

TESTIMONY OF CURTIS CHAMBERS, CHAIRMAN
BURT LAKE BAND OF OTTAWA AND CHIPPEWA INDIANS
BEFORE THE HOUSE RESOURCES COMMITTEE
JUNE 13, 2007

Good morning Mr. Chairman:

My name is Curtis Chambers and I am the Chairman of the Burt Lake or "Cheboygan" Band of Ottawa and Chippewa Indians. Thank you for holding this hearing.

I am here today because after twenty-five years of waiting for the BIA to correct its error and restore our name to the list of federally acknowledged tribes, we ran into a legal technicality under the Office of Federal Acknowledgment's Regulations. Because that technicality prohibited us from receiving a positive final determination, the BIA suggested that our only option was to come here to implore you to solve this problem.

As some of you will remember, our Tribe has been here before. In 1994, legislation to reaffirm three Michigan Tribes was pending before this Committee. There was a bill to reaffirm Little River and Little Traverse, a bill to reaffirm Pokagon, and a bill to reaffirm Burt Lake. Because those first two bills had been introduced earlier, they were ahead of Burt Lake in the legislative process. Since all three Tribes had virtually identical histories and fact patterns, and since all four tribes were supporting each other's bills, an effort was made by some of the members of the Michigan delegation, to add our Burt Lake Bill to the Little River/Little Traverse legislation on the House floor. The Little Traverse/Little River bill was coming up for a final House vote in August, just a few weeks before the House was scheduled to adjourn. While there was support in this Committee for the passage of our bill, it quickly became clear that our rider might create problems for the Little River/ Little Traverse legislation because our bill had not yet gone to hearing. As a result, the staff of this Committee, and the leadership of Little River and Little Traverse, who all supported our separate reaffirmation, asked us to pull back on our efforts and we agreed to do so with the understanding that our bill would be taken up early the next year.

Legislation to reaffirm our federal acknowledgment was marked up by this Committee in 1995, but it unfortunately failed to make it to the House floor before the Congress adjourned. This Committee then reported another Burt Lake bill in 1997, but that bill failed to muster the two-thirds majority required to pass it under suspension. That second bill failed by a mere thirty votes, because on the morning of the floor vote, the BIA announced that the legislation was not necessary, since it could resolve our acknowledgment problems within six months. Well that was ten years ago and we are still waiting. While that past legislation was not successful, I would still like to thank former Committee Chairman Don Young, as well as the bill's sponsors Congressmen Dale Kildee and Bart Stupak who all worked so hard to try and get it passed.

Since that time, we have faced obstacle after obstacle in trying to secure the same federal reaffirmation and the same federal services that the Congress has granted to Michigan's

Pokagon, Little River, Little Traverse and Lac Vieux Desert Tribes, and that past Administrations have granted to Sault Ste Marie, Grand Traverse, and the Huron Band of Potawatomi, all which have histories and fact patterns virtually identical to our own. Here is our story.

As some of you may recall, our Burt Lake or Cheboygan Band is a small treaty tribe which is located just south of the Mackinaw Bridge in Michigan. We have around 250 members. Our Tribe, along with a number of Ottawa and Chippewa Bands, signed two treaties with the United States, one in 1836 and one in 1855, and both of those Treaties were ratified by the Senate. This created a government-to-government relationship between our tribe and the United States. Because the Congress has taken no action to terminate that relationship, and because the separation of powers section of the U.S. Constitution provides that a federal agency lacks the legal authority to terminate a tribe recognized by the Congress of United States, it is and has always been our contention that we are still federally recognized. Unfortunately, for reasons that the BIA has never explained, our name has been left off of the list of federally recognized tribes and the BIA has stopped providing services to our people.

We have had a long history of problems in dealing with the BIA. Our 1836 treaty promised us a reservation, but the federal government failed to provide it. Tired of waiting, our people took their own trust annuity funds and purchased a reservation for our Band on Michigan's Burt Lake. This acquisition was made with the help of our local BIA agent. Because this was done at a time when the federal government was threatening to move all of Michigan's Indians west of the Mississippi, our federal Indian agent feared that if the U.S. took trust title to that property it might just turn around and terminate its ownership and try to move us west anyway. To address this problem, he suggested and later helped us put that land in trust with the Governor of Michigan. His theory was that this would prevent our relocation because the federal officials charged with that relocation would lack the authority to terminate our ownership of that land.

This worked well for a number of years and our people moved onto that land together and built our new tribal village. While both our Indian agent and our members thought that this property was exempt from local property taxes, our local non-Indian officials did not always agree. To our shock, one cold day in October of 1900, a group of armed men showed up in our village, announced that our property had been sold for taxes and forced us out at gun point. They then proceeded to burn our tribal village to the ground. This is not ancient history for us. Many of the parents and grandparents of our tribal elders were children at that time.

Luckily, some of our members had Indian treaty homestead land about three miles away, and the overwhelming majority of our families moved to that site together. Here they again used their own funds to rebuild our church and their homes and a new Burt Lake village was born. That area is still known as Indian Road, and members of five of our original twelve tribal families still live there today. This Indian Road property and lands located nearby is where the parents of virtually all of our senior members were born, and where the majority of our members over the age of forty spent their youth. There were twelve extended families living in our original village before it was burned, and the 1930 federal census shows that nine of those

families were living as consecutive households on Indian Road at the time of that census and that all of the people living in those households were Indian. That census also shows a number of other Burt Lake families who had settled on nearby lands within a few miles of that area. Thus, the Burn Out did not destroy our tribal life.

It took almost 11 years, but finally in 1911, the United States filed suit in the United States District Court against the man who had taken possession of our land. In its complaint, seeking the return of our lands, the U.S. advanced the theory that these lands were federal trust property which was exempt from state and local taxation because all of the money used to acquire it had come from federal trust funds. In that same complaint, the U.S. reaffirmed our federally recognized status when it stated that it was suing on behalf of the “Cheboygan band of Indians,” “which is now and was at all the times mentioned in this bill of complaint a tribe of Indians under the care, control, and guardianship of the plaintiff and said band is now and was at all times mentioned in this bill of complaint recognized by the plaintiff through its chiefs or head men which it annually elects.”

That case went on for seven years, but unfortunately it was lost in 1917. In its decision, the Court found that while the U.S. could have made the property tax exempt, it failed to do so because the U.S. Indian agent who had helped us acquire the land had mistakenly failed to place the proper tax exempt language in the deeds.

Because our people were shell shocked from all that had happened, and rightfully distrustful of our local non-Indian officials, they lived together as quietly and inconspicuously as possible. We were and still are a real Indian community. Public and church records show that as late as the end of WWII eighty percent of our members who were married, were married to other Indians, and fifty percent of our people were still speaking our traditional language to various degrees.

Being such a small community, and living in such close proximity, our people saw and communicated with each other every day. After all that they had lost, they quickly came to recognize that their most valuable asset was each other. Because our community was so close knit, our people all shared food, helped each other with funerals and in times of illness and child birth, and chopped wood for and otherwise took care of our elders. They also arranged for the placement of children with other tribal members when a family faced a crisis, provided transportation for each other and kept our local church in good repair. In short, we all worked together across family lines to do whatever it took to insure that everyone was able to survive and we avoided seeking the help of outsiders whenever possible.

Our lives also revolved around the small tribal Catholic Church which our people had rebuilt on Indian Road. This church was built with tribal labor, on land donated by a tribal member, with materials collected by tribal families. Virtually all of our elders, and most of our adult members were baptized, married and eventually buried or will be buried at that Church. In fact, sadly we still have tribal members buried there every few months. Unfortunately, while the BIA found that these same types of activities had met their political criteria in other cases, they failed to find that in our case because we did not hold meetings or elect or appoint people to

provide these services. As we explained however, we did not have to hold a lot of meetings and elect people to run our small community because we all lived next door to each other and we were together every day of the week, so people just fell into their various roles. We also pointed out that because we were so small, these activities involved a much larger percentage of our tribe than similar activities have involved in other tribes. Finally, we explained that we did not need to elect a spokesperson to deal with outsiders, because our people were trying hard to avoid formal dealings with the local government. In short, this was a small community where things were decided informally by consensus, just like we had done historically. While I realize that our community might have operated differently than larger tribes did out west, and maybe this arrangement was not contemplated by the BIA's regulations, I don't think that it is all that hard to understand.

After our Court case ended, the BIA continued to send our members to its Mt. Pleasant Indian School, but because the BIA had no real agency office in Michigan, it was not really providing any additional services to any of Michigan's treaty tribes in those years. At the time of the IRA, the treaty Tribes in Michigan were divided into two groups: those that were able to hold onto their lands, and those that had lost their lands through tax sales and forced cessions. Grand Traverse, Sault Ste. Marie, Little River, Little Traverse, Lac Vieux Desert, Gun Lake, Huron, Pokagon and Burt Lake and Grand River all fell into this second category. Of this group, every Tribe except Burt Lake and Grand River has had its federal acknowledgment reaffirmed by the United States, and Grand River, as you know, is anxiously awaiting the OFA's review of its petition.

A precondition of reorganizing under the IRA was the Tribe's communal ownership of tribal land. Unfortunately, of the eleven treaty tribes in Michigan in the mid 1930's, only three of those tribes had been able to hold on to their land and Burt Lake was not one of them. While the IRA authorized funds for the Secretary to acquire land for landless groups like Burt Lake, those appropriations were long since expended by the time the BIA came to Michigan. Despite this fact, a number of Burt Lake members and a number of the members of Michigan's other landless Bands petitioned for the IRA. While some members of our Band failed to sign the petition, no tribe had 100 percent signatures.

While some BIA staff advocated for the inclusion of the landless tribes like Burt Lake in the IRA process, the BIA staff in Washington was at a loss for what to do. One group of BIA staff advanced the idea of approving the petitions from Michigan's landless tribes in the hope that land could be acquired for them at a later date. At least one BIA person in Michigan also advanced the idea of trying to creating a super reservation for all of the landless Michigan groups in a remote area in Michigan's Upper Peninsula. Ultimately, however, the BIA officials in Washington ended up turning down the petitions of Burt Lake and the other landless Treaty Bands while approving the identical petitions of the three Michigan Treaty Tribes who had been able to maintain their land base. They did this even though the BIA still had an ongoing trust responsibility to Burt Lake and the other landless Bands.

After the IRA, the BIA simply started focusing its efforts on the three groups that it had helped to reorganize and ignored the others. This was done, even though reorganization under

the IRA is clearly not required to maintain federal acknowledgment. Many federally recognized tribes like the Navajo, the Crow and the Sisseton and Yankton Sioux, did not reorganize their governments under the IRA, yet their federal status has remained unquestioned. Nonetheless, when the list of federally recognized tribes was finally produced in the late 1970's, the names of all of those landless groups in Michigan, including Burt Lake, were not included, even though we all still had a treaty-created government-to-government relationship with the U.S.

As more time passed, and the members of Michigan's other landless Bands started to meet federally recognized Indians from other states, either in the military or at Indian schools, they started to see that they were not receiving the same treatment afforded to other federally recognized Tribes. Because many of the landless Bands in our State were so small, and therefore lacked the resources to try to deal with the federal government, they joined with people from other landless Ottawa Bands in the Northern Michigan Ottawa Association which put forth still another effort to secure those same federal services for our people. Not only did this effort fail, but the OFA actually penalized us for joining in this group effort saying it was not "Burt Lake political activity."

As I noted before, over the last thirty years, the legal status of all of the landless Michigan Treaty Tribes, except Burt Lake and Grand River, has been resolved either through Congressional legislation, Executive Order, or Administrative decision. Those Tribes with more educated members and better political connections got reaffirmed first while we had to struggle just to get our case put together and to find a lawyer who would help us. This is not a new effort for us; in fact, in the 1920's my grandfather appeared before the Congress advocating the return of some of our treaty funds and before the BIA advocating the return of our land-base, and our OFA petition has been in the works since the process was established in the mid 1970's. For well over thirty years, we have met and sent letters to the BIA asking them to prove how and when the Burt Lake Band was legally terminated. Our Congressional delegation has introduced legislation and written to the White House trying to get someone to address our plight and we have openly advocated for our petition to be read by the Office of Federal Acknowledgment.

Because of our strong history, and the fact that every member of our tribe traces directly to a person who resided in our Colonial Point Village at the time of the Burn Out in 1900 or to an Indian person who resided on or near Indian Road before the U.S. brought its case against John McGinn in 1911, we quite frankly foresaw no problems whatsoever with the OFA process. We just could not get them to read our petition. After waiting for a full 25 years, we even had to go to federal court just to get them to take up our issue.

We were therefore thrilled when, in 2000, the OFA finally announced its intent to read our materials. But to our utter shock, we were about to face still another slap in the face from the Interior Department. Here is what happened.

While we waited year after year for the BIA to review our case, and our people heard broken promise after broken promise, a number of our members became in even more desperate need of federal health services and educational assistance, so they did the only thing that they knew to do: they went to the BIA for help. When they did, the BIA Agency office quickly

explained that it had no authority to help them, but if they were simply to sign a slip of paper enrolling in the nearby Little Traverse Bay Band, they could obtain the help that they wanted right away. Little Traverse and Burt Lake are located near each other and a number of our people were eligible to join Little Traverse because one of their ancestors had married a Little Traverse member. Because the BIA was indicating that this was not a big deal and because these people were not required to move, give up their membership in Burt Lake or otherwise change their lives in any way in order to obtain these benefits, they signed the paperwork to join Little Traverse, but they continued to socialize with other Burt Lake families and attend Burt Lake functions just as if nothing had happened. This went on for some time until one day, a newly elected government at Little Traverse wrote to the Burt Lake people who had signed those pieces of paper and gave them 30 days to disenroll at Burt Lake or lose those benefits.

The Little Traverse administration took the position that because Burt Lake was arguing, as Little Traverse had done before its bill was passed, that it was still federally recognized, and because Little Traverse's constitution prohibits dual enrollment with another federally recognized tribe, it was a violation of Little Traverse law for our people to have their names on both enrollment lists. Not knowing what to do, and not being in a position to give up those health benefits and scholarships on thirty days notice, many of these people came to Burt Lake and asked to have their names deleted from our rolls with the understanding that they could re-enroll in Burt Lake after Burt Lake received its federal recognition. Not having an attorney and not wanting our members to suffer, we agreed. Unfortunately, this decision would lead us to receive a negative finding from the OFA because the same agency who had told our people that this was "no big deal" would make it into a "big deal" just a few years later.

When the OFA finally got around to reading our petition, one of the first questions that it asked was whether our Tribe had somehow been "absorbed" by Little Traverse because a number of our elders had joined that Band. We answered that question by explaining in detail why these individuals were no longer on our rolls. We also took statements from a sizable number of those families who the BIA was asking about. With the exception of a handful of dual enrolled people who had grown up having closer ties to the Little Traverse side of their family, all of those interviewed reaffirmed that they had only sought Little Traverse enrollment to be eligible for IHS services and scholarships and that they wanted to be able to return to Burt Lake. While you would think that statements like these would lead the BIA to issue a positive finding, the BIA took just the opposite approach.

When we went to the BIA and sought their advice on how to handle this situation in our petition things got very interesting very quickly. First, we were told that we should definitely avoid allowing them to put their names back on our rolls because under the BIA's regulations the Agency could not recognize a tribe which had more than a minuscule percentage of people who had been enrolled in another federally recognized tribe. A minuscule percentage for us was only one or two families because we are so small. Then, we were told that if we failed to include those names on our rolls we might have a problem getting recognized because even the BIA saw that many of these people were and are an intricate part of our Burt Lake community and far more tied to Burt Lake than they are to Little Traverse. Thus, on the advice of the BIA we decided to try to thread the regulatory needle by simply getting letters from a representative

group stating that they still considered themselves to be Burt Lake and that they wanted the right to return. While the OFA staff that we met with thought this might work, they made no guarantee and reminded us not to get too many letters or we would not be eligible under their regulations. This again was hard for us to work through because, as a small tribe of less than 250 people, even one family could constitute ten percent of our entire tribe and ten percent was about all the BIA regulations would allow. OFA Director Lee Fleming even told us that we would have been better off in the process if we had simply done what his tribe did, and passed a tribal law prohibiting these people from leaving just to get better benefits, but that is not something that we would have ever considered because we would never hurt our own members. Besides, these people were not tribe shopping. They were just trying to get prescription drugs for themselves and their children.

After spending weeks trying to figure out what to do, we ultimately decided to collect around thirty letters from Burt Lake members whose names appeared on the Little Traverse list, but when the OFA issued its final decision here is what it found. First, it agreed that a number of the people in question had joined Little Traverse just to get services. The problem, OFA found is that none of these people had really severed their ties to Burt Lake even though their names were not on the roll that we had submitted to OFA. Even though it was the BIA that told us that we could not add those names back on our list if we wanted to be reaffirmed. Second, the BIA stated that the letters that these people had signed were too speculative, because they merely asked for the right to return rather than stating that they “were returning.” This was even more outrageous since it was coming from the same people who told us not to allow them to re-add their names to our rolls, and not to allow them to state that they were definitely planning on re-enrolling, for fear of triggering the regulatory prohibition. Third, the BIA concluded that because these people were so closely tied to Burt Lake, but not on our membership list, our tribe was ineligible for federal reaffirmation, because the OFA cannot recognize “a part of a tribe.”

To its credit, the OFA then went on to say that as far as it could see Burt Lake had not become a subsidiary of Little Traverse, that these individuals clearly saw themselves as Burt Lake rather than Little Traverse. It also noted that Burt Lake Band would have had a very different case if its petition had been read before these people took the advice of the BIA’s Agency staff. Finally OFA noted that if these people had kept their names on both enrollment lists or disenrolled in Little Traverse so that their name would be exclusively on Burt Lake’s roll, Burt Lake would still have been ineligible under the regulations because a percentage of its members had once been members of another federally recognized Tribe.

The OFA then concluded its decision with the most insulting remarks of all. In short it said that Burt Lake’s problem may be one of timing. If its petition had been read before the BIA encouraged these people to sign up with Little Traverse our petition would have appeared very differently, but they had to work from the names on our list today, so we fail to make the grade. Then it went on to say that if more time had passed between the time that these people joined Little Traverse and the time that our petition was read, those people might have distanced themselves more from Burt Lake and started to identify themselves as Little Traverse, which would have helped to show that the names on our rolls were in fact our entire community at

present. In other words, if we had been forced to wait another 25 years, we might have been eligible for recognition.

This decision literally sent shock waves through our community and through the surrounding tribes. No one could believe it. Noted Indian scholars like your former chief of staff Franklin Ducheneaux and the Senate's former Chief Counsel Peter Taylor called it the most outrageous decision they had seen in 30 years.

In its turn down letter the BIA advised us that we could appeal the decision, which given its attitude and its regulations appeared to be a total waste of time, or we could go to the Congress. That is why I am here today. To say that I am angry and frustrated is an understatement. Our bill corrects all of these problems in a very simple way. It reaffirms our federal status, like this Committee attempted to do in 1994, 1995 and 1997, and allows us to keep our rolls open for a short time to allow those Little Traverse people who want to return the time to do so. So, in short, it puts both tribes back to where they would have been if our Burt Lake bill had been passed at the same time as the Little Traverse legislation. We have met with the Little Traverse chairman and with our members and former members and all agree that this is the right approach. Our attorney Ms. Marks will explain some of the legal technicalities of what happened and why, but I personally hope that our case speaks for itself. In closing I want to thank you for agreeing to hold this hearing and beg you to finally force the United States to do the right thing by passing this bill to reaffirm the government-to-government relationship that has never been terminated. Thank you.