

PREPARED STATEMENT

Submitted by

RON YOB, CHAIRMAN

GRAND RIVER BANDS OF OTTAWA INDIANS OF MICHIGAN

FOR THE

SENATE INDIAN AFFAIRS COMMITTEE

HEARING ON THE FEDERAL RECOGNITION PROCESS FOR INDIAN TRIBES

September 19, 2007

9:30 a.m., Room 628 Senate Dirksen Building

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 (or "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-1930s, 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 1940s and early 1950s. 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 nine months later in February 2007, just four 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 one 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 four 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 1990s. 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.

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 towards 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, 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.

*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).

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 non-recognition 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, FR)

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, FR)

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 wholly (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 Indian 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, FR) In one early 1970s 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, FR)

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.

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 United States 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 four 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 administratively 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.