

**TESTIMONY OF CURTIS CHAMBERS, CHAIRMAN
BURT LAKE BAND OF OTTAWA AND CHIPPEWA INDIANS
BEFORE THE HOUSE RESOURCES COMMITTEE
JULY 15, 2009**

Good Morning Mr. Chairman:

My name is Curtis Chambers and I am the Chairman of the Burt Lake Band of Ottawa and Chippewa Indians. Our traditional name is the Cheboygan Band. On behalf of myself and our members I would like to thank you for this opportunity to appear.

As some of you will remember, our Tribe has been here before. Legislation to reaffirm our federal acknowledgment was marked up by this Committee in the last Congress and in 1995, but both times it 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 2/3rds majority required to pass it under suspension. That second bill failed by a mere 30 votes and this was after the BIA announced on the morning of the floor vote that the legislation was not necessary because it could resolve all of our 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 O, former Committee Chairman and former Chairman Don Young, as well as the bills' sponsors Congressmen Dale Kildee and Bart Stupak who all worked so hard to try and get them passed.

As you know, I am here today to discuss the reaffirmation of our Tribe's present government to government relationship with the United States. I use the term reaffirmation rather than recognition because to this day, the BIA cannot provide us with any proof that our federal acknowledgment was ever terminated. Because the story that I am going to tell you is so outrageous, it is my sincere hope that after I finish you too, will see why our legislation deserves to be signed into law as soon as possible. To put my testimony in its proper perspective, I would like to start by asking each of you to take just a moment to remember what year your parents and grandparents were born, because most of what I am going to discuss happened within their lifetimes and your own.

The Burt Lake Band has always been very small. We have just over 240 members. Our homeland is just south of Michigan's Mackinaw Bridge. Our Band signed two treaties with the United States, one in 1836 and another 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.

While our 1836 treaty promised us a reservation, the federal government never got around to conveying that site. Then, shortly after that treaty was signed, voices in Washington started calling for the removal of Michigan's Indian population west of the Mississippi. Fearing that forced removal and having no faith that the U.S. would ever provide the land that it promised, our tribal members decided to pool some of the annuity payments that they had

received from our 1836 Treaty and purchase their own reservation along Michigan's Burt Lake. This was done with the help of our local federal Indian agent. Unfortunately, this is where things first started to go wrong.

Because of the federal removal calls, both our people and our local federal Indian agent feared that if the land we had just acquired was placed under the control of the United States, the federal government would simply turn around, terminate its ownership and force us to move west anyway. So, to address this problem, they came up with the idea of placing this land in trust with the Governor of Michigan. The thinking was that the U.S. removal agents had no jurisdiction over the State, so once established, our reservation could not be taken away by those charged with our removal. Things worked well for a while and our members, which then consisted of 24 households, settled in the Burt Lake village seen in the pictures that I have presented. This exclusively Indian village came to be known as Colonial Point.

Because this land ownership was unusual, it did not take long before our local non-Indian officials started trying to figure out whether this land was subject to local property taxes. One year they declared it taxable and then changed their mind and returned the money. The next year they declared it taxable and kept the money, and the next year they declared it tax exempt. This went on for years, and then one day things all fell apart.

On a cold October morning in 1900, our people, including my great grandparents, and the parents and grandparents of many of our more senior members, found themselves visited by a local doctor who told them that he had received a report that there was small pox in our village. This later proved to be nothing but a hoax. Then, the very next morning, the local sheriff and a local timber baron named John McGinn arrived in our village with a group of armed men. These armed men announced that McGinn had purchased the property at a tax sale and everyone had to get out. After my family and the other members of our tribe were evicted at gun point, with just the clothes on their backs and the few things that they could carry, our tribal village was burned to the ground. The fire was supposedly to eradicate the small pox which did not exist in the first place. This is not ancient history for us, our enrollment clerk; Loretta Parkey's father was a child at the time of the Burn Out as were the parents and grandparents of our elders.

Because our members were so tightly connected, the majority of our people moved together onto Indian homestead land that our relatives had received under our earlier treaties. This site, which was only about three miles away, is still known as Indian Road. After arriving at this new location our members again pooled their resources, rebuilt our tribal church and our tribal homes, and a new Burt Lake homeland was born. There, while still shell shocked and clearly distrustful of local non-Indian officials, our people settled in together to rebuild their lives as quietly and inconspicuously as possible. After this experience, the last thing that our leaders wanted to do was attract the attention of our local non-Indian government.

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 40 spent their youth. Remember that we started out as 12 extended families and the 1930 federal census shows that nine consecutive households on Indian Road were Indian and all 46 people

living in those households were identified as 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.

Mr. Chairman, our people have always had a strong understanding of who they are, and the Burn Out of our village cemented that attitude even more. We are and always have been a real Indian community and we can prove it. Public records confirm that as late as WWII well in excess of 80% of our members who were married were married to other Indians, and as late as WWI close to 50% of our people were still capable of speaking the tribal language to various degrees. While a number of our people did marry members of other Tribes, they still identify themselves as Burt Lake and the members of our neighboring tribes identify them as Burt Lake.

But let me continue with our story. After the Burn Out, we had some hope for justice when in 1911 the U.S. finally filed suit against John McGinn in the Federal District Court in Michigan in an effort to regain our Colonial Point lands. The theory advanced by the United States was that these lands were federal trust property which was exempt from state and local taxation because the money used to acquire them was all federal trust funds. In its complaint, the U.S. affirmed our federal status by openly stating 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.’”

A review of the case files shows that the U.S. Attorney involved, while well intended did not do a great job of arguing the case and that case was eventually lost in 1917. The Court’s decision was based exclusively on the fact the federal Indian agent who helped us acquire the property had failed to put the proper tax exempt language in the deeds that were given to the Governor. While the announcement of the Court’s decision was a second blow to our people and another reason for them to distrust local and federal officials, any lawyer will tell you that it did not terminate our government to government relationship with the United States and the statistics that I just quoted show that it did not destroy our community. Thus, after the decision, the BIA continued to send our children to BIA-funded schools and to provide the same meager assistance it was giving to the other Michigan Tribes.

Because most Michigan Tribes are small and our wars with the U.S. ended very early, the BIA never had much of a presence in Michigan between 1920 and 1970. This is probably the reason why they forgot to place our name and the names of Michigan’s other landless treaty Tribes on the list of federally acknowledged groups when that list was first started in the late 1970’s. It is also important to understand that many of the issues which arose between the end of our Court case and the time of the IRA dealt with our Treaty provisions and more times than not, our people were told by the BIA that the only way that we could address those issues was as a part of the larger group of Bands who signed that same Treaty. Thus, for this reason alone, many of our more public political efforts involved members of other Tribes as well as the majority of our Burt Lake families.

Because the BIA had no staff in Michigan, the IRA was not a well-publicized event in our state. At the time of the IRA, the treaty Tribes in Michigan were divided into two groups: those which were able to hold onto their lands, and those which had lost their lands through tax sales and forced cessions. Grand Traverse, Sault Ste. Marie, Little River, Little Traverse, Lac Vieux Desert, Gunn 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.

If you look at the actual language of the IRA you will see that it did not do what most people think that it does. In fact, Section 19 made the Act applicable to only three groups: (1) Indians who were members of federally recognized Tribes who were under federal jurisdiction; (2) Indians who descended from Tribes which were under federal jurisdiction who were, on June 1, 1934, residing within the present boundaries of any reservation; and (3) persons of ½ or more Indian blood. The Act also stated that prerequisite for IRA benefits was the communal ownership of Indian land. Because Tribes like Burt Lake had no reservation, and because the BIA was at that time taking the position that federal jurisdiction only extended over those tribes which had federal lands, our people and the other Tribes that I just mentioned were left to fall into the third category of IRA eligibility, groups of people with ½ or more Indian blood, and then if and only if that had or could reacquire communal land.

While the IRA authorized funds for the Secretary to acquire land for landless groups like Burt Lake, the appropriations were long since expended by the time the BIA came to Michigan. Thus, a Michigan Band's right to organize under the IRA became conditioned on its communal ownership of Indian Land. Unfortunately, there were only three Bands in Michigan which still had tribally owned lands, and Burt Lake was not one of them.

So, while Congress had passed some lovely words, those words were not followed by a large enough appropriation to make those land purchases. So, when the BIA's staff contacted their bosses to learn what it was that they should do in Michigan, those senior BIA officials were simply not sure how to respond. Ultimately, however, because the BIA lacked the funding to acquire land for landless groups like Burt Lake, it ultimately turned 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, even though reorganization under the IRA is clearly not required to maintain federal acknowledgment. Many federally recognized tribes like the Navajo did not reorganize their governments under the IRA yet their federal status has remained unquestioned. Nonetheless, when the list of federally recognized tribes was final 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 our people started to meet Indians from other Tribes in the military and at various timber camps, Burt Lake and the other landless Bands started to see that they were not receiving the same treatment afforded to other federally recognized Tribes. To address this problem, they picked up on the idea that there was strength in numbers and we joined with other landless Ottawa Bands in the Northern Michigan Ottawa Association which put forth 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 30 years, the legal status of all of the landless Michigan Treaty Tribes groups, 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, my grandfather appeared before the Congress advocating the return of our property in the 1920's 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 must trace 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 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.

As many of you may recall, in the 1994, three bills were pending in the Congress to reaffirm the legal status of Michigan landless tribes: one to reaffirm the federal status of the Little Traverse Bay and Little River Bands; another to reaffirm the federal status of Pokagon and a third to reaffirm the federal status of Burt Lake. All four of these tribes were supporting each other and each had the support of the other Tribes in the state. Burt Lake and Little Traverse are and have historically been located near each other and both have members who have intermarried.

Because the Little Traverse/Little River bill had been introduced first, it was ahead of Burt Lake in the legislative process. But, when the Pokagon and Little Traverse bills went to the House floor for final passage in 1994, members of the Michigan Congressional delegation

sought to place the Burt Lake bill on the Little Traverse bill as a rider since the Tribes had virtually identical histories and fact patterns. This effort met with some resistance from the House leadership because this Committee had not yet held a hearing on the Burt Lake legislation. The Committee staff made an effort to schedule something, but it was simply too late in the session to schedule even a quick hearing on our bill. So, to insure that our issue did not present any problems for the other three tribes, we agreed to pull back on our request for a rider with the understanding that our bill would be advanced separately in the next session. As a result, the Little Traverse and Little River and Pokagon bills passed and were signed into law, while the Burt Lake bill died a few weeks later at the end of the Congressional session.

This is when things went from bad to worse. The Burt Lake bill was reintroduced in the next session, reported to the floor by this Committee and that is when the BIA stuck again. When our bill came up for a suspension vote, Congressman Shays of Connecticut announced that he had been in touch with the BIA and had the BIA had told him that our bill was unnecessary because the BIA would be able to resolve Burt Lake's status in six months. This mind you was ten years ago in 1997. This statement cost us the support of a number of members and the bill was defeated under the suspension rules by a vote of 240 in favor and only 176 against.

Hoping, however, that the BIA would be true to its word, our tribe waited again for the BIA to act and again nothing happened. Finally, after more than a year had passed, Congressman Kildee, who had been contacting the BIA on a regular basis to try to make them live up to their promise, was successful in getting the BIA to place our petition on active consideration. This under the BIA's own regulations required them to issue a proposed finding in 12 months. Well those 12 months turned into years and still the BIA did nothing, so we took the next logical step, we sued the agency asking the federal court for a declaratory judgment that we had never been terminated.

As expected, the BIA defended on the grounds that it has the OFA process which has the authority to make these types of decisions and they were successful in convincing the judge to dismiss our case on the grounds that we had failed to exhaust our administrative remedies. Then, just when we were ready to appeal, the BIA finally announced its intent to start reading our petition.

This is when the BIA stuck yet again. During the course of our 25-year wait, while our people heard broken promise after broken promise, a number of our people had become even more desperate for 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. A number of our people were eligible to do this because one of their ancestors had married a Little Traverse member. Because a number of our people did not understand this to be a big deal, and because they 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.

This 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 after Burt Lake received its federal recognition. Not having an attorney and 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. Here is what happened

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. We answered that question by interviewing a sizable representative group of the people who had signed those papers joining Little Traverse and with few exceptions; they all stated that while they might have their name on Little Traverse's roll, they still considered themselves to be 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 adding these names back onto our roll 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 we would 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. 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 being a small tribe of less than 250 people even one family could constitute 10% of our entire tribe and 10% was about all the BIA regulations would allow.

After spending weeks trying to figure out what to do, we ultimately decided to collect around 30 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. 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 even though the OFA had told us not to include definitive language in the letter for fear of triggering the 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 formal subsidiary of Little Traverse, that these individuals clearly saw themselves as Burt Lake rather than Little Traverse and 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 be ineligible under the regulations because a percentage of its members had once been members of another federally recognized Tribe.

The BIA 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 different 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 interviews were conducted, those people might have distanced themselves more from Burt Lake and started to identify themselves as Little Traverse, which would have helped us get a positive finding. 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 the 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, 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 and it puts both tribes back to where they would have been if that Burt Lake rider had been added in 1994. 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.