities and privileges, including partial exemptions from State and local jurisdictions and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

Established in 1978, the Department's Federal acknowledgement process allows for the uniform and rigorous review necessary to make an informed decision on whether to acknowledge a petitioner's government-to-government relationship with the United States. The regulations require groups to establish that they have had a substantially continuous existence and have functioned as autonomous entities throughout history until the present.

Under the Department's regulations, petitioners must demonstrate that they meet each of the seven mandatory criteria. Let me abbreviate these criteria. First, the petitioner must have identifications as an American Indian entity since 1900. Two, the group must show distinct community from historical times until the present. Three, the petitioner must demonstrate political influence or authority from historical times until the present. Four, provide a copy of the group's present governing document.

Five, demonstrate that descent from a historical Indian tribe is there and provide a current membership list. Sixth, the petitioner must show that the group is composed principally of persons who are not members of any other federally recognized Indian tribes. And last, seven, the group must demonstrate that neither the petitioner nor its members are subjects 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. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the continued tribal existence of the group as an Indian tribe.

The Federal Acknowledgement Office is composed of a director, a secretary, four anthropologists, three genealogists and four historians. A team composed of one professional from each of the three disciplines reviews each petition. Additionally, the Office of Federal Acknowledgement has a contract that provides research and administrative assistance.

Currently, the Office of Federal Acknowledgement workload consists of 17 petitions, broken down as 7 petitioners are on active consideration and 10 are fully documented petitions that are ready, waiting for active consideration. We are considering several actions to expedite and clarify the Federal acknowledgement process. Some of these would require changes to internal workload processes to eliminate backlogs and delays, and some would require revisions to the regulations.

We plan to distribute revised regulations and guidelines so petitioners and interested parties know what the OFA review teams expect and what the regulations require in order to provide more clarity in submissions. OFA could recommend an application form for petitioners to use to point to specific evidence in their submission that meets the criteria for specific time periods. OFA could also recommend that petitioners present their genealogies in a common format used by genealogists known as GEDCOM, and provide membership lists in an electronic data base.

Once a petition has been received, the genealogist, historian and anthropologist in a research team evaluate a petition concurrently. We are considering changing this to a review in stages, with the genealogist first, followed by the historian and anthropologist. The genealogist's advance work, prior to the petition going on the active list, would prepare the way for the other professionals during the active review process. We also plan on developing a list of common questions and procedures that the research teams or new research staff would use to speed up the evaluations and note the potential deficiencies in the petitions.

Further, OFA is looking at the possibility of moving to the front of the ready, waiting for active consideration list groups that can show residence and association on a State Indian reservation continuously for the past 100 years or groups that voted for the Indian Reorganization Act in 1934, if the group appears to have met subsections (e), (f) and (g) of the regulations.

Limiting the number of technical assistance reviews and imposing a time period for petitioner response to a technical assistance

review letter would also help move petitions along faster. We will attempt to create more concise decision documents to speed the process and improve the public's ability to understand the decision.

The Department also plans to post decisions and technical assistance letters on the website for public access. These steps would free OFA to spend more time on review of the petitions and allow for greater transparency to the general public. Technological improvements would also speed OFA's tasks.

Our goal is to improve the process so that all groups seeking acknowledgement can be processed and completed within a set timeframe. We are considering various ideas for improving the acknowledgement process. Options including hiring and contracting additional staff, establishing a time line for responding to each step of the regulations to ensure that petitions move along, and moving the first sustained contact requirement for some cases to start at the point when that area became a part of the United States or at the inception of the United States in 1776 to ease the burden on petitioners and reduce time-consuming research into colonial histories.

Thank you for the opportunity to provide my statement on the Federal acknowledge process, and I will be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Fleming follows:]

PREPARED STATEMENT OF R. LEE FLEMING, DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGEMENT, OFFICE OF THE ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, I am submitting the Administration's statement on the process that the Federal Government follows when it receives a petition from a group seeking Federal acknowledgment as an Indian tribe under 25 C.F.R. Part 83 and changes we are undertaking to expedite this process.

Implications of Federal Acknowledgment

The acknowledgment of the continued existence of another sovereign entity is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables that sovereign entity to participate in Federal programs for Indian tribes and acknowledges a government-to-government relationship between an Indian tribe and the United States.

These decisions have significant impacts on the petitioning group, the surrounding communities, and Federal, state, and local governments. Acknowledgment carries with it certain immunities and privileges, including partial exemptions from state and local jurisdictions, and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

For instance, the Mashpee Wampanoag Indian Tribal Council recently received a positive decision under the Federal acknowledgment process and is now eligible to receive Federal health and education services for its members, to have the United States take land into trust that will not be subject to state taxation or jurisdiction, and to operate a gaming facility under the Indian Gaming Regulatory Act once it has met the conditions of that Act.

Background of the Federal Acknowledgement Process

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 on whether to acknowledge a petitioner's government-to-government relationship with the United States. The regulations require groups to establish that they have had a substantially continuous tribal existence and have functioned as autonomous entities throughout history until the present. Under the Department's regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

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

(b) 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;

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

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

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

(f) 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

(g) 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. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the continued tribal existence of a group as an Indian tribe.

The Federal acknowledgment process is implemented by the Office of Federal Acknowledgment (OFA). OFA is currently staffed with a director, a secretary, four anthropologists, three genealogists, and four historians. A team composed of one professional from each of the three disciplines reviews each petition. Additionally, OFA has a contract that provides for three research assistants and three records management/Freedom of Information Act specialists, as well as one Federal acknowledgment specialist.

OFA's current workload consists of seven petitions on active consideration and ten fully documented petitions that are ready, waiting for active consideration. The administrative records for some completed petitions have been in excess of 30,000 pages. Two hundred forty-three other groups are not ready for evaluation because they have submitted only letters of intent to petition for Federal acknowledgment as an Indian tribe or partial documentation.

The Interior Board of Indian Appeals (IBIA) just affirmed the negative final determinations for the Nipmuc petitioning groups 69A and 69B, but referred to the Secretary of the Interior issues as possible grounds for reconsideration. In addition, there are two pending lawsuits seeking review of acknowledgment decisions.

Proposed Improvements to the Federal Recognition Process

We are considering several actions to expedite and clarify the Federal acknowledgment process. Some of these would require changes to internal workload processes to eliminate backlogs and delays and some would require amendments to the regulations.

For example, we plan to distribute revised guidelines so petitioners and interested parties know what the OFA review teams expect and what the regulations require in order to provide more clarity in submissions. Additionally, to speed up the review, the OFA could recommend an application form for petitioners to use to point to the specific evidence in their submission that meets the criteria for specific time periods. OFA could also recommend petitioners present their genealogies in a common format used by genealogists (GEDCOM) and provide membership lists in an electronic database.

Once a petition has been received, the genealogist, historian, and anthropologist in a research team evaluate a petition concurrently. We are considering changing this to a review in stages, with the genealogist first, followed by the historian and anthropologist. The genealogist's advance work, prior to the petition going on the "active" list, would prepare the way for the other professionals during the active review process.

The OFA plans to develop lists of common questions and procedures that the research team or new research staff will use to speed up the evaluations and note the potential deficiencies in the petitions.

Further, OFA is looking at the possibility of moving to the front of the "Ready, Waiting for Active Consideration" list groups that can show residence and association on a state Indian reservation continuously for the past 100 years or groups that

voted for the Indian Reorganization Act (IRA) in 1934, if the groups appear to have met subsections (e), (f), and (g) of 25 C.F.R. § 83.7.

Limiting the number of technical assistance reviews and imposing a time period for petitioner response to a technical assistance review letter would also move petitions along faster. We will attempt to create more concise decision documents to speed the process and improve the public's ability to understand the decision.

The Department also plans to post decisions and technical assistance letters on its website for public access. These steps would free OFA to spend more time on review of the petitions and allow for greater transparency to the general public.

Technological improvements would also speed the OFA's task. We plan to revise the Federal Acknowledgment Information Resource (FAIR) computer data base. The final version of FAIR 2.0 will also allow for electronic redaction of documents under the Freedom of Information and Privacy Acts. In addition, revisions to the FAIR computer data base would allow faster work. FAIR provides OFA researchers with immediate access to the records, and the revised version will speed up the indexing of documents and allow for more data review capabilities, allowing OFA researchers to make efficient use of their time. The Department plans to purchase a heavy duty scanner, new computers and printers, establish an internet connection and software for faster scanning and work.

Our goal is to improve the process so that all groups seeking acknowledgment can be processed and completed within a set timeframe. We are considering various ideas for improving the Federal acknowledgment process. Several options we may consider include:

- Hiring or contracting additional staff.
- Establishing a timeline for responding to each step of the regulations to ensure that petitions move along.
- Issuing negative proposed findings or final determinations based on a single criterion would also speed work and maximize researcher time use.
- Allowing for an expedited negative proposed finding if a petitioner has failed to adequately respond to a technical assistance review letter or refuses to submit additional required materials in response to this review.
- Moving the "first sustained contact" requirement of 25 C.F.R. § 83.7(b) and (c) for some cases to start at the point when that area became a part of the United States or at the inception of the United States in 1776 to ease the burden on petitioners and reduce time-consuming research into colonial histories.

Thank you for the opportunity to provide my statement on the Federal acknowledgment process. I will be happy to answer any questions the Committee may have.

The CHAIRMAN. Mr. Fleming, thank you very much for your testimony.

I am going to ask a couple of questions, then I have to depart. Senator Murkowski is going to complete the hearing and I very much appreciate that.

Let me ask, Chairperson Tucker, you have had a petition in front of the Interior Department for how long?

Ms. TUCKER. Our first one was filed in 1978. It didn't make the new restated regs, so it was returned. We started over. We wrote two in between. Our latest one, I think, was filed in the 1990s. And now, we have had to revamp that petition. So when we go on active consideration, we will have another restated document with the changes that have taken place, including the digitizing of information.

The CHAIRMAN. Of the three tribes recognized here, Mr. Goins, I am not asking this question of you, because you are actually prevented at the moment from going through this process, of the three tribes represented here, is it your testimony that your petitions are completed, you have filed all that is required to be filed, you have a complete petition in the process and you are only waiting at this point for action by the Interior, is that correct?

Mr. SINCLAIR. Yes.

Mr. YOB. Yes.

Ms. TUCKER. Yes.

The CHAIRMAN. And Mr. Fleming, in your testimony, you talk about working on seven current petitions. What I have here is, those seven petitions started in 1979, 1974, 1982, 1980 and 1978. Is that about right, do you think?

Mr. FLEMING. That's about correct.

The CHAIRMAN. So, at least the oldest of those petitions would be 33 years.

Mr. FLEMING. Petitioners submit letters of intent and then the ball is in the court of the petitioner to do research and then to provide documentation.

The CHAIRMAN. I understand. Ten petitioners are now awaiting review, the oldest of which is 1971. That is 36 years, and again, recognizing that is not necessarily the date in which all the information has been produced. But it describes, it seems to me, if you have petitions that you are now working on dating back to 1971, what we here in Congress see is, "Look, we have been working on this process with the Department of the Interior for 36 years. We have put all of our information in, we have submitted everything that was required of us, and still we wait."

Now, your testimony says there are 243 other groups not ready for evaluation, because they have submitted only letters of intent. Does that mean that in addition to what I have just described—seven that you are currently working on, ten that are awaiting a review—you have not yet started to review, and there are 243 other potential groups that say, we want Federal recognition as tribal organizations?

Mr. FLEMING. That is correct. We have a good number of groups that have only contacted us by submitting a letter of intent which is a letter that says we are interested in going through your process. And then when we publish notice of that letter of intent, then the groups are then responsible for documenting their petitions.

The CHAIRMAN. Mr. Fleming, when Chairperson Tucker, Chairman Yob, Chairman Sinclair have submitted everything that you have requested, how long does it take you to make a decision?

Mr. FLEMING. The Federal acknowledgement process regulation itself designed a due process system that is 25 months, which is broken down into a 12 month review, formal review. At the end of that review, a proposed finding is published, so that the petitioner and interested parties know of the proposed decision to acknowledge or not to acknowledge. Then it opens to a 180 day public comment period to allow the petitioner and interested parties to provide any additional documentation regarding the proposed finding.

Then there is the preparation of responses to those comments by the petitioner and then after that period, there is the period of 2 months for the Department to review all the evidence to issue a final determination. You also then have a 3-month period after a final determination is published to allow the petitioner or interested parties to request reconsideration.

So under the regulation, just by those time phases, it is a 25 month process. However, we do have the backlog that we have been working under for quite some time. And add that to the waiting list, then you see how the delays have been——

The CHAIRMAN. And that backlog would be, would add to the delay of the 25 months how long? Twenty-five months is a period which you now describe. But the backlog would extend that to how many years, do you think?

Mr. FLEMING. The GAO estimated it to be approximately 15 years, I believe.

The CHAIRMAN. All right, now, Mr. Fleming, you indicated on page four of your testimony that you are considering hiring, contracting additional staff, perhaps, establishing time lines and so on. Do you have authority at this point, or have you requested authority or has the Department of Interior requested funds to hire additional staff?

Mr. FLEMING. The budget process is being undertaken and those considerations are——

The CHAIRMAN. Was a request made by your office and the Secretary of the Interior for additional staff?

Mr. FLEMING. It is a joint effort.

The CHAIRMAN. But that request was made?

Mr. FLEMING. Yes.

The CHAIRMAN. Let me just make a comment. I don't really know how long you have worked in this area, Mr. Fleming. This is a process that has, over several decades, and many administrations, proven to be a process that relates to undue delays, unfortunate misery, I would think, and expenditure for tribes or for those who seek to be recognized.

I understand the recognition of a sovereign is a pretty awesome responsibility, because there are very substantial and important results from that determination. So I understand that we don't say, send us some papers and let us take a look at it, we will get back to you next month. I understand that. But I also understand that establishing a process that in some cases takes 15 years, 25 years or 30 years is untenable. And it is unfair, it is unfair to the folks that Mr. Sinclair has described and Mr. Yob, Chairperson Tucker. It is just unfair. And we have got to find a way to fix this. We can't say there's a process if the process doesn't work.

Mr. Goins is in a different situation. And it seems to me that Congress has two choices with Mr. Goins' situation. One is to enact legislation directly, as my colleagues have suggested, or the second is to eliminate the impediment for them to go to the Department of the Interior and require of the Department of the Interior an expedited opinion.

But it seems to me that whether it is Mr. Goins or Chairman Sinclair, Chairperson Tucker, Chairman Yob, it seems to me that everyone who has testified here has a very legitimate complaint about the Federal Government, its bureaucracy and its inability to meet a time line or a reasonable time line to make the decision, yes or no.

My understanding is that since the regulations were established in 1978, 40 decisions have been made. So that is about, in 30 years, 40 decisions, 16 petitioners were acknowledged, 24 were denied. During the period that the Interior Department has rendered 40 decisions, of which 16 petitioners were given sovereign status, Congress in that same period has recognized, restored or otherwise changed the status of 28 tribal groups by an act of the Congress.

So that is where we are. We are going to hold other hearings on this subject. But Mr. Fleming, I must say, and I am not denigrating your work, because I don't know how long you have been there or what your role is, whether you have asked for additional funding and you are not getting it. But somebody is bleeding this process dry and the process isn't working for a lot of folks who are vulnerable and who at some point will deserve recognition, tribal recognition, in my judgment. And they are not getting it at this point. So your page four describes what you would like to do. I am going to ask in six or 8 months, Senator Murkowski and I will ask you back and I want to find out what you have done as opposed to what you are thinking of doing.

Mr. FLEMING. I will be here.

The CHAIRMAN. You will. We will ask you.

Mr. FLEMING. Hopefully.

The CHAIRMAN. All right. This is important business, and let me thank all four of you for testifying. We are trying to think through this, Senator Murkowski and I and other members of the Committee. And we consider this something that is a serious responsibility of the Federal Government, a Federal responsibility to those that believe they have the documentation to establish their historical recognition as a tribe or their historical circumstances that would give them tribal status. So we appreciate very much your being here today.

Let me ask Senator Murkowski to continue the chairmanship of this Committee, as I have to go down to the other meeting. We are joined, however, by Senator Burr. And Senator Murkowski, if you perhaps want to recognize Senator Burr for a statement.

Senator MURKOWSKI [presiding]. That is certainly appropriate at this time. Senator Burr?

STATEMENT OF HON. RICHARD BURR,
U.S. SENATOR FROM NORTH CAROLINA

Senator BURR. I thank the Chairman, I thank the Vice Chairman. I apologize to the Committee and my colleagues, but I am also in a Veteran's hearing downstairs. I apologize to our witnesses.

Mr. Chairman, I want to commend you on your understanding of the challenges we have before us, and I think you stated them very clearly. I am delighted to be here today. I want to take this opportunity to thank my colleagues, Senator Dole and Representative McIntyre for their unbelievable work as it relates specifically to the Lumbee issue. I believe it is long past time that the Lumbee Tribe receive the full recognition they deserve. I have been an advocate for Congressional consideration of Lumbee recognition since my tenure as a member of the House of Representatives representing the Fifth District of North Carolina.

In fact, I testified before the House Committee on Resources in 2004 to facilitate a decision on Lumbee recognition. I felt then and still do today that the pursuit of Lumbee recognition, which has touched three centuries, should finally be resolved. I want it to be clear that the Lumbees are in a unique situation, as the Chairman stated. In 1956, Congress designated the Indians residing in Robeson County and adjoining counties as the Lumbee Indians of North

Carolina. However, this act also prevented the Lumbees from ever being eligible for any services performed by the Federal Government or any benefits derived by law or on behalf of other recognized groups.

When the Bureau of Indian Affairs established this process for formal recognition in the 1970s the Lumbees were denied from seeking recognition due to the 1956 Act. In 1989, the Department of Interior decided that the 1956 Act prevented the Lumbees from being considered for Federal recognition under the administrative process. Therefore, the limited Federal recognition of the Lumbees in 1956 has been as much of a detriment as a benefit.

Since my testimony last year, the full Senate has still not given consideration to Lumbee recognition. I have not wavered in my advocacy for Lumbee recognition and it is my hope that the Senate will fulfill its commitment to achieve fairness and justice for the Lumbees.

I certainly appreciate the Vice Chairman's indulgence so that I could get back to the Veterans hearing. I would say to this group, I think the Chairman stated it very simply, we have two choices. Not the Bureau of Indian Affairs. The Congress of the United States has two choices. And any group, individual who had fought a process since 1956 deserves some resolution to that process.

I thank the Chair.

Senator MURKOWSKI. Thank you, Senator Burr. I appreciate your advocacy and that of Senator Dole's and the Congressman on this important issue to the Lumbees.

We are scheduled to have a vote beginning at 10:45, but Congressman, I would turn to you for any questions that you might have prior to us recessing and Senator Dole, if you would like to direct any questions to the witnesses. Then we will take a short break so I can go vote and come back.

Congressman, do you have anything?

Mr. MCINTYRE. I have no questions at this time but thank you.

Senator MURKOWSKI. Thank you. Senator Dole?

Senator DOLE. Let me just ask Chairman Goins, the Lumbee Tribe, as we have all heard, has sought Federal recognition for more than 100 years. Why do you think the Tribe has never succeeded? Could you just sum that up for the record?

Mr. GOINS. Very simply put, Senator, and thank you for asking. Since 1890, the BIA leadership has repeatedly opposed our recognition because of one thing: our size.

Senator DOLE. How important do you think State recognition is in the Federal process? Do you think that the current BIA process gives enough weight to State recognition, Chairman Goins?

Mr. GOINS. Senator Dole, it should be very important. My understanding of the current process does not give much weight to such a relationship. I don't understand how the Federal Government can cast aside such a relationship, particularly in a case like Lumbee, when the Lumbee has enjoyed such a relationship for over 120 years with the State of North Carolina.

Senator Dole, you know personally, you know that we have an active, longstanding political relationship with the State of North Carolina.

Senator DOLE. Thank you, Chairman Goins, and thank you.

Senator MURKOWSKI. Thank you, Senator Dole. We will keep on until we get the notification of the vote.

I want to ask Chairmen Sinclair, Tucker and Yob, the stories that you have conveyed here today in terms of the many years of basically trying to do what you have been asked by the Federal Government, by the Bureau, in terms of the records that you have had to pull together, everything that you have done, you are now sitting here decades out with no resolution to your issue. And if I understand Mr. Fleming correctly, even though you are the lucky ones to be on the active consideration, those cases on the active file, you may still be decades from resolution.

In your opinions, what could be done to help facilitate this process? And we are talking about installing new data bases and digitizing records. I am not convinced that that is going to yield you a quicker result to this. What could make the process move more expeditiously? Are there deadlines that need to be put in place? You surely have given some thought to this. What can be done?

Mr. SINCLAIR. That is a hard question, because I am not completely familiar with how OFA internally operates, just from day to day. But I think some sort of time limit, because we want an answer, yes or no. Right now we have been dangling, basically. Well, we have been dangling for almost 200 years. But it has been dangled over our heads for the last 30, almost.

That would be my best——

Senator MURKOWSKI. So some form of deadline. How about you, Chairwoman Tucker or Chairman Yob?

Ms. TUCKER. From our experiences in this process, there are some things that Mr. Fleming has said that I understand for new tribes. But what we have found is that when agencies reform, that this causes delays. While you are beefing it up and you are putting the allocated resources in there, and then the burden of proof is on the tribe to answer this back.

I think that the process does need to be looked at. I think that there are time lines that need to be established. I think that there are open doors of communications that need to be made now between the agency and those of us who are sitting. We are considered ready, waiting for active consideration.

Senator MURKOWSKI. Do you think that communication has been lacking in the past? Is that what you are suggesting?

Ms. TUCKER. Yes, I do. And if I can add one thing, the elder stateswoman of our council, who volunteers 5 days a week at our tribal house, is 83 years old. And if we have to wait another 15 years, I mean, I love her dearly, but I am just not sure about that. I would really like Congress to act on the old ones and then let's see what can be done for the rest.

Senator MURKOWSKI. Chairman Yob?

Mr. YOB. That is a really hard question. It is probably where I put my foot in my mouth, here, but I do appreciate what Mr. Fleming is doing. Because I know if this wasn't such a thorough process, there would be probably 2,000 people on that list instead of 200. I just know that whatever they ask us, we will do for them, and we hope that they do it in a fair manner back to us.

Senator MURKOWSKI. That is fine. And several of you have mentioned not only the time and energy that the delays cause, but the expense. Is the expense of going through this process prohibitive to some? I think it was you, Chairwoman Tucker, that indicated you are not only burying generations, but the expense is perhaps debilitating as well.

Ms. TUCKER. Yes, because any time you are looking at a process that requires anthropologists, genealogists, sociologists and all those other ologists, you are looking at a tremendous amount of money. They are not going to come and work for nothing. We dealt with volunteers for many, many years, Senator. The Administration for Native Americans, they had status clarification. We used that process to help solve our problems and at the same time, maintain our culture. Because that was the way that we could keep our language safe.

But now those grants are not there. So we are in a state now where we are desperate, we don't know where to turn.

Senator MURKOWSKI. Chairman Sinclair, you wanted to add something?

Mr. SINCLAIR. Yes, what we wanted to say was one thing. We had a preliminary proposed finding of recognition back in 2000. We had no Government entity that opposed us, no tribal entity that opposed us. And we also have the Supreme Court, Montana Supreme Court has ruled that we meet the Federal criteria as a tribe of this Country.

We would like to see that used to short-circuit this system. We should be able to be recognized at this point, because of those factors.

Senator MURKOWSKI. So an expedited process, because of the factors that had been laid in your case?

Mr. SINCLAIR. Right.

Senator MURKOWSKI. Let me ask you, Mr. Fleming, when Chairman Dorgan asked you what the timeframe is, and you set out the timeframe within the regulations at about 25 months, and I have to admit, when I heard 25 months I thought, well, that is within the realm of reason. But then when pressed further to appreciate that because of the backlog, that has the potential to add an additional 15 years, potentially, or even more, I have to concur with the Chairman, it is unacceptable. It is not right, it is not a system that is working under any stretch of the imagination.

Now, you have indicated that you are going to be presenting some revised guidelines. What will this do to those who are waiting who have submitted, the seven tribes that have submitted their petitions and they are in that active status? Do they have to now conform to something new? Is this going to cause further delay to them?

Mr. FLEMING. No. The revised guidelines would be for those petitioners who are currently documenting their petitions.

Senator MURKOWSKI. So those that have just submitted their intent, is that correct, or does the other ten under active consideration, are they under new requirements?

Mr. FLEMING. There are no new requirements. These are guidelines that simply will provide technical assistance for those petitioners who are working on documenting their petitions. A good

part of the work is done by the petitioner. A good part of the work is done by the Department.

If the petitions are better prepared, then that will help ease the review. Many of the groups have been documenting their petitions, I will give you an example. One petitioner submitted their letter of an intent in 1978. They did not submit their documented petition until 1998. Whatever the delay was on their part for 20 years, we then get part of the blame for that delay.

Once the petitioner submits their material, we provide a technical assistance review letter that points out any deficiencies or significant omissions, and this one particular group then took 5 years to respond to that letter.

Senator MURKOWSKI. Do you believe that it is entirely clear on its face as to what is expected to be submitted, or is this part of the problem, that perhaps the tribes are left guessing as to what it is that you need and require?

Mr. FLEMING. This is why we are recommending to revise the guidelines to allow clarity on what is expected, not only by what the review teams are looking for, but also what is required under the regulations.

Senator MURKOWSKI. When do you anticipate those guidelines will be out?

Mr. FLEMING. Very soon. It is one of the ideas that we have expressed that we would like to get out to the petitioners and the interested parties.

Senator MURKOWSKI. How many employees do you actually have within OFA?

Mr. FLEMING. We have 14 full-time employees and we have 7 contracted individuals that help with the research and administrative tasks.

Senator MURKOWSKI. And in order to get your time line addressed, or your backlog addressed, how many employees do you think you would need to bring on?

Mr. FLEMING. We have expressed that analysis in the GAO report and review, and I would be happy to provide that to the staff.

Senator MURKOWSKI. Do you need to double it?

Mr. FLEMING. It depends on expectations. If you want the backlog to be completed by X number of years, then here are the resources necessary to do that.

Senator MURKOWSKI. Well, then let me ask you another way. If our regulations say that basically there is a 25 month process, that is an expectation that I think your petitioners can reasonably expect. That is what is outlined in your own set of regulations.

Mr. FLEMING. Correct. And I might point out that the regulations do allow for extensions. There are opportunities for the petitioner, if they need more time to develop their comments during the public comment period, then they may wish to ask for an extension. We have had one group that has asked for over ten extensions. And with that in mind, the current Administration is looking conservatively at granting extensions because of these concerns of delay. The extensions are in increments of 180 days or less. And so we want to give the petitioner the opportunity to enhance their petition. If they have a plan on how they are going to use their extension, that is another idea that we would like to institute, so that

we know that extension time is being warranted and used effectively. Because one extension in one group may also cause a delay in the review of other groups, because we have the limited resources.

Senator MURKOWSKI. I appreciate what you are saying. I do not believe that a 15 year backlog is acceptable within your department or agency or any that we are dealing with. As I have said before, it is not fair, it is not right. We do need to have some better resolve to how we are going to process this and provide an answer, either up or down, for those that are seeking this recognition.

Mr. Goins, I appreciate, too, your travel here today. It has been suggested by some that what you need to do is pursue, rather than pursue the legislative recognition that you are doing, is to start down the road of administrative recognition. My guess would be that after this hearing, this is not a road that you are interested in at all.

Mr. GOINS. No, ma'am.

Senator MURKOWSKI. I just wanted to confirm that.

If in fact you had no other choice but to do that, and I am just playing devil's advocate here, do you have any idea how long it might take you to compile a petition to submit to the Office of Federal Acknowledgment?

Mr. GOINS. Senator, I have no idea. Let me go back to Mr. Fleming's comment about limited resources. Now, the tribes, not only the Lumbees, but everyone here at this table, we don't have a lot of money. We are out here asking the churches to have plate sales, love offerings, we are having to raise this money like this, this is a heavy burden on the tribes. So it costs millions of dollars to go through the process. And that is something I couldn't give you an answer, it depends basically on the funding.

Senator MURKOWSKI. Sure. One last question for you. You had mentioned in your written testimony that Congress should transfer the Federal acknowledgement process to another agency or perhaps some kind of an independent commission. Do you have any suggestions on where that might be, what kind of an agency, or what would be appropriate to consider administering the acknowledgement process?

Mr. GOINS. No, but the reason for that statement was this. When you look at the mission of the BIA itself, it is to give service and protect the rights of federally recognized tribes. Then you are turning around and asking the same BIA to qualify a tribe to come in that is not federally recognized. That is why we would just like to see this whole process just go to an independent commission, whatever the Congress could come up with, an independent commission outside of the BIA.

Senator MURKOWSKI. So just remove it from BIA altogether?

Mr. GOINS. Yes, ma'am.

Senator MURKOWSKI. Let me just check quickly and make sure I have had all my questions answered. I believe that I have. It appears that we have beat the clock to the vote, so we don't need to take a break. Again, I appreciate the testimony of each of you who has appeared before the Committee today. I appreciate what you do for those that you represent, those you serve.

This Committee will keep working on this issue. The testimony I think has been very, very helpful this morning to allow us to better appreciate what you are dealing with on a daily basis as you attempt to work through the Federal bureaucracy to achieve that recognition.

I concur with Chairman Dorgan that we probably need to do a followup with your agency, Mr. Fleming, to see how this process is coming, because I do think that it is clear we need to be doing more to achieve the very important goals that have been mentioned by so many here.

So with that, we will conclude this hearing.

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

A P P E N D I X

PREPARED STATEMENT OF HON. MEL MARTINEZ, U.S. SENATOR FROM FLORIDA

Chairman Dorgan and Vice Chairman Murkowski:

I want to thank you for holding this hearing to examine the federal tribal recognition process and for inviting Chairwoman Ann Tucker of the Muscogee Nation of Florida to testify before you today.

As Chairwoman Tucker will outline very eloquently, the Muscogee Nation has been struggling for nearly 30 years to gain federal recognition through the bureaucratic and broken federal recognition process at the Bureau of Indian Affairs (BIA). She has been a tireless advocate for the Muscogee Nation and for her people to prove that they actually exist, and are eligible for important programs at the BIA.

The Muscogee Nation is headquartered in Bruce, Florida, which is a small community situated in the northwestern part of the state. The Tribe has a 7-acre land base in Bruce and has 13 acres of 4,000 year old shell mounds that it keeps in protective trust for the benefit of all people in their community to enjoy.

The Muscogee Nation are descendents of Creek Indians native to Florida that were relocated by the U.S. Government during the Trail of Tears. The Treaty of Washington and Treaty of Fort Gibson (1832–1833) required that the Creek Nation relocate from Florida to land west of the Mississippi River. Not all of the Creek agreed to leave and resisted being removed by President Jackson. These remaining Creek later became named the Muscogee Nation of Florida. In 1852, the General Assembly of Florida enacted legislation that made it illegal for any Native American to remain in Florida. The Tribe was also subjected to the racial segregation of Jim Crow laws in Florida.

Even though the Tribe was impacted by 1852 laws, the Muscogee Nation of Florida continued to function. The Tribe maintained its traditional form of leadership, subsistence type of living, and shared economic practices. During the early 20th century, the Tribe saw an increase in its membership, and the BIA made an announcement in 1947 of a Land Claim Settlement impacting the historic Creek Nation. The people of the Muscogee Nation of Florida were parties to this litigation, and it was determined in 1957 that they were eligible to share in the settlement.

Unlike the controversies surrounding others involved in the recognition process, the Muscogee Nation is *not* interested in acquiring gaming rights. They have not petitioned our Governor or state legislature in pursuit of these rights, or sought to acquire additional lands to expand gaming operations. Instead, the Tribe is seeking an acknowledgement of the simple fact that they are indeed a tribe. The Tribe has been recognized by the State of Florida and has the support of local leaders, business, and hundreds of individuals who have signed petitions in support of recognition.

Under the leadership of the Senate Indian Affairs Committee, the myriad of problems with the Federal recognition process have been highlighted and exposed. Chairwoman Tucker's testimony today will shed further light on the past inadequacies of this process. I look forward to working with the Committee and assisting in their efforts to bring a more open and transparent tribal recognition procedure at BIA.

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Thank you, Mr. Chairman. I commend the Committee for holding this important hearing on the process of Federal recognition of Indian tribes.

Although the Federal acknowledgment process was set up with the intent of providing tribes with a fair and unbiased track for obtaining Federal recognition, there are some tribes that cannot go through the process, and there are some tribes that feel the process is too slow, too expensive, and too cumbersome. I agree with you, Mr. Chairman that this process needs to be looked at carefully and remedied where appropriate. However, that may take many years. Today, we will hear from tribes

that have been waiting a long time—13 years and 29 years—just to go through the Federal acknowledgement process. These figures do not include the decades they have been waiting for Federal recognition prior to the establishment of the process. How much longer must they wait for an efficient and effective process?

Of the four tribes we are examining today, the Lumbee's experience is particularly disheartening because they are ineligible to go through the Federal acknowledgement process. Since 1885, the Lumbee have been recognized by the State of North Carolina, yet their tribe is the only tribe in the country acknowledged as Indian by Congress but have no access to the Bureau of Indian Affairs recognition process because of an act of Congress. I think the time has come to correct this wrong that was done so many years ago and extend Federal recognition to the Lumbee Tribe. Over the years, the Congress has attempted to do so. Most recently, the House of Representatives passed H.R. 65, the Lumbee Recognition Act.

In addition to the Lumbee's experience, today we are examining the plights of the Little Shell Tribe, the Muscogee of Florida, and the Grand River tribe. All three of these tribes are at different stages in the federal acknowledgment process. Little Shell and Muscogee submitted their petitions when this process was first developed back in 1978. Grand River has been going through this process for the past 13 years. Although, I understand that there many requirements that the tribes must meet, there must be a more efficient way for tribes to gain federal recognition.

According to the Department of Interior, since 1978, there have been 314 groups who have stated their intent to seek acknowledgment through the administrative process. Of this number only 82 groups have submitted completed petitions. Of the 82 completed petitions, the Department of Interior has resolved 41 cases. Also, it should be noted that of the 82 completed petitions, 19 cases were resolved by an act of Congress or through other means. Currently the Department has 10 petitions under active consideration and 9 petitions are awaiting active consideration.

The four tribes who are represented here today all have unique circumstances, as well as experience with this process, and I hope that they will have adequate time to provide their thoughts and insights on this issue.

I look forward to working with my colleagues on the Committee to ensure that the legislation for these tribes receive fair consideration before the U.S. Senate.

PREPARED STATEMENT OF CURTIS CHAMBERS, TRIBAL CHAIRMAN, BURT LAKE BAND OF OTTAWA AND CHIPPEWA INDIANS

My name is Curtis Chambers. I am the Tribal Chairman for the Burt Lake Band of Ottawa and Chippewa Indians. This prepared statement is submitted for your last hearing on the Federal Recognition Process, it is my hope that this will give you some insight on how this entire process has completely failed my people. My statement will be strong, and I am sorry about that, but my level of frustration is over the top and someone has got to start telling the truth about what is really going on here.

The historical facts and background) including our two ratified treaties and the approximately 40,000 pages of pictures, documents and cd's etc. . .submitted by my Tribe to the BIA are irrefutable proof that Burt Lake was and is a treaty tribe which still exists. The other federally recognized tribes in Michigan agree with this position. Now the last that I understood it, the BIA does not have the authority to terminate a treaty tribe unless Congress gives it that power. I may not have the same education that some of the BIA staff have, but I do understand separation of powers. What Congress passes the BIA cannot undo on its own. If it can and we are not going to get our Federal benefits, can you please help us get our land back from the U.S. because we need to sell it to someone who will actually pay for it!

As a matter of fact, the OFA does not disagree that the Burt Lake Band signed two treaties with the United States, that those treaties were ratified by the Congress, and that the U.S. represented the Burt Lake Band in Federal court as our "guardian and trustee" well after 1900. They also do not disagree that our members comprised a distinct Indian community until 1989. That's right *1989*!!! Yet, according to the BIA we no longer exist. Now if that does not sound ridiculous, my members and I do not know what does.

According to the BIA, we "ceased to exist as a distinct Indian community" in 1989 simply because some of our members, many of who were quite sick, became convinced that the U.S. was never going to hear our case, so they took the advice of our local BIA Agents and signed up for health care and education services with the Little Traverse Bay Band. Little Traverse opened its doors to help our people, until our recognition status could be resolved by the Congress, but when you are dealing with the BIA, no good deed goes unpunished. The problem, according to the BIA

is that even though these people signed up with Little Traverse, *they never left Burt Lake.* So because, on paper, we have members in two tribes and that violates some Federal regulation, we have to be terminated. It does not matter that our community is still intact, that the majority of our people never signed up for those Little Traverse services, or that Little Traverse itself continues to argue that Burt Lake is still a separate community, according to the BIA all that counts is what is on paper and what's in their regulations. After all, they are lawyers, and we are just dumb Indians!!!!

The mere fact that some of our people took these steps only after being assured by *the BIA Agency staff* that they could return to Burt Lake's rolls as soon as it was reaffirmed did not matter either, because OFA is *separate from the rest of the BIA* and *should not be bound by the fact that these other BIA people gave "bad advise."* So in short, OFA cares more about what is in its regulations than it does about what really happened. I guess Indians just do not think like that!

The whole idea that Burt Lake ceased to exist as a separate tribe is ridiculous to us, because we know how our people see themselves and who we are seen by other Indians in the state. Besides, we see these people who the BIA says have "left" our community every day and I personally have seen almost all of them *at Burt Lake functions in just the last month.* No other Little Traverse people were there, just those who "left Burt Lake" and those who stayed! But the BIA spent a whole 4 days up here with clipboards and tape recorders and that was enough time for them to see" the true picture." Me, I just live here.

Now it does not matter that the other federally recognized tribes in Michigan, the University of Michigan whose professors worked with us, and which has studied Michigan Indians since the University was formed, the local governments who deal with our tribe on a regular basis, the Catholic Church which has had a Burt Lake Indian Mission Church *on our land* at Burt Lake from the early 1800 through today, the State of Michigan, and our State Representatives and Congressional delegation who all have met with our community regularly for over 50 years all disagree with the BIA, because the BIA spent 4 days here with clipboards and tape recorders and knows better than all of them. After all, it interviewed 10 people!!1!!

This is what is wrong with this process; To this day, the BIA has not been able to point to one legal document terminating our tribe, so when NARF and our other lawyers demanded that they give us the services that we are legally entitled to under our treaties, the BIA went into a panic and spent four whole days interviewing ten to twelve people, and another 8 months comparing us to their own picture of what a federally recognized tribe should look like and declared us extinct. That was some 4 days—these people must be brilliant.

Let's put aside for a minute our two signed *and* ratified Treaties, the Federal court case that the United States litigated as the "guardian and trustee" of our "federally recognized tribe", the opinions of the federally recognized tribes in Michigan, the opinion of the folks at the University of Michigan, the opinion of the State of Michigan, and all the documentation we presented, and look at the process that has become so complex and convoluted that nobody is satisfied with it. Now I am the first to admit that I am just a stump jumping halfbreed from northern Michigan, but it seems to me that the process is exactly backward. Instead of figuring out how to live up their treaty obligation as the Supreme Court and the Constitution say they are supposed to, this OFA group just ignores the Treaty, ignores the Constitution and sets out to prove why a treaty tribe who they mistakenly left off their list has ceased to exist.

The list they use to do that is a good one too—less than 60 percent of our people voted in the last election, our Tribal Council meetings do not draw more than 25 percent of our people, even though these are Council meeting not public meetings, less than 50 percent of our people live on our tribal land (even though we lost virtually all of our reservation land to taxes so there is no place for them to live), and oh yes, some of our people were members of inter-tribal organizations and some married into other tribes. Under these tests, they could terminate the Navajo, the Blackfeet and every Sioux Tribe tomorrow and use our decision as precedent. So who knows, maybe the BIA will go after them next.

Don't think they couldn't do it either—because in many cases our numbers are as good as theirs—we have two ratified treaties, the majority of our people lived next door to one another until WWII, we had 80 percent Indian to Indian marriage at the end of WWII and 50 percent of our people were still speaking the language at the end of WWII, but that does not count to the BIA.

I know a lot of federally recognized tribal leaders and a lot about how federally recognized tribes actually function because these are my cousins, and I thank God that they have never had to face the BIA's tests, because I know that they would end up in the same boat we are in. Standing Rock, Rosebud, Pine Ridge and Three

Affiliated for example would not qualify because their members come from more than one band—thus they are not technically "from a single Tribe or tribes who combined to form a single entity." Under the BIA's test, they are merely a group of people from different historic Bands who got forced to move to a specific location—so in that regard they are worse off than we are. Less than 60 percent of Oglala's members voted in the last tribal election according to Indianz.com, and the tribal council meetings for every one of these tribes generally don't draw more than 40 non council members, which is less than 1 percent of their population. So. that is far below our numbers as well. Also, a lot of Oglala Sioux are married to Rosebud members, and Standing Rock members are married into other Sioux Bands so that too is a negative as well. Finally less than 50 percent of the Oglala Sioux actually live on the reservation. The fact that many live in Rapid City and go back and forth every week does not count in the OFA process. So God help them if they ever had to face the BIA's regulations.

Are we Indians—well yes. The BIA own genealogists just recently awarded most of our Tribal members judgment fund monies of over $12,000.00 each as *¼ blood Indians who descend from the two ratified treaties that we gave the BIA,* so they do not dispute that we are Indians, just not the Indians they want us to be. They also do not dispute that our entire council is descended from historic treaty signers, we just do not fit into the pigeon hole they want us to. The OFA's assertion that we somehow ceased being a Tribe because: we did not continue using services that no one offered to us in the first place; some of our people had to leave the area in order to get jobs to feed their families and only made it home once a month, and that our people should be punished for doing what they had to do to get the health care that they needed and that the U.S. denied to us illegally is patently absurd and pretty damn cruel too, That would be like the Catholic Church closing a church and then saying wow—no church—I guess that means that there are no more, Catholics living there.

Incidentally, the Burt Lake Indian Mission Catholic Church we rebuilt on our tribal lands after our Burn-out in 1900 is still is use today, so I guess they must be violating their obligation by keeping it available to those of us who are "no longer Burt Lake Indians." Maybe that's why the Catholic Church supports our reaffirmation so strongly.

Sir, the entire process started off in an adversarial situation. First we had to wait 24 years for someone to tell us when and how they had incorrectly concluded that we were terminated and then instead of doing that they sent us to OFA, Then, we finally got a chance to inform the BIA who we were and what our intentions were and from that moment on the Bureau started trying to prove that we were liars. I don't know, maybe they were afraid that we would sue them or something for the services that we had been illegally denied. Our treaty meant nothing because after all, it was signed and ratified "over 100 years ago." The fact that the majority of our members traced directly back to the signers of that treaty meant nothing because "maybe they didn't want to be Indians anymore?" Can't prove that they don't have a treaty, so you better prove that they decided to *terminate themselves*!!! A treaty tribe not on their list of federally recognized tribes gets to wait, get called liars and then try to find the money to fight back. That Sir is how the OFA process really works, in just three sentences. And if your like us, living in an area where gaming is never going to make a lot of money, good luck finding the money that you need to fight back.

The BIA hires lawyers, historians, genealogist and staff to prove what bad liars we are. They have their own idea of what a tribe should look like, and the fact that their picture conflicts with what every federally recognized tribe in the state looks like does not matter. They have the formula because they are anthropologists. We on the other hand are just Indians. We are then forced to hire lawyers, historians, genealogists, and staff to challenge their arguments. We are also forced to give the BIA every single thing that they ask for no matter how much it costs to collect, because the BIA decides whether our people get the medicine they need for their diabetes, cancer and other problems or whether they die at home without it. That is what happened to one of our most beloved elders Bernie Parkey just last month. He died at home, because he could not afford a hospital bed and IHS said he was not Indian enough! Imagine that, a treaty Indian *of almost full blood,* living on his original land, dying without medical attention because he is not the right kind of Indian!! So when we complain and demand that they prove that they terminated us, the Bureau hires more of the same along with a solicitor for each. "Do you see a pattern here?" The Tribes do not have much money, so they are forced to find investors and the process starts all over again. All because living up to the terms of our treaty might cost them some money to pay for the land that those treaties took away.

It seem to me that things would be much simpler if the Bureau would use its resources to help live up to the Treaties that we signed instead of trying to get rid of treaty Indians! It has been my experience that it is much easier to prove a positive than a negative. But, if we disagree with the ruling that the BIA hands down, the burden of proof falls on us and that is dam hard to deal with when you are up against Federal lawyers paid for by our own tax dollars.

Sir, the bottom line is that we are treaty Indians still living together as a community. Our Tribe still honors the agreements and commitments made by our ancestors and your predecessors in those treaties. I do not believe the Bureau does. Will you?

PREPARED STATEMENT OF MICHAEL COOK, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, INC.

On behalf of United South and Eastern Tribes, Inc. (USET) an inter-Tribal organization comprised of 24 federally recognized Tribes located in 12 states from Maine to Texas, I am writing to ask that this letter be included in the record of the Senate Committee on Indian Affairs' hearing on the process of Federal recognition scheduled for September 19, 2007.

USET strongly supports the administrative process for Indian groups to seek Federal recognition through the Department of the Interior's Office of Federal Acknowledgement (OFA). Due to the complexity of determining whether an entity is deserving of Federal recognition, although Congress has the legislative authority to recognize a tribe, it has appropriately shifted that responsibility to the agency level, where the question can be examined in detail by experts and according to standards that were originally crafted after extensive review and consultation with Tribes by the American Indian Policy Review Commission.

USET's policy position is based on the view that federal acknowledgement determinations should be based upon merit and the weight of evidence. USET has testified many times in support of Indian groups going through the OFA process, while consistently opposing those same groups going through the legislative process.

The OFA process serves to protect the cultural identity of established Tribes, as well as the government-to-government relationship that such Tribes have with the United States. Further, the process assures that the Federal government, through the use of experts in genealogy, history, and anthropology, can reach a determination in a manner that is fully supportable by a well-developed and evaluated record. This is an evaluation that agencies are well-positioned to undertake, but for which the Congress is not equipped.

It is because Federal recognition is so important that it must be handled with unusual care. Federal recognition is a formal act, creating a perpetual government-to-government relationship between a Tribe and the United States, in which the United States acknowledges the sovereign status of a Tribe. Federal recognition also creates a trustee relationship and fiduciary responsibilities on the part of the United States. Federal recognition enables Tribes to gain access to vital resources needed to break the yoke of unemployment, low education levels, substandard housing, and poverty, which have historically plagued our people. Federal recognition also shields Tribes from undue federal and state encroachments. Furthermore, Federally recognized Tribes have inherent sovereign powers recognized by the United States to exercise criminal jurisdiction and civil jurisdiction within their territory.

If Congress believes that the OFA process is in need of repair, then legislation should be developed to review and strengthen the OFA procedures. In those circumstances where an Indian entity cannot go through the legislative process, such as with the five groups that fall under the 1956 Lumbee Act, Congress should enact legislation that would allow them to go through the OFA process, not legislation that would circumvent that process.

Thank you for the opportunity to share USET's views regarding this important topic. I am available to discuss this matter at your convenience .

PREPARED STATEMENT OF MICHAEL F. EASLEY, GOVERNOR, STATE OF NORTH CAROLINA

Thank you for the opportunity to submit written comments about pending legislation for federal recognition of the Lumbee Tribe of North Carolina by the Congress of the United States of America. I believe full federal recognition of the Lumbee Tribe by Congress is long overdue. As you know, such a bill was recently passed overwhelmingly by the House of Representatives.

Recognition of and interaction with the Lumbee people as a unique, distinct Indian tribe began when settlers from Virginia, South Carolina and Europe first arrived in the Cape Fear and Pee Dee River Basins after the Tuscarora War (1711-1715). There, the settlers encountered a well-populated, cohesive American Indian tribal group situated mostly along and to the west of what is now known as the Lumber River in Robeson County. As early as 1890, the U.S. Department of Interior acknowledged this fact among others as evidence that the Lumbee people are American Indians.

A proclamation by colonial Governor Matthew Rowan on May 10, 1753 stated that Drowning Creek (now Lumber River in Robeson County) was "the Indian Frontier." Other historical records of the eighteenth and early nineteenth centuries, including Revolutionary War pensions for Lumbees who fought for American independence, attest to the Lumbees as American Indians.

In 1885, North Carolina's General Assembly passed a bill recognizing and naming the Lumbee tribe "Croatan." In 1911 the General Assembly changed their name to the "Indians of Robeson County" and in 1913 to "Cherokee Indians of Robeson County." None of these names was chosen by the tribe. In 1953, the State officially changed the tribe's name to "Lumbee Tribe of North Carolina" following a 1952 tribal referendum requested by the Lumbees and paid for by the State in which this name was overwhelmingly chosen. These names all apply to the same American Indian tribe.

For more than a century, North Carolina's Governors, various state legislators and Members of the North Carolina Congressional delegation have supported the effort by the Lumbee Tribe to obtain federal recognition, beginning with a petition to Congress in 1888. Enclosed are copies of letters by former Governors James G. Martin (R) and James B. Hunt, Jr. (D) – my immediate predecessors – attesting to the strong bi-partisan support for federal recognition that the Lumbee Tribe has enjoyed during the last generation.

In the past, federal recognition has been denied because of opposition by the Bureau of Indian Affairs and Department of Interior on budgetary grounds. Each of several federal investigations into the Lumbees' history, genealogy and ethnicity has concluded that the Lumbees are in fact American Indians. It follows that federal recognition should be authorized for this long-standing American Indian Tribe.

Personally and on behalf of North Carolina, I offer to our fellow Lumbee citizens and to the Congress our full, unqualified support for Congressional recognition of the Lumbee Tribe. I encourage your support for the Lumbee Tribe and for the adoption of this bill.

I urge the Committee on Indian Affairs to hold a hearing on this bill at the earliest available opportunity and report the bill to the floor. Thank you again for allowing me to offer written comments about the Lumbee Tribe recognition bill.

Attachments

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT, JR.
GOVERNOR

March 11, 1993

The Honorable Bruce Babbitt
Secretary
U. S. Department of Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Bruce:

I am pleased that you were able to be in our state recently and I appreciated the opportunity to meet with you.

There are approximately 40,000 Lumbee Indians living in North Carolina and they have been officially recognized by the State of North Carolina since 1885. The Lumbees have been seeking federal recognition since 1888. Seven studies have shown them to be an independent Indian community.

I would like to reiterate my strong support for the Congressional process for federal recognition of the Lumbee Indian tribe in North Carolina. As you know H. R. 334, introduced by Congressman Charlie Rose of North Carolina, would provide such recognition. We support that legislation as stated in my letter of January 28, 1993.

Federal recognition of the tribe has been endorsed by the N.C. Commission of Indian Affairs, the Governors' Interstate Indian Council, and the National Congress of American Indians which is the oldest and largest Indian organization in the country.

In 1956 a bill was passed by the Congress to recognize the Lumbee tribe, but it denied the tribe the benefits or protections afforded to Indians by the U.S. of America.

For over 100 years the Lumbees have tried to obtain federal recognition, but to no avail. It is my opinion that the administrative recognition process that was proposed by the previous administration simply is too cumbersome, time-consuming, costly and has not worked effectively. Therefore, I would urge you to support the Congressional recognition process as proposed by Congressman Rose.

I want to work with you and the President in any way possible to help the Lumbee Tribe receive Congressional recognition. I am confident that this recognition is not only in our state's and the tribe's best interest, but in the interest of the United States as well.

Sincerely,

James B. Hunt, Jr.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT, JR.
GOVERNOR

January 28, 1993

The Honorable Bruce Babbitt
Secretary
U.S. Department of Interior
Washington, DC 20240

Re: Federal Recognition of the Lumbee Indians

Dear Bruce:

This letter is to ask for your assistance in obtaining federal recognition for the Lumbee Indian tribe, which has many members in North Carolina. Congressman Charlie Rose (D-N.C.) has introduced a bill (H.R. 334) that would provide such recognition.

Before the House Subcommittee on Indian Affairs considers H.R. 334, I understand that the Clinton Administration will release its position on the bill. I ask that you and the President support the bill.

The Lumbee have 40,000 enrolled members in the United States and should be recognized. In fact, seven studies in this century have shown them to be an independent Indian community.

I appreciate your consideration of this letter. Please contact Congressman Rose or me if we can assist you in any way with this matter.

My warmest personal regards.

Sincerely,

James B. Hunt, Jr.

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES G. MARTIN
GOVERNOR

October 18, 1991

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The United States House of Representatives recently passed H.R. 1426 which provides for full federal recognition of the Lumbee Tribe of Cheraw Indians of North Carolina.

I am in support of this legislation as evidenced by the enclosed testimony given on my behalf by Secretary James S. Lofton of the North Carolina Department of Administration at a joint hearing of the Senate Select Committee on Indian Affairs and the House Interior and Insular Affairs Committee held August 1, 1991. H.R. 1426 is now before the United States Senate, as is its companion bill, S. 1036.

I am requesting your support of the passage of this legislation and its subsequent signing into law following its successful passage.

Sincerely,

Jim Martin

James G. Martin

JGM:lf

Enclosure

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES G. MARTIN
GOVERNOR

July 30, 1991

Senator Daniel K. Inouye
Chairman
Senate Select Committee on Indian Affairs
Hart Senate Office Building, Room 838
Washington, D.C. 20510

Dear Senator Inouye:

I have asked James S. Lofton, Secretary of the North Carolina Department of Administration to represent me at the Joint Hearing regarding S. 1036, the Lumbee Recognition Bill, which will be held on August 1. Secretary Lofton will be accompanied by Henry McKoy, Deputy Secretary of the Department of Administration, Patrick O. Clark, Chairman of the North Carolina Commission of Indian Affairs, and A. Bruce Jones, the commission's executive director.

I fully support the passage of S. 1036 and am requesting the support of the Senate Select Committee on Indian Affairs. The State of North Carolina has recognized the Lumbee Tribe as a separate and viable Indian entity since 1885. The passage of S. 1036 will entitle the Lumbee to enjoy the same rights, privileges and services enjoyed by other federally recognized tribes in the nation and will, further, be a major step toward rectifying the inequities suffered by the Lumbee people for centuries.

I thank you for your attention to this matter and will appreciate your favorable consideration of my request.

Sincerely,

Jim Martin

James G. Martin

cc: Senator Jesse Helms
Representative Charlie Rose
Representative Charles Taylor

PREPARED STATEMENT OF JAMES WRIGHT, TRIBAL CHIEF, MA-CHIS LOWER CREEK INDIAN TRIBE OF ALABAMA

Chairman Dorgan, Vice Chairman Murkowski, and honorable members of the Senate Committee on Indian Affairs, I thank you for the opportunity to present this testimony to the Committee. As Tribal Chief of the Ma-Chis Lower Creek Indian Tribe of Alabama my name is James Wright and it is an honor to submit our information to this Committee for the record.

This Tribe is recognized at many different levels of government but we have been unable to get the Federal Recognition from BIA because of the process that now is in place. We recommend that the process be changed to a realistic format that will allow an affordable process for Native American Tribes.

The Ma-Chis Tribe was denied Federal Recognition with the present format that is in place because a number of reasons that we as Native Americans were unable to comply with, such as: we had to deny who we were to government officials in order to stay in our homeland in the southeastern part of the present day United

States of America so we were not killed or removed in the Indian Removal Act of the 1830's. By doing this act of survival, we can not show the continuous "government-to-government" relations that is in the present process.

Without going into a long explanation of our unique circumstances, we will offer a little background information.

The Ma-Chis Tribe is made up of Native Americans who are descendants of the Creek Confederacy and Native Americans who have kept the native ways close to their hearts and remain today in our homeland. We are party to signatures to several treaties with the United States between 1790 and 1836, which led to many of our ancestors being forced in a march west.

Our tribal members who stayed in our homeland retreated into the forested lands, swamps, caves, and lived along the following streams: Pea River, Conecuh River, Yellow River, Coosa River, Tallapoosa River, Little Tallapoosa River, Alabama River, Choctawhatchee River, Little Choctawhatchee River, White Water Creek, Big Judy Creek, Little Judy Creek and others located in our homeland. We maintained a close knit community and at times the closeness was only known by tribal members. We are proud to be united as a Native American Tribe that is anti-gaming and faith based. Our tribal owned businesses and tribal church is spreading its' work base and faith base in and ever-growing World Wide recognition.

We note that it has been brought to the attention of this committee, a number of flaws in the existing process of Federal Recognition and would like to work with you in the process to rework the process for Federal Recognition of Native American Tribes.

When we become BIA Recognized, it will allow us to overcome some present day problems we have as Native Americans in Alabama such as allowing us to put Native American on the Drivers License in the State of Alabama, and allowing us to overcome a number of educational problems that our tribal members go through with discrimination.

We still face the fact today of not being BIA Recognized with such issues as getting the HUBZone Certification. As an example, we have been denied this certification for our tribal business because we "do not exist", but the fact is we live in a HUBZone and are United States Citizens but because BIA does not have us listed on their (BIA List), we can not get the certification, and that denies our tribal 8(a) SDB Company the opportunity to bid on HUBZone projects.

In conclusion, you can see there are many problems that we have with the present process, and I urge you to change the process for the better.

PREPARED STATEMENT OF HON. ANTHONY RIVERA, JR., CHAIRMAN, JUANEÑO BAND OF MISSION INDIANS, ACJACHEMEN NATION

Chairman Dorgan, Vice Chairman Murkowski, on behalf of the Juaneño Band Of Mission Indians, Acjachemen Nation of Orange County, CA, I would like to thank you for holding today's "Hearing on the Process of Federal Recognition of Indian Tribes". For the reasons I set out below, today's exercise of the Committee's oversight responsibilities over the Federal recognition process is long overdue and needs to be continued in order to reform a badly broken administrative process.

For the record, my name is Anthony Rivera, Jr. and I am the Chairman of the Juaneño Band of Mission Indians, Acjachemen Nation ("the Nation") located in San Juan Capistrano, Orange County, California.

First western contact with the Nation came with the arrival of Spanish missionaries in 1769 and our history is not unlike the many other California tribes that suffered under the yoke of Spanish oppression yet persevered and fought to preserve our culture and political integrity. It is a testament to those that went before me that I am here before you today, on behalf of the Nation and still fighting for formal acknowledgment by the U.S. Government. Today I am indeed standing on the shoulders of giants who never gave up hope that the Nation would assume its rightful position among the family of federally recognized Indian tribes in the U.S.

Our contemporary fight for recognition really began in 1919, when the Nation joined the Mission Indian Federation to protest the abuses to Indian people carried out by the Federal Bureau of Indian Affairs—the same Bureau of Indian Affairs that literally has the power of life or death over the Nation's petition for acknowledgement. Around the same time the Nation submitted a signed petition to the Department of Interior requesting Federal acknowledgement and restoration of tribal lands.

The Nation has been in the queue of the administrative federal recognition process since 1982, when a formal letter of intent was filed with what was then called the Branch of Acknowledgment and Research, and currently bears the name "Office

of Federal Acknowledgement" ("OFA"). The letter and the subsequent filing of the application and related documents were done pursuant to the regulations found at 25 CFR Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe." These regulations were first promulgated in 1978 and continue to govern the review of recognition petitions.

The recognition by the U.S. of a sovereign Indian tribal entity is an occasion of some solemnity because with it comes all the privileges and immunities of Indian tribal status under Federal law. The event also marks the establishment of a unique legal, political, and government-to-government relationship between two sovereigns: the United States and the Indian tribe.

In theory, the OFA is guided by and operates according to regulations intended to establish a uniform administrative process for Indian groups seeking formal recognition.

Petitioners are required to satisfy seven strict criteria before recognition will be accorded. The recognition process, like all administrative processes, should be rigorous, transparent, fairly administered in a timely fashion, and include procedural safeguards and certainty. The process, and those that administer the process, should instill in petitioners, interested parties, and the Congress a high level of confidence that petitions will be reviewed in timely fashion and decisions will be made on the merits of the application—without passion or prejudice.

In America we demand of our officials and decisionmakers transparent decisions made in a timely fashion not only because huge—and sometimes unsustainable and prohibitive—economic costs are borne by petitioners due to the extremely long administrative process but out of our collective belief in fundamental fairness and decency.

The Nation first filed its letter of intent in August 1982 and has been extremely patient with the administrative process for over 25 years. We have worked diligently to gain national, state, and local support for our petition. For example, the California State Assembly issued a Resolution of support for our Federal recognition in 1993; the National Congress of American Indians, on behalf of the General Assembly, unanimously passed a Resolution in support of our Federal recognition petition in the fall of 2005; and the Southern California Tribal Chairman's Association has also endorsed a Resolution of full endorsement for our recognition efforts. On the local level, in 2006 the Orange County of Supervisors passed a County Resolution supporting the Tribe's ancestral lands and Federal recognition; the cities of San Juan Capistrano and San Clemente have also endorsed our bid for recognition. The "Jewel of all California Missions"—the Mission San Juan Capistrano—and the Orange County Archdiocese have similarly submitted letters of support as well.

Our diligence in garnering support has been matched by our work at presenting a solid and comprehensive application for recognition. Since 1982, the Nation has been not only patient with the OFA but also cooperative with OFA's demands for additional information; requests that I might add did not significantly add to the weight or content of the petition.

In September 2005, the Nation's petition finally reached "Active Status" within the OFA due to the Federal court filing in the *Mashpee Wampanoag vs. Norton* case. Since then, the OFA has not adhered to the decisionmaking schedule it agreed to and instead has granted no fewer than five extensions of time within which to issue a "Proposed Finding." The stated rationales behind OFA's need for extensions have been various, vague, and unjustified according to our tribal government. For example, the OFA has alternatively indicated that:

1. The "Department needs more time in order to finalize its analysis and legal review of the two proposed findings";
2. The "OFA is working on its recommendations for the proposed finding but needs additional time to complete its recommendations";
3. The "Department needs additional time in order to finalize its analysis and legal review of the two findings";
4. The "Department needs the full 180-day extension of time in order to finalize its analysis and legal review of the two findings"; and
5. The "OFA has requested and received an extension of the deadline for completing the recommended proposed findings."

In extending the deadline for a Proposed Finding, the OFA has repeatedly relied on an interpretation of 25 CFR 83.10(h) that defies logic and the plain meaning of the regulation. The regulation states:

> "Within 1 year after notifying the petitioner that active consideration of the documented petition has begun the Assistant Secretary [for Indian Affairs] shall

publish proposed findings in the Federal Register. The Assistant Secretary has the discretion to extend that period up to an additional 180 days."

The OFA's interpretation of the phrase "up to an additional 180 days" is that such extensions are "limited to increments of not longer than 180 days, but allow for more than one extension." This interpretation strains credulity, logic, and the plain meaning of the regulation.

On a more substantive matter, the Nation has been informed that the OFA is combining the membership list of the Nation with a variety of other entities, including petitioners outside of the tribe and other unrelated entities without providing us, the Petitioner, with ample justification or adequate reasoning for this action. This unorthodox—and ultimately destructive—effort is unfounded and we question the reasoning and appropriateness of such an activity.

As the congressional body which undertook the investigation of Jack Abramoff and his associates, this Committee knows that the Abramoff Affair raised an important question about good government which is especially relevant to the recognition process: What protections are there in the law or in the political arena for legitimate tribal petitioners, often of modest means, facing intense, well-heeled lobbying by private interests?

It is sad that in our time there are Indian tribes actively working against the aspirations and needs of their sister tribes when it comes to efforts to acquire land, to develop economically, or—in our case—whether or not we will be accorded recognition. These actions are disgraceful.

Mr. Chairman, Jack Abramoff may be on the sidelines but "Abramoffism" is alive and well in 2007. If the tactics by OFA in delaying the Nation's Proposed Finding were not enough, economic interests including, sadly, already-recognized Indian tribes and privately held card rooms are taking advantage of the OFA's elongation of the administrative process to lobby Members of Congress and others in an effort to have the Nation's petition delayed or denied. The last time I checked Mr. Chairman, "market share" was not a criteria included in the regulations found at 25 CFR. I am profoundly and personally disappointed to have learned about these efforts but those responsible should know that in the end they will fail.

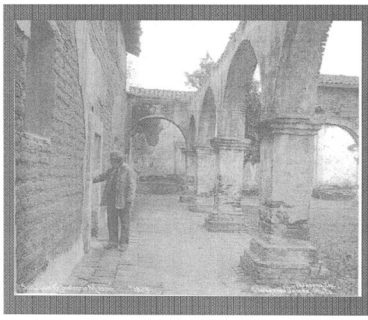
Today the Committee is asking the question as to why Indian groups see the value in pursuing Federal legislation in lieu of the OFA administrative process. With all respect, I would ask a slightly different question: how can Congress countenance a situation such as ours and then with a straight face suggest that Indian groups pursue the administrative route? The Nation has been nothing but diligent and cooperative and these efforts and our reasonableness have been met with endless delay and dilatory tactics by the OFA, political interference by Members of Congress, extant Indian tribes, and corporate interests, and no end in sight to our battle for justice.

I will close with this thought Mr. Chairman. This Committee has done the required hard work over the years to protect and enforce the rights and prerogatives of Indian nations. I urge you to continue this good work and find ways to ensure that the Federal recognition process is transparent, free from outside and undue political influence, and gives this committee and Congress sufficient confidence so that pursuing a legislative remedy is left to those groups which, for one reason or another, are not eligible to pursue the administrative process. Due process, let alone fundamental fairness and traditional notions of decency, require no less.

I thank you for your commitment to Indian country and the important work that you do and I look forward to working with you and your staff on improving the federal recognition process.

Attachment

PETITION INFORMATION



Mission San Juan Capistrano 1900

NAME:

Juaneño Band of Mission Indians, Acjachemen Nation

LOCATION:

Orange County, CA

POPULATION:

1,709 Adult Citizens

1,050 Minors

PETITIONS:

November 1, 1776 ~ Mission San Juan Capistrano Established

1852 ~ Chief Gononish signs Treaty K

1922 ~ Interior Petition from San Juan Indian Village

August 13, 1982 ~ Letter of Intent

February 12, 1996 ~ Ready for Active

September 28, 2005 ~ Active Status

September 28, 2007 ~ Proposed Finding

EVIDENCE:

Sacramental Registers Mission San Juan Capistrano

Federal, State, and Tribal Government Documents

Over 30,000 pages of evidence

Over 60 volumes submitted

SUPPORTERS:

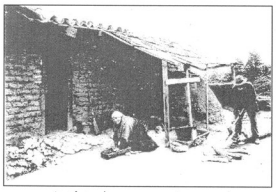
Mission San Juan Capistrano

City of San Juan Capistrano

County of Orange

National Congress of American Indians

Southern CA Tribal Chairman's Assoc.



Acjachemen Ancestors

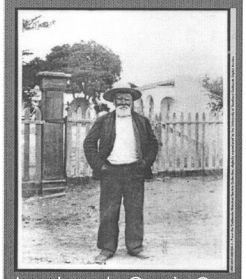
Tribal Continuity

We have continued to wait for the federal government to comply with their regulations and correct the wrongs caused by their omission of the Acjachemen Tribe from the list of tribal governments with whom the federal government enjoys a government to government relationship. The Acjachemen tribal members continue to maintain their strong cultural roots while complying with federal regulations to assist the Department in making an appropriate final determination.

Recognition Highlights

- *Tribe denied Federal Acknowledgement for over 150 years*
- *First Mission Indian Tribe under Regulations*
- *Mission San Juan Capistrano upholds firm support of Tribe*

"There was never a race of people shamed and plundered and then ignored and refused to grant them what God in Heaven had already given them."
Chief Clarence Lobo



Acu Jose de Garcia Cruz 1909

• 31411-A La Matanza Street • San Juan Capistrano, CA 92571 • (949) 488-3484 • www.juaneno.com

CROW TRIBE EXECUTIVE BRANCH

Bachaelche Avenue
P.O. Box 159
Crow Agency, Montana 59022
Phone: (cheelch406) 638-3732- Fax: (406) 638-3773

Carl E.Venne
CHAIRMAN

Cedric Black Eagle,
VICE CHAIRMAN

Scott Russell,
SECRETARY

Darrin Old Coyote,
VICE SECRETARY

September 13, 2007

The Honorable Max Baucus
U.S. Senate
511 Senate Hart Building
Washington, D.C. 20510

The Honorable John Tester
U.S. Senate
204 Senate Russell Building
Washington, D.C. 20510

RE: Federal Acknowledgement Legislation

Dear Senators Baucus and Tester:

On behalf of the Crow Tribe, I respectfully ask that you oppose legislation that would allow groups claiming to be Indian tribes to circumvent the Department of the Interior's Office of Federal Acknowledgement. We are particularly concerned about S. 333, legislation that would acknowledge the Lumbee group as a tribe.

If enacted into law, this bill would have a significant impact on the Crow Tribe. The cultural integrity of all established tribes is threatened when groups self-identifying as tribes and Indians achieve federal acknowledgement through political processes rather than the objective criteria at the Office of Federal Acknowledgement. The process protects tribes and Indians whose history, culture, language, and long dealings with the federal government are beyond question.

This legislation also would undermine the fulfillment of federal trust and treaty obligations to tribes and individual Indians. The Lumbees claim over 62,000 persons in their service area for purposes of housing monies and their tribal membership likely exceeds over 70,000. Our view is that Congress should not be acknowledging groups whose identity is so in question, particularly when it would likely harm tribes across the country whose tribal identity is unquestioned.

The trust and treaty relations our tribes have fought to maintain over the years are undermined when politics drives federal acknowledgement decisions. I humbly request your support in maintaining the integrity of our separate tribal culture and our government-to-government relations with the United States.

Sincerely,

Chairman Carl Venne

PREPARED STATEMENT OF MONROE SKINAWAY, CHAIRMAN, SANDY LAKE BAND OF OJIBWE

My name is Monroe Skinaway and I represent the Sandy Lake Band of Ojibwe in Minnesota as their Chairman.

We have been trying to restore our Federal recognition status as a historic North American Indian Tribe over twenty eight years, our ancestors signed ten treaties with the United States of America ceding millions of acres of land for the benefit of white settlement, in all, hoping for a better life for them and their decendants.

I don't know if you are aware of the 1889 Nelson Removal Act in Minnesota when the Federal government attempted to resettle all Indians in Minnesota on the White Earth Reservation created in 1867 for that purpose. The removal didn't pan out as planned and most Indians lost their land holdings at White Earth, maybe 90%. Also, some didn't move or some returned to their former reservations or many roamed around landless. Through this removal, every Indian was given a White Earth enrollment number.

In 1934 the Federal Government passed the Wheeler, Howard Indian Reorganization Act, which was intended to fix the Indian problem created by the 1889 Nelson Removal Act. The Federal government recreated six Ojibwe reservations for governmental purposes. These reservations were called the Minnesota Chippewa Tribe and were to consist of White Earth, Leech Lake, Bois Fort, Grand Portage, Fond du Lac and Mille Lacs Lake. For the record, the Minnesota Chippewa Tribe is a government created tribe. Sandy Lake is a historic tribe with ten treaties made with the Federal government. Each of the six recreated reservations were a mix of multiple band affiliations, regardless of your origin or you could say wherever you were standing at that point in time. through this restructure most Indians lost their tribal identity. the Minnesota Chippewa Tribe is an almalgamation of eleven Ojibwe bands.

The Mille Lacs Reservation was to consist of five separate bands with separate histories. The five other reservations had the same arrangement. I personally feel the Federal government tried to unite the bands closely related as possible.

The Sandy Lake Reservation was to be placed within the structure of the Mille Lacs Band and share in the benefits of the Reorganization Act. The Federal government accomplished these multiple band assimilations through Charter Agreements, each reservation had one. The signing of the Charter of the Mille Lacs Band took place at my parent's home on the Sandy Lake Reservation in 1939.

Throughout the years, the Sandy Lake Band never became members of the Mille Lacs Lake Reservation. My parents both died White Earth enrollees as other members of the Sandy Lake Band who were present at the historic signing of the Charter Agreement. Through this arrangement we lost our land base and our recognition as a historic tribe. Most of us retained our White Earth enrollment number from the 1889 Nelson Removal Act.

The Federal government considers us members of the Mille Lacs Band, however the Mille Lacs Band does not consider us members and refuses to provide services. For many years the Mille Lacs Band has benefited on our behalf simply because of the Federal goverments position, by misrepresenting our membership to receive Federal and State funds, the White Earth Reservation may have received fundings also because of our White Earth enrollment numbers.

I personally feel we were placed with the wrong recreated band. If we were to be placed with anyone, it should have been the Fond du Lac Band as our tribal relationship has the same migration route and ancestral leaders.

The Mille Lacs Band on the other hand, are a mix of Snake River and St. Croix bands or various tribes from central Wisconsin.

As I mentioned previously, our ancestors signed ten treaties with the Federal government in good faith, hoping for a better life for their people. Instead our tribe was decimated.

I know you may be aware of the Federal Acknowledgement Process at the Bureau of Indian Affairs. As I've stated many times to Acknowledgement Director, Mr. Lee Fleming, we don't fit the criteria. Even though we have never became integrated in the Mille Lacs Band, we are members of the Minnesota Chippewa Tribe which bars us from that process.

The Sandy Lake Band represented themselves in the structure of the Minnesota Chippewa Tribe until 1961 when the Minnesota Chippewa Tribe changed their constitution illegally rescinding the charters. We lost our seat in that restructure.

The rules and regulations prohibit this kind of activity and Mr. Fleming is aware of it. I've sent documentation proving it many times.

We are not claiming we are a newly discovered tribe which the process is designed for, we claim we are an old tribe who made an agreement with the Mille Lacs Band, Minnesota Chippewa Tribe and the Federal government who designed the Constitution and the Charter Agreements on behalf of the Minnesota Chippewa Tribe.

The Charter Agreements were never honored for the Sandy Lake Band. Therefore, our land and recognition should be restored to us.

We feel there has been a great injustice done to our people. We no longer have a land base, we were left out of housing, education, health care and economic development as intended by the Reorganization act. and our agreement with the federal goverment.

In this day and age the injustice is compounded as White, Hispanic and African American groups have been recognized as Indian tribes for gaming purpopses, by investors who know how to manipulate the system, whatever the reason other ethnic groups are designated Indians is still an injustice to all true North American Indians, As we bare the brunt of racism because of our features and the color of our skin.

We have been trying to settle this issue with the Mille Lacs Band and the Minnesota Chippewa Tribe for twenty nine years. My brother Clifford Skinaway, who passed away in 1994, started in 1978.

Our tribe is in a difficult position because of the gaming industry, similar to other tribes across the nation dis-enrolling members to increase gaming profits, on the other hand some of our Federal Representitives are persuaded not to support legislation by the tribes because of the Minnesota gaming industry. I regretfully understand the position this places our Representitives in, by the same token this also places us in a difficult position as how we tactfully approach our Representitives knowing that gaming influences are at the bottom of our problem and not the merits of our claim. How do we circumvent this unfortunate situation without alienating our Representitives, how do we seek justice for our people

We are asking your office to consider how to implement legislation restoring our tribes Federal recognition status so we can rebuild our tribal community, reclaim our identity and what rightfully belongs to us for our children and generation to come, an opportunity which designated tribes with less people, less Indian blood across the nation have. We are people too. We have a right to exist.

Attachments

Sandy Lake Band of Ojibwe
4331 Cedar Ave So
MPLS, MN 55407

Sept 23, 2007

Senator Byron Dorgan, Chairman
Senate on Indian Affairs Committee
838 Hart Senate Office Bldg
Washington, D.C. 20510

Dear Senator Dorgan:

I'm Monroe Skinaway, I represent the Sandy Lake Band of Ojibwe here in Minnesota as their Chairman. I'm responding to a request from your aid Cindy Darcy, as she said your office would consider reviewing our tribal situation and she requested material concerning our correspondence with the Bureau of Indian affairs, by phone conversation 9-20-2007.

We've been trying to restore our federal relationship with the United States of America for twenty nine years so our members may be eligible for Federal programs, such as housing, health care, land acquisition, educational benefits, and economic development.

Through the Indian reorganization act and agreements made with the Minn. Chippewa Tribe, on behalf of the Bureau of Indian Affairs, we should be receiving these services through the Mille Lacs Band Organization, but the Mille Lacs Band refuses to recognize us as members to receive services.

Mille Lacs Band members receive a host of benefits, such as housing, health care,educational fundings, econmic developmment assistance, monetary assistance for bill paying , elder care, assisted living and a host of other programs and not to exclude per-caps totaling some ten thousand a year.

The explaination from the Bureau is that we were made part of the Mille Lacs Band Organization for govermental purposes, or our problem is an internal one, or our problem needs Congressional action, or we need to use the (OFA) process, or we can't use the (OFA) process because of our base membership, Minn. Chippewa Tribe, it somehow seems, they have the power to make us part of Mille Lacs Band, but can't force Mille Lacs Band to accept us into their membership, I wonder why that is, all the while our people receive nothing for their ten treaties, the ceding of millions of acres of land for the advancement and benefit of white settlement, and our willingness to accept the Indian reorganization act , all the while the Mille Lacs Band says they were

against the Indian reorganization act and that everthing was forced on them, This just doesn't seem fair for our people.

The B.I.A. says by letter that we don't meet the criteria at the Office of acknowledgement because of our dual enrollment and thus would be denied acknowledgement under the department's existing regulations as a matter of law.

We're not claiming we're a newly discovered tribe which the process is designed for, but a historic tribe who made an agreement with the Minnesota Chippewa Tribe, and the Federal goverment which was not honored, therefore our recognition and land should be restored to us, that is our claim.

We were left out of programs and services promised through the Indian reorganization act, such as housing, health care, educational opportunities, land acquisition and economic development, also what little land we had left taken from us by the Bureau of Indian Affairs and given to the Mille Lacs Band.

Mille Lacs Band says our problem is with the White Earth Band as that's where we're enrolled, and the White Earth band says our problem is with the Mille Lacs Band as our land is under their jurisdiction and that's where we should be enrolled, White Earth is some two hundred miles from our former land base, so where do we belong?

The White Earth Band has been very supportive of us as they understand the unfair situation we're in, and so has the Leech Lake Band, combined, these two bands represent 85 percent of the tribe, It seems unfair that a small three percent can overrule the wishs of the majority, where in America we're taught that the majority prevails.

Mille Lacs Band don't want us, but they want what ever Federal and state funds they can receive on our behalf, all the while operating two successful casinos.

As lawmakers of this great land I'm sure you can see the injustice in our tribal situation and not be blindsided by tribal politics and all that go with it.

We're asking your committee to introduce legislation restoring our federal recognition status as a historic North American Indian tribe, so we may have a chance at development as other tribes across the country have, as I said before, we are people too, we have a right to exist. please take a serious look at our claim as you have the power to rectify an injuctice done to our people.

Monroe Skinaway, Chairman
Sandy Lake Band of Ojibwe
4331 Cedar Ave So
Mpls, MN 55407

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

AUG 11 2006

In reply please address to:
Main Interior, Room 6513

Mr. Monroe Skinaway
4331 Cedar Ave. So.
Minneapolis, MN 55407

Dear Mr. Skinaway:

By letter dated October 25, 2005, to the Solicitor, you requested that the Department add your group, the Sandy Lake Band, to the *Federal Register* list of tribal entities. On May 30, 2006, James Cason, Associate Deputy Secretary, myself, and persons on our staff met with you concerning your request.

In the exchange of correspondence with our office and at the May 30, 2006, meeting, you have submitted a variety of materials. While the factual circumstances surrounding the Sandy Lake Band and the legal consequences of those circumstances are not entirely clear, some essential facts are clear. You submitted on May 30, 2006, the 92 names on the membership roll of the Sandy Lake Band. Seventy two of the individuals, representing over 78% of the membership, are listed as enrolled with other recognized tribes, including, White Earth, Leech Lake, Red Lake and Grand Portage.

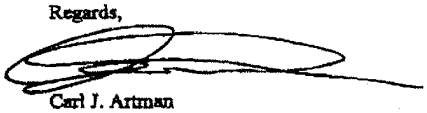
The Department's acknowledgment regulations, 25 C.F.R. Part 83, list seven mandatory criteria for establishing entitlement to be acknowledged. An acknowledgment petitioner must establish it can satisfy each of the seven criteria to be acknowledged. Criterion (f) requires that the petitioner establish that its membership is "composed principally of persons who are not members of any acknowledged North American Indian tribe." 25 C.F.R. § 83.7(f). The regulations identify certain conditions under which enrollment in another Indian tribe would not bar the members of a petitioner from seeking acknowledgment under the Department's regulations. You do not allege that any of these conditions exists. Thus, based on the facts you have provided, it is clear that the Sandy Lake Band would not as a matter of law be eligible for acknowledgment under the Department's existing regulations.

Since the Sandy Lake Band has not petitioned the Department for acknowledgment, this letter can not be construed as a determination under those regulations. It is clear, however, that if the factual representations you have made are

correct, the Sandy lake Band would not meet criterion (f)(prohibition on dual enrollment), and thus would be denied acknowledgment under the Department's existing regulations as a matter of law. Accordingly, the Department will not add the Sandy Lake Band to the *Federal Register* list of tribal entities at this time or upon this request.

In your earlier correspondence, you asked that the Department revise the 1980 legal opinion from the Office of the Field Solicitor, Twin Cities, Minnesota, based on the information you provided that you believe proves the opinion erroneous. I do not believe a further review and revision of that opinion is warranted at this time under the current circumstances.

Regards,



Carl J. Artman
Associate Solicitor - Indian Affairs

Not if you write the membership qualifications to require continuing tribal relations or descent from a relatively recent list.

83.7(f) Requires that a petitioner's members not be mostly members of an already recognized tribe.

If a majority of your group's members have never been enrolled in a federally acknowledged tribe, you only need to present a short statement saying so.

Why was this criterion included?

The Federal Acknowledgment process cannot be used to break up acknowledged tribes. Even though unrelated groups may have been put together on one reservation, they must seek Congressional action or some other route to be separated.

The 1994 regulations clarify that a group MAY be acknowledged even it its membership is composed principally of persons whose names have appeared on the rolls of, or who have been otherwise associated with, acknowledged North American Indian tribes if it meets criteria 83.7(a) - (e) and (g) and IF the group establishes:

✔ that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity;

✔ that its members do not maintain a bilateral political relationship with a federally acknowledged North American Indian tribe; and

✔ that its members have provided written confirmation of their membership in the petitioning group.

An even more detailed, technical discussion may be found in the proposed finding on the Yuchi Tribal Organization on the BAR home page, the San Juan Southern Paiute final determination and court decisions following that decision.

Individuals should be urged not to give up their membership in federally-recognized tribes because

United States Department of the Interior

OFFICE OF THE SOLICITOR

NOV 14 2002

In reply please address to:
Main Interior, Room 6456

Mr. Monroe Skinaway
HCR 3, Box 562-6
McGregor, Minnesota 55760

Dear Mr. Skinaway:

By letter dated September 16, 2002, you indicate that you are seeking to have the "federal status" of the "Sandy Lake Band" restored. You note that you live on the Sandy Lake reservation, which is under the control of the Mille Lacs Band, and that you are enrolled at White Earth.

The Indian Reorganization Act allowed a tribe whose members are scattered over two or more reservations to reorganize as a tribe or to organize as separate bands or reservations. In 1935, the Minnesota Chippewa Tribe requested reorganization in a general organization of all bands of the Minnesota Chippewas other than the Red Lake Band. The Tribe subsequently reorganized in this fashion, adopting a constitution and bylaws, approved by the Secretary of the Interior on July 24, 1936. This constitution included representation of the White Earth, Leech Lake, Fond du Lac, Bois Fort and Grand Portage Reservations, and the nonremoval Mille Lac Band of Chippewa Indians, and included provision for local autonomy through charters. Under this constitution, the "members of the Minnesota Chippewa Tribe residing on the Mille Lacs reservation and in nearby settlements" organized to manage their local affairs and obtained a charter of organization. This charter specifically includes the village of Sandy Lake and provides for representation from the Sandy Lake district. Subsequent amendments to the constitution retain this governing structure.

Over the years, the Department has advised that a separate organization of Sandy Lake residents from the Mille Lacs Band or from the Minnesota Chippewa Tribe is an internal tribal matter and is not a question for the Bureau of Indian Affairs to decide in the first instance. If your group is a separate and distinct group from that referenced in the Minnesota Chippewa constitution, it may petition under the federal acknowledgment regulations, 25 C.F.R. Part 83. Under the regulations, the group must demonstrate that it has continuously maintained its separate autonomous tribal status to be acknowledged. The regulations, however, do not apply to splinter groups of federally recognized tribes, such as the Minnesota Chippewa Tribe.
This office reviewed your submissions carefully. We find no reason to recommend that the Department modify its previously stated position.

Sincerely,

Barbara N. Coen

Barbara N. Coen

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

NOV 16 2004

Mr. Monroe Skinaway
4331 Cedar Avenue South
Minneapolis, Minnesota 55407

Dear Mr. Skinaway:

Thank you for your letter postmarked September 8, 2004, to the President. The White House received your letter on October 8, 2004, and forwarded it to the Office of Federal Acknowledgment for reply. The Office of Federal Acknowledgment is responsible for matters concerning the regulated process of groups seeking Federal acknowledgment as Indian tribes. This process is regulated under Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83).

Your letter requested an Executive Order to have "federal status restored" for the "descendants of the Sandy Lake Band" (SLB). While the President has the authority to issue Executive Orders recognizing Indian tribes, no such orders have been issued since the Executive Branch's Department established the acknowledgment regulations in 1978. The Department's process allows for a thorough review and evaluation of a group's claim(s) and evidence surrounding the group's historical circumstances and an examination of the genealogical descent from an historical tribe(s). Under 25 CFR Part 83, the Department is then able to make an objective, fact-based, and defensible decision as to whether the group has continued to exist socially and politically as an Indian tribe.

On August 25, 2004, we discussed by telephone the two routes that appear to be open to the SLB descendants to resolve their situation. One route is for the group to pursue Federal acknowledgment through the 25 CFR Part 83 administrative process, although you expressed your belief that the SLB could not meet the requirements of § 83.7(f), namely that a group's membership be composed principally of persons who are not members of a federally acknowledged Indian tribe. The second route we discussed was the possibility of Congressional legislation to clarify the group's status.

These two options still remain open to your group, and we hope that the SLB descendants consider both options in their pursuit of status clarification.

Sincerely,

R. Lee Fleming

Director, Office of Federal Acknowledgment

IN REPLY REFER TO

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

MAR 18 2005

Mr. Monroe Skinaway
4331 Cedar Avenue South
Minneapolis, Minnesota 55407

Dear Mr. Skinaway:

Thank you for your letter of February 23, 2005, to Mr. Mike Olsen, Principal Deputy Assistant Secretary – Indian Affairs, regarding a group known as the "Sandy Lake Band of Ojibwe." You also submitted a request to meet with Mr. Olsen and proposed March 21, 2005, as a date to meet.

On March 11, 2005, Mr. Olsen's office informed you that he was unable to meet with you. Subsequently, you requested to meet with Mr. James E. Cason, Associate Deputy Secretary of the Interior or myself, Mr. Pat Ragsdale, Director, Bureau of Indian Affairs (BIA). As a decision-maker in the Federal acknowledgment process, it would be inappropriate for Mr. Cason to meet with you.

As for myself, I am declining to meet with you as well. My predecessor, Mr. Brian Pogue, Director, Bureau of Indian Affairs, already advised you in his letter dated July 26, 2004, "that the relationship between the Sandy Lake and Mille Lacs Band of the Minnesota Chippewa Tribe was an 'internal matter' that needed to be resolved within the Mille Lacs Band rather than by an external office or entity." Mr. Pogue further stated,

> [I]t would be unusual for our office to reach a different conclusion or to take action contrary to the analysis and conclusions provided to you in those documents unless you were able to demonstrate why each of the determinations was incorrect or incomplete.

In addition, Mr. R. Lee Fleming, Director of the Office of Federal Acknowledgment, and the Midwest Regional Office, BIA, have communicated with you over the years advising you that the two options open to your group are to pursue 1) Federal acknowledgment through the 25 CFR Part 83 administrative process, or 2) Congressional legislation to clarify the group's status. Although you are concerned that the group's membership in federally recognized tribes may cause it to fail one of the mandatory criteria under the Federal acknowledgment regulations (83.7(f)), this option still remains open to you. Of course, Congress has broad authority in Indian affairs and is the other option that you may consider in resolving your group's status.

Should you have any questions, please feel free to contact Mr. Fleming or Ms. De Springer, Deputy Regional Director, Indian Services, Midwest Region, BIA

Sincerely,

Director, Bureau of Indian Affairs

cc: Midwest Regional Office
Office of the Solicitor

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 0 2 2005

Mr. Monroe Skinaway
4331 Cedar Avenue South
Minneapolis, Minnesota 55407

Dear Mr. Skinaway:

Thank you for your letter of March 16, 2005, to the President. The White House received your letter and forwarded it to the Office of Federal Acknowledgment (OFA) for reply. OFA received your letter on April 26, 2005, and is responsible for matters concerning the regulated process of groups seeking Federal acknowledgment as Indian tribes. This process is regulated under Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83).

In your letter, you requested "an Executive Order restoring our status as a separate and distinct tribe" for the descendants of the Sandy Lake Band (SLB). This request is that same that you presented in your letter postmarked September 8, 2004, to the President. As stated in the November 16, 2004, response:

> While the President has the authority to issue Executive Orders recognizing Indian tribes, no such orders have been issued since the Executive Branch's Department established the acknowledgment regulations in 1978. The Department's process allows for a thorough review and evaluation of a group's claim(s) and evidence surrounding the group's historical circumstances and an examination of the genealogical descent from an historical tribe(s). Under 25 CFR Part 83, the Department is then able to make an objective, fact-based, and defensible decision as to whether the group has continued to exist socially and politically as an Indian tribe.

By letter of March 18, 2005, Director of the Bureau of Indian Affairs, Mr. W. Pat Ragsdale also informed you that only two routes are open to the SLB descendants to resolve their situation: pursue Federal acknowledgment as an Indian tribe under 25 CFR Part 83 or pursue Congressional legislation to clarify the group's status. These two options still remain open to the SLB group.

Sincerely,

R. Lee Fleming

Director, Office of Federal Acknowledgment

cc: Midwest Regional Office
Office of the Solicitor

IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

MAR 18 2005

Mr. Monroe Skinaway
4331 Cedar Avenue South
Minneapolis, Minnesota 55407

Dear Mr. Skinaway:

Thank you for your letter of February 23, 2005, to Mr. Mike Olsen, Principal Deputy Assistant Secretary – Indian Affairs, regarding a group known as the "Sandy Lake Band of Ojibwe." You also submitted a request to meet with Mr. Olsen and proposed March 21, 2005, as a date to meet.

On March 11, 2005, Mr. Olsen's office informed you that he was unable to meet with you. Subsequently, you requested to meet with Mr. James E. Cason, Associate Deputy Secretary of the Interior or myself, Mr. Pat Ragsdale, Director, Bureau of Indian Affairs (BIA). As a decision-maker in the Federal acknowledgment process, it would be inappropriate for Mr. Cason to meet with you.

As for myself, I am declining to meet with you as well. My predecessor, Mr. Brian Pogue, Director, Bureau of Indian Affairs, already advised you in his letter dated July 26, 2004, "that the relationship between the Sandy Lake and Mille Lacs Band of the Minnesota Chippewa Tribe was an 'internal matter' that needed to be resolved within the Mille Lacs Band rather than by an external office or entity." Mr. Pogue further stated,

> [I]t would be unusual for our office to reach a different conclusion or to take action contrary to the analysis and conclusions provided to you in those documents unless you were able to demonstrate why each of the determinations was incorrect or incomplete.

In addition, Mr. R. Lee Fleming, Director of the Office of Federal Acknowledgment, and the Midwest Regional Office, BIA, have communicated with you over the years advising you that the two options open to your group are to pursue 1) Federal acknowledgment through the 25 CFR Part 83 administrative process, or 2) Congressional legislation to clarify the group's status. Although you are concerned that the group's membership in federally recognized tribes may cause it to fail one of the mandatory criteria under the Federal acknowledgment regulations (83.7(f)), this option still remains open to you. Of course, Congress has broad authority in Indian affairs and is the other option that you may consider in resolving your group's status.

Should you have any questions, please feel free to contact Mr. Fleming at (202) 513-7650, or Ms. De Springer, Deputy Regional Director, Indian Services, Midwest Region, BIA at (612) 713-4400.

Sincerely,

W. P. Ragsdale

Director, Bureau of Indian Affairs

cc: Midwest Regional Office
Office of the Solicitor

RESOLUTION 114-96

WHEREAS, The Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of the Minnesota Chippewa Tribe, comprised of six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth); and

WHEREAS, The Minnesota Chippewa Tribe has learned that a small group of members of the Tribe who reside at Sandy Lake are seeking to form their own separate Band; and

WHEREAS, The Minnesota Chippewa Tribe acknowledges and affirms that the Non-Removal Mille Lacs Band is the sovereign authority over the land, resources, and people of the Sandy Lake area; and

WHEREAS, The Non-Removal Mille Lacs Band has legally, fairly, and responsibly exercised its authority over all Mille Lacs Band members and resources, including the Mille Lacs Band members and resources at Sandy Lake; and

WHEREAS, In a letter from the United States Department of Interior Field Solicitor dated May 29, 1988, the position of the United States on this matter was stated as follows:

> " It is our opinion that the proper authority is the Mille Lacs Band as represented by its Reservation Business Committee. We reach this conclusion because the Mille Lacs Band is the political successor of the historic Sandy Lake Band. The original charter of organization of the Mille Lacs Band (following organization of The Minnesota Chippewa Tribe under the Indian Reorganization Act) provided that the membership of the Mille Lacs Band would consist of all Chippewa Indians permanently residing on the Mille Lacs Reservation and at, or near, the villages of Isle, Danbury, East Lake and Sand Lake. It is further provided that those Chippewa Indians who reside "on the Mille Lacs Reservation or on any lands under the jurisdiction of the Band" would be registered as Mille Lacs members."

WHEREAS, The above position was reiterated in correspondence from the United States Department of the Interior dated September 13, 1985; June 24, 1988; May 29, 1990; November 19, 1990; May 21, 1991; July 5, 1991; and June 23, 1992; and

WHEREAS, The Minnesota Chippewa Tribe recognizes that under 25 CFR Section 83.7 (f), persons already enrolled as members of a federally acknowledged Indian tribe may not receive acknowledgment as a separate Indian tribe.

NOW THEREFORE BE IT RESOLVED, That the people of Sandy Lake are members of the Minnesota Chippewa Tribe and are now and forever will be enrolled as members of the Mille Lacs Band.

BE IT FURTHER RESOLVED, That The Minnesota Chippewa Tribe considers the efforts of a few persons at Sandy Lake to undermine the sovereignty of the Non-Removal Mille Lacs Band to be inimical to the interests of the Tribe and all member Bands.

BE IT FURTHER AND FINALLY RESOLVED, That the Minnesota Chippewa Tribe opposes any attempts at administrative of legislation recognition that are now being undertaken, or that may be pursued in the future, by members of the Non-Removal Mille Lacs Band residing at Sandy Lake.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 11 For, 0 Against, 0 Silent, at a Regular Meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on February 6, 1996, at St. Paul, Minnesota.

Norman W. Deschampe

Norman W. Deschampe, President
THE MINNESOTA CHIPPEWA TRIBE

Peter J. DeFoe

Peter J. DeFoe, Secretary
THE MINNESOTA CHIPPEWA TRIBE

SANDY LAKE BAND OF OJIBWE
4331 Cedar Avenue South
Minneapolis, MN 55407
612-729-6913

May 18, 2006

Gary Frazer
Executive Director
Minnesota Chippewa Tribe

Dear Gary:

This is Monroe Skinaway again. Back in July of 2004 I requested the records of a referendum vote held for each band that rescinded the charters of Organization for each reservation.

According to the Charter of Organization for the Mille Lacs Band of Chippewa Indians, Article 9 (Amendments) says this charter shall not be revoked except by action of the Tribal Executive Committee, subject to ratification by a two thirds majority of the eligible voters of the band who shall vote in a popular referendum; B) This charter shall not be surrendered except upon petition of at least thirty percent of the eligible voters of the band, requesting the executive committee to withdraw the charter and upon ratification of said committee action to withdraw the charter by a two thirds majority of the eligible voters of the band who shall vote at a popular referendum. C.) Amendments to this charter may be adopted, subject to the approval of the executive committee, by a majority vote of the eligible voters of the band who shall vote in a popular referendum on the amendment.

The information you did send me was a vote on the revision of the Minnesota Chippewa Tribe Constitution, 1761 for and 1295 against on November 23, 1963. Even if you used the numbers for the revised constitution it still doesn't meet the threshold as prescribed in the charters.

I'm requesting again the voting referendum numbers that rescinded or amended the Charters of Organization for the Minnesota Chippewa Tribes six bands.

I'm sending the information you sent me about the Minnesota Chippewa Tribe constitution.

I hope for a timely, speedy and honest reply as to how the charters were revoked.

If you have any questions you can always reach me at 612-226-8550.

Sincerely,

Monroe Skinaway, Chairman
Sandy Lake Band of Ojibwe
4331 Cedar Avenue South
Minneapolis, MN 55407
612-729-6913 - home

The Minnesota Chippewa Tribe

September 5, 2003

Monroe Skinaway
4331 Cedar Avenue South
Minneapolis MN 55407

RE: Minnesota Chippewa Tribe Charters

Dear Mr. Skinaway:

This is in response to your request for information about the charters issued by the Tribal Executive Committee (TEC) of the Minnesota Chippewa tribe pursuant to the original Constitution and Bylaws, as approved by the Secretary of the Interior on July 24, 1936. In particular, you asked about the status of the Charter or Organization of the Mille Lacs Band of Chippewa Indinas.

Article XI of the original Constitution and Bylaws authorized "each reservation and district or community" to govern itself in local matters by obtaining from the TEC "a charter setting forth its organization and powers." Such a charter was issued "to the members of the Tribe residing on the Mille Lacs reservation and in nearby settlements."

When the Tribal constitution was revised, the "local rule" provision of the 1936 Constitution was incorporated in Articles III and IV of the Revised Constitution and Bylaws. The powers of the Reservation Business Committees are set out in Article VI, and Section 1(f) provides:

> "The powers heretofore granted to the bands by the charters issued by the Tribal Executive Committee are hereby superceded by this Article and said charters will no longer be recognized for any purposes."

In other words, the charter issued to Mille Lacs is a nullity and has had no significance since the Revised Constitution and Bylaws was approved on March 3, 1964. I hope this clarifies this matter for you.

Sincerely,

Gary S. Frazer
Executive Director

NORMAN W. DESCHAMPE, PRESIDENT
MILTON BENJAMIN, VICE PRESIDENT
GARY S. FRAZER, EXECUTIVE DIRECTOR
FRANKLIN R. HUBER, SECRETARY
DAVID C. MORRISON, SR., TREASURER

The Minnesota Chippewa Tribe

December 27, 2005

Monroe Skinaway
4331 Cedar Avenue South
Minneapolis, MN 55407

Dear Mr. Skinaway:

We are in receipt of your faxed message in which you asked for clarification on the process for band transfers within the Minnesota Chippewa Tribe.

As you may be aware, Article II of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe defines membership for the MCT and describes an appeal process for those who are rejected for enrollment. Likewise, the Minnesota Chippewa Tribe Enrollment Ordinance provides even more clear instruction on MCT enrollment and explains the procedure an applicant who has been denied enrollment by the Tribal Executive Committee (TEC) may follow to appeal that decision. However, and as we have discussed, you are already an enrolled member of the Minnesota Chippewa Tribe-White Earth Band so the appeal process as defined in Tribal law may not apply.

The TEC has approved the transfer of enrollment for members from one MCT band to another provided that both bands first approve such a request by resolution. The TEC will only consider a band transfer request after documentation of approval has been forwarded by the two bands involved. An MCT band has the authority to accept or reject, at the local level, a band transfer request made by an MCT member, and in such a case the request would not be forwarded to the TEC.

Sincerely,

Travis R. Annette
Director of Administration

February 28, 2003

Monroe Skinaway
Chairman, Sandy Lake Reservation
3052 Minnehaha Avenue South
Minneapolis, MN 55406

Dear Mr. Skinaway:

In response to your letter of February 13, 2003, the Band Assembly decided to refer you to the White Earth government body because you are an enrollee of that Ojibwe Band. We are certain that you understand that, as elected officials, we must reserve our time for issues that concern Mille Lacs Band members.

Miigwetch

Herb Weyaus
Secretary / Treasurer

cc: File

HW/smv

MILLE LACS BAND OF CHIPPEWA INDIANS
Housing Authority

June 5, 1996

Sandra Skinaway Perry
HCR 3, Box 562-6
McGregor, MN 55760

Dear Ms. Skinaway:

I am writing to respond to your letter dated June 3, 1996. I have called Carol at the Mille Lacs enrollment office to attempt to determine the enrollment status of the individuals named on the housing applications that you forwarded to my attention. I have been informed by our enrollment office that none of the individuals named on these housing applications are enrolled members of the Mille Lacs Band of Ojibwe. If you and/or others applying for housing think that this information is in error, you should contact the Mille Lacs enrollment office directly to correct your enrollment status.

As I indicated to you previously, the Mille Lacs Housing Authority only provides housing for enrolled Mille Lacs Band members. While there are probably many people who can trace some degree of "descendence" to this and other tribal entities, being an enrolled member of a tribe is very different from being a descendent. Enrollment in the Mille Lacs Band is governed by the requirements set forth in the Constitution of the Minnesota Chippewa Tribe. If you meet those requirements then you should be eligible for enrollment with one of the six Minnesota Chippewa Bands. At the current time, however, our records reflect that you and the other individuals named on these applications are not enrolled members of the Mille Lacs Band and, consequently, are not eligible for housing from the Mille Lacs Band.

Sincerely,

Anita P. Fineday

Anita Fineday
Attorney at Law

Never did get a well
in The Minnesota chippew Tribe
on Mille Lacs band.

1942
054
9559-G
1 1x IV

Whereas, there are at Sandy Lake eleven families without a well and who are required to haul and carry water a distance of two miles, and Whereas, most of the Indians are now using swamp water which may spread disease,

Now therefor be it resolved that the Indians at Sandy Lake be given a well and that any available tribal funds such as relie funds be used for this purpose.

Wm. Anywaush, President.
Tribal Executive Committee.

I hereby certify that the foregoing resolution was duly enacted at a regular meeting of the Tribal Executive Committee held in the Village of Cass Lake, Minnesota, on December 18, 19, and 20th, 1942. and a vote was cast as follows, Carried by unanimous vote.

Joseph A. Northrup, Secretary
Tribal Executive Committee.

COPY
[illegible] Ekinaway.

SANDY LAKE INDIAN RESERVATION
54130 Loon Ave.
McGregor, Minnesota 55760

Sep 14, 2003

Department of the Interior
Bureau of Indian Affairs
Office of Tribal Services
Washington, D.C. 20215

Dear Sir:

My name is Sandra Skinaway and I represent the Sandy Lake Band of Mississippi Ojibwe as Secretary/Treasurer.

In addition to that, I am a direct descendant of Chief Kah-dah-wah-be-dah, aka Chief Broken Tooth. As Chief of the Sandy Lake Band, Kah-dah-wah-be-dah was the oldest Chief on the upper Mississippi in 1828. Chief Kah-dah-wah-be-dah was in attendance at the historic and picturesque treaty of Prairie du Chien in 1825 at which, Governor Lewis Cass and General William Clark attempted to solve the boundary disputes between the Chippewa and Sioux.

As did my ancestors, I have lived on the Sandy Lake Indian Reservation my whole life with the exception of the three years that I spent serving my country in the United States Army after graduation from high school. After my honorable discharge from the United States Army, I moved back home to Sandy Lake with my young son and daughter.

Over the years, we have lived and worked without the federal services that we are entitled to such as, housing, employment, and health care from the Mille Lacs Band. We are often told that we are not eligible for enrollment and housing assistance because we are not Mille Lacs Band members. I currently live in my relative's two bedroom home with my teenage son and daughter. Because of the poverty and the lack of housing and employment opportunities for the historic Sandy Lake Band descendants, many of my family members have moved to other parts of the State of Minnesota for employment and housing opportunities. However, they still identify themselves as members of the historic Sandy Lake Band of Mississippi Ojibwe.

This situation seems very odd, since we have resided on the Sandy Lake Indian Reservation all our lives and are direct descendants of the historic Sandy Lake Band who made provisions for us through ten (10) treaties with the United States Government and ceded millions of acres of land. Our treaty and tribal history exceeds tribes are federally recognized today.

In closing, it is our intent to continue the efforts to have our federal recognition status restored as it is our duty to maintain our tribal identity; our culture and to make a better life for our children and our future generations yet to come.

Respectfully,

Sandra Skinaway

Sandra Skinaway
Secretary/Treasurer