

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

**Before**

**Senate Committee on Indian Affairs  
Hearing on S.724  
September 25, 2008**

Chairman Dorgan, Vice Chairman Murkowski, our good friend Senator Jon Tester, and honorable members of the Senate Committee on Indian Affairs, I thank you for the opportunity to testify in support of S.724, a bill that would confirm the federal relationship between the Little Shell Tribe of Chippewa Indians of Montana and the United States, and address related issues.

My name is John Sinclair and I have the honor of serving as President of the Little Shell Tribe. I follow in the footsteps of my father and grandfather in that honor and appear before you today in the same work at which they labored – the long effort to confirm federal recognition of the Little Shell Tribe. S.724, introduced by our tireless champion Senator Tester, would accomplish this long sought goal for the Tribe. I urge the committee to act favorably on S.724. The bill is consistent with Congress' and the Department of the Interior's historical commitments to acknowledge our people and establish a land base for them. This bill is necessary since our experience with the acknowledgment process administered by the Office of Federal Acknowledgment, Bureau of Indian Affairs, shows that the Department either cannot or will not bring that process to conclusion. And the terms of S.724 show it to be a reasonable approach that would address, and thereby expedite, issues related to confirmation of the Tribe's federal status.

**THE HISTORY OF THE LITTLE SHELL TRIBE**

The Little Shell Tribe of Chippewa Indians 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 1800s. The Pembina Band was recognized by the United States in an 1863 treaty that was ratified by the Senate. *See* Treaty of October 2, 1863, 13 Stat. 667. After the treaty, some members of the Pembina Band settled on reservations in Minnesota but our ancestors followed the buffalo herds into western North Dakota and Montana, eventually settling in Montana and in the Turtle Mountains of North Dakota.

In 1892, 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. Some of Little Shell's followers moved to Montana and joined with other members of the Pembina Band who had settled in Montana; our collective Pembina ancestors came to be known as the "Little Shell Band." When our traditional means of livelihood died with the buffalo herds, our ancestors were left to eke out an existence in a number of shantytowns across Montana. We became known as "the trash-can Indian," or "the landless Indians." Forced to live in communities which did not welcome us, our people faced severe racism and discrimination throughout Montana, some of which continues today.

For one hundred years now, Congress has known of and attempted to address the plight of the Little Shell people. In 1908, Congress first appropriated funds to settle our people on a land base. 35 Stat. 84. Congress appropriated funds again in 1914 and, again, every year thereafter until 1925 – all to provide a reservation land base on which to settle the "homeless Indians in the State of Montana." The acquisition was never made and the Tribe never recognized.

In the 1920's, newspaper articles chronicled the plight of our people. Our leaders pleaded for help for the destitute Little Shell people. Tribal leader Joseph Dussome asked Congress, "Are we not entitled to a Reservation and allotments of land in our own County, just the same as other Indians are?" Two weeks later, the Department of the Interior rejected our leader's plea:

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.

Letter of Asst. Secretary Scattergood, dated December 14, 1931. Three years later, however, Congress enacted the Indian Reorganization Act [IRA], which provided a mechanism for groups of Indians like ours to organize and apply for land. In December 1935, the Commissioner of Indian Affairs took steps to organize our people under the IRA. The Commissioner proposed a form to enroll our 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.

BIA Letter, December 23, 1935. This effort resulted in the Roe Cloud Roll, named after Dr. Henry Roe Cloud, an Interior official who played a large part in the project. Once the

roll was complete, the Field Administrator clearly stated that the purpose of the roll was to settle our people and bring them under federal jurisdiction:

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 first step in the programs is to recognize those Indians of the group who may rightfully make claim of being one-half degree, which is the occasion for presenting the attached applications. The fact of these people being Indian and being entitled to the benefits intended by Congress has not been questioned.

Roe Cloud Roll applications, 1937. The Department of the Interior never fulfilled this promise. The limited resources available to acquire land were expended for tribes already recognized. In 1940, Senator James Murray requested Interior to fulfill its promise of land for the Little Shell Band. Assistant Commissioner Zimmerman responded that his office was "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." Unfortunately, the federal government's efforts to assist the Little Shell Tribe gave way during the termination era of the 1950's to the termination policy, and, as a result, the land promised for our people was never forthcoming.

#### **RECENT EXPERIENCE WITH THE OFFICE OF FEDERAL ACKNOWLEDGMENT [OFA]**

When the Department of the Interior adopted regulations establishing an administrative process to acknowledge Indian tribes in 1978, once again the Little Shell people had hope. We hoped that the Department's process would finally bring to conclusion the Tribe's long effort to achieve federal recognition. The administrative process has turned out to be just another cruel hoax on the Little Shell people. We began work on through this new process in 1978 and, *thirty years later*, it still has not been completed.

For years after its initial submission, the Tribe researched its history and community to establish the seven mandatory criteria under the regulations. We had numerous technical assistance meetings with the staff and responded to requests for additional information. Finally, nearly twenty years later in 1995, the Bureau of Indian Affairs declared that the Tribe's petition was ready for active consideration.

However, a “ready for active consideration” designation does not mean that the OFA will commence its review; it only means that you get into line. Active consideration begins only when the Bureau of Indian Affairs has time to commence active consideration. In our case, that was 1997, two years after the petition was declared ready for active. At that point, we hoped that we were at least on the road toward completion of the process. Once again, we were wrong.

On July 24, 2000, the Bureau of Indian Affairs finally issued the proposed finding on the Tribe’s petition. The proposed finding found that the Tribe had met all the seven mandatory criteria and should be recognized - but this was not the end of the process. It merely triggered the next step – which is public comment on the proposed finding and review by the Bureau of Indian Affairs of those public comments as part of its final determination.

The Tribe takes very little comfort in the favorable proposed finding. Although the Department found that the Tribe met all the mandatory criteria, the Department “encouraged” the Tribe to submit more documentation. No significant evidence was submitted in opposition to the favorable proposed finding. Unlike many other cases, neither the State of Montana nor any local government submitted adverse comments on the proposed favorable finding for the Little Shell Tribe. But the Department made clear that it preferred that the Tribe submit additional records for certain time periods before the 1930s. We took the Department’s suggestion to heart, submitting approximately 1000 pages of additional reports and appendices supported by several boxes of documentation.

We are still waiting for the Department’s final determination on the Tribe’s petition. The Director of OFA advised a federal court in June 2005 that OFA expected to issue its Final Determination on Little Shell in February 2007. See 8<sup>th</sup> Declaration of Lee Fleming, *Mashpee Wampanoag Tribal Council v. Norton*, Case No.1:01CV00111 (D.D.C.) This did not happen. Then, OFA advised the Tribe in writing to expect the commencement of active consideration on the final determination on August 1, 2007. This did not happen, either. Instead, OFA granted itself extensions, advising the Tribe to expect active consideration on the final determination to begin by August 1, 2008, with a final determination to be issued by the end of 2008. Once more, this did not happen. On July 24, 2008, the Tribe received another letter from OFA, granting itself yet one more extension. Now, we are told to expect a final determination by January 28, 2009. Of course, nothing prevents the OFA from granting itself another extension, so the Tribe has no confidence that this new deadline is any more firm than the earlier deadlines.

Over the past 30 years, the Tribe has been fortunate to have the services of the Native American Rights Fund on its petition. Without NARF’s assistance, it would have been impossible for the Tribe to participate in this protracted and expensive administrative process. NARF has spent over 3,400 attorney hours over the last fifteen years on our 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, the total cost for consultants and associated expenses over the last fifteen years exceeds \$1 million dollars.

The lengthy process also imposes an immeasurable human cost, with the recognition battle passing from one generation to the next. The demands of providing for my people without the protection of federal recognition, a protection that has been promised for one hundred years, has been daunting, to say the least. And it is just heartbreaking to think that, after all we've been through with this administrative process, the Department could at the end of day even decide not to confer federal acknowledgment, to reverse its own favorable proposed finding.

Enough is enough. It's time for Congress to step in, to accept what the Department itself found in its proposed finding – that the Little Shell Tribe is entitled to federal recognition. *It is unconscionable that nine years after it found that the Little Shell constitutes an Indian tribe, that in the face of no significant opposition to that proposed favorable finding, that the Little Shell Tribe is still waiting.* One entire generation of Little Shell people has passed away, including my own father, as we wait for administrative action and we have no confidence that the new deadline will be met.

The Constitution of the United States gives the Congress the privilege and right to recognize tribal governments. The Congress has considered the needs of the Little Shell people time and time again. Congress should not wait any longer, and should not force the Little Shell people to wait any longer, for the completion of a seemingly never ending administrative process. It's time for Congress itself to issue the final determination on the status of the Little Shell Tribe and enact S.724.

#### **THE REASONABLE AND NECESSARY TERMS OF S.724**

First and foremost, S.724 takes the final step that has been interminably delayed by the Bureau of Indian Affairs - even though it has essentially acknowledged that the Little Tribe is real and should be recognized - and that is the confirmation of federal recognition for the Tribe. This has been promised to the Tribe, both by Congress and the Department of the Interior. There is no rational reason for further delay. Since the Department does not seem capable of bringing its deliberations to an end, the Congress should do so by recognizing the Little Shell Tribe through legislation.

I must underscore that the State of Montana, affected local governments, and all recognized tribes in the State of Montana support the bill to recognize the Little Shell Tribe. The circumstances here truly are unique. The Department of the Interior has already issued a proposed favorable finding on the Tribe's petition and there is *no* government opposition to recognition of the Tribe. In this case, the enactment of federal recognition legislation only makes sense.

In addition, S.724 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 and a tribal service

area. 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 eight years after the Jena Band of Choctaw Tribe was recognized before Interior took that Tribe's cemetery and governmental offices into trust. 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 service area. Thus, even if the Department of the Interior does issue its final determination next year (which is doubtful given the Tribe's experience with OFA), the Tribe could be forced to endure many additional years in legal limbo as it struggles to establish and land base and service area.

S.724 addresses these issues. It defines a service area for the Tribe consisting of four counties where our people live. It also directs the Secretary to acquire trust title to 200 acres located within the service area to be used as a tribal land base. With these terms, the Little Shell people are put much closer to the actual delivery of federal Indian trust services and benefits.

Can any reasonable person believe that the Little Shell people haven't waited long enough? The enactment of S.724 would finally end the uncertainty regarding the status of the Little Shell people. The enactment of S.724 would finally provide for the establishment of a land base for the Little Shell people, something the Department of the Interior promised one hundred years ago. And the enactment of S.724 would provide certainty for the local governments that support recognition of the Little Shell Tribe, by defining the Tribe's service area and the location of a land base.

## **CONCLUSION**

As our history shows, the Little Shell people are persistent and patient. But I have difficulty in explaining to my people why we still remain unrecognized, even though the Department of the Interior issued a favorable proposed finding on the Tribe's petition in 2000. We have waited on the Department for one hundred years. Now it's time for Congress to act. The Little Shell people implore this committee to act favorably on S.724 and allow the bill to move forward.