

**TESTIMONY OF  
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DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
ON S. 514, S. 724, S. 1058 AND H.R. 1294**

**September 25, 2008**

Good afternoon, Mr. Chairman and Members of the Committee. My name is Lee Fleming and I am the Director for the Office of Federal Acknowledgment at the Department of the Interior. I am here today to provide the Administration's testimony on S. 514, the "Muscogee Nation of Florida Federal Recognition Act", S. 724, the "Little Shell Tribe of Chippewa Indians Restoration Act of 2007", S. 1058, the "Grand River Bands of Ottawa Indians of Michigan Referral Act", and H.R. 1294, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007."

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state, and local governments. Acknowledgment carries with it certain immunities and privileges, including governmental activities exempt from state and local jurisdictions and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

We recognize that under the United States Constitution, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe. But along with that authority, it is important that all parties have the opportunity to review all the information available before recognition is granted. That is why we support a recognition process that requires groups to go through the Federal acknowledgment process because it provides a deliberative uniform mechanism to review and consider groups seeking Indian tribal status.

Legislation such as S. 514, S. 724, S. 1058, and H.R. 1294 would allow these groups to bypass this process - allowing them to avoid the scrutiny to which other groups have been subjected. While legislation in Congress can be a tool to accomplish recognition, a legislative solution should be used sparingly in cases where there is an overriding reason to bypass the process. The Administration supports all groups going through the Federal acknowledgement process under 25 CFR Part 83.

The Administration believes that the Federal acknowledgment process set forth in 25 CFR Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision establishing

this important government-to-government relationship. Before the development of these regulations, the Federal government and the Department of the Interior made determinations as to which groups were Indian tribes when negotiating treaties and determining which groups could reorganize under the Indian Reorganization Act (25 U.S.C. 461). Ultimately, treaty rights litigation on the West coast, and land claims litigation on the East coast, highlighted the importance of these tribal status decisions. Thus, the Department, in 1978, recognized the need to end ad hoc decision making and adopt uniform regulations for Federal acknowledgment.

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

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

A criterion shall be 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.

Over the past year, the Department has taken several actions to expedite and clarify the Federal acknowledgment process. Some of these actions required changes to internal workload processes to eliminate backlogs and delays and others will require amendments to the regulations. Our goal is to improve the process so that all groups seeking acknowledgment can be processed and completed within a set timeframe. We look forward to working with the Congress to this end.

Since September 2007, the Department has made several decisions on petitions.

- The Department's final determination to acknowledge the Mashpee Wampanoag Tribe had become final and effective for the Department.
- In October 2007, the Department made a final determination not to acknowledge the St. Francis/Sokoki Band of Abenakis of Vermont. This determination became final and effective for the Department on October 1, 2007.
- On November 26, 2007, the Department issued two proposed findings for the Juaneno Band of Mission Indians, Achachemen Nation (Petitioner #84A), and the Juaneno Band of Mission Indians (Petitioner #84B) and published notice on December 3, 2007, starting 180-day comment periods for both of these California petitioners and interested parties. The comment period was extended until December 2, 2008.
- On January 28, 2008, the final determinations not to acknowledge the Nipmuc Nation (Hassanamisco Band) and the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians of Massachusetts became final and effective for the Department.
- On March 12, 2008, the Department issued a negative final determination on the Steilacoom Tribe of Indians.
- The Department conducted two day-long formal technical assistance meetings on April 17 and 18, 2008, for the Juaneno Petitioners #84A and #84B.
- On May 23, 2008, the Department published Guidance and Direction in the Federal Register regarding internal procedures for the Office of Federal Acknowledgment.
- On May 30, 2008, the Department published two negative proposed findings for the Biloxi, Chitimacha Confederation of Muskogeese, Inc. and the Pointe-au-Chien Indian Tribe.

Status of Petitions for Tribes Affected by the four Bills:

#### **S. 514**

S. 514, the "Muscogee Nation of Florida Federal Recognition Act", provides Federal recognition as an Indian tribe to a Florida group known as the Muscogee Nation of Florida (Petitioner #32), currently a petitioner in the Department's Federal acknowledgment process. This group submitted to the Department its letter of intent in 1978, and completed documenting its petition in 2002. Currently this group is fifth in line on the "Ready, Waiting for Active Consideration" list, thus ready for the Department to review and evaluate its evidence under the seven mandatory criteria.

## **S. 724**

S. 724, the “Little Shell Tribe of Chippewa Indians Restoration Act of 2007”, provides Federal recognition as an Indian tribe to a Montana group known as the Little Shell Tribe of Chippewa Indians of Montana (Petitioner #31), currently a petitioner in the Department’s Federal acknowledgment process. This group submitted to the Department its letter of intent in 1978, and completed documenting its petition in 1995. Currently, this group is on “Active Consideration,” and a final determination is expected early 2009.

## **S. 1058**

S. 1058, the “Grand River Bands of Ottawa Indians of Michigan Referral Act,” provides an expedited review for Federal recognition as an Indian tribe to a Michigan group known as the Grand River Bands of Ottawa Indians (Petitioner #146), currently a petitioner in the Department’s Federal acknowledgment process. This group submitted to the Department its letter of intent in 1994, and completed documenting its petition in 2007. This group is ninth in line on the “Ready, Waiting for Active Consideration” list, thus ready for the Department to review and evaluate its evidence under the seven mandatory criteria.

## **H.R. 1294**

H.R. 1294, the “Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2005,” provides Federal recognition as Indian tribes to six Virginia groups: the Chickahominy Indian Tribe, the Chickahominy Indian Tribe – Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe. These groups are currently petitioners in the Department’s Federal acknowledgment process. Under 25 CFR Part 83, these six groups have submitted letters of intent and partial documentation to petition for Federal acknowledgment as Indian tribes. Some of these groups are awaiting technical assistance reviews under the Department’s acknowledgment regulations. The purpose of the technical assistance reviews is to provide the groups with opportunities to supplement their petitions due to obvious deficiencies and significant omissions. To date, none of these petitioning groups have submitted completed documented petitions to demonstrate their ability to meet all seven mandatory criteria.

The Federal acknowledgment regulations provide a uniform mechanism and standards to review and consider groups seeking Indian tribal status. S. 514, S. 724, S. 1058, and H.R. 1294, however, allow these groups to bypass our process, thus avoiding the scrutiny to which other groups have been subjected. We look forward to working with these groups and assisting them further as they continue under the Federal acknowledgment process.

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