



Chinook Indian Nation

Cathlamet, Clatsop, Lower Chinook, Wahkiakum, Willapa

TESTIMONY OF CHAIRMAN RAY GARDNER, CHINOOK NATION TRIBAL COUNCIL

BEFORE THE COMMITTEE ON NATURAL RESOURCES OF THE

U.S. HOUSE OF REPRESENTATIVES

ON H.R. 3084, CHINOOK NATION RESTORATION ACT

JULY 15TH, 2009

Taxayem, Chairman Rahall and members of the House Natural Resources Committee. My name is Ray Gardner, son of Lois Robinson, daughter of Dora D. Clark, daughter of Annie Hawks, daughter of John Hawks and Nellie Secena, John is the son of Huckswelt, or Tom Hawks, signature signer of the 1851 Tansy Point Treaty, last Full Chief of the Willapa Tribe of the Chinook Nation. I am serving my second term as chairman of the Chinook Nation Tribal Council. Prior to that I was in the Vice-Chair position for one term and one term on Council prior to that. Today, I am before you to represent the Chinook Nation in urging you to look favorably on our People and on H.R. 3084, the Chinook Nation Restoration Act. The others in our delegation are Vice-Chairman Sam Robinson, Chief and Councilmember Phil Hawks, and our counsel, Michael Mason.

The Chinook Nation is made up of five tribes, the Lower Chinook, Cathlamet, Clatsop, Wahkiakum, and Willapa. We have 2,670 enrolled members, centered in the counties listed in section 4 of H.R. 3084 as the Service Area, Pacific, Wahkiakum, Cowlitz, and Clark Counties in Washington and Clatsop and Columbia Counties in Oregon. Approximately 60% are adults and 40% are youth and children. Our people have worked hard to stay in our aboriginal territory around the Yakaitl-Wimakl, or Lower Columbia River, and Willapa Bay. Without a reservation to contribute to our well-being and self-sufficiency, most have had to move to cities throughout the region.

Brief History of the Chinook Nation

The Creator placed our People along the Yakaitl-Wimakl and Willapa Bay, where we enjoyed great prosperity and wealth, more than any people in the present United States and

Canada. Our aboriginal territory stretched from the mouth of the Columbia up to modern-day Portland and north all around Willapa Bay. In today's political terms, our lands included all of Pacific and Wahkiakum Counties, and parts of Cowlitz and Clark Counties in Washington, as well as Clatsop and part of Columbia and Multnomah Counties in Oregon. A map of Lower Chinook Lands is attached, from *The Chinook Indians: Traders of the Lower Columbia River*, R. Ruby and J. Brown (University of Oklahoma Press: 1976). We were at the center of a great trade network that extended North to Vancouver Island and the Queen Charlottes, South to California, and East to the Great Plains. Our wealth was founded on the great Chinook salmon, plentiful on the River beyond the imagination of modern people, and the great Redcedar (*Thuja plicata*), source of our homes, garments, and canoes.

We enjoyed friendly relations with the United States and its citizens, starting with the entrance of Captain Gray and his ship, *Columbia Rediviva*, into the Columbia in 1792. We promptly carried on trade with this Yankee. The next major encounter was with the Lewis & Clark Expedition in 1805. They wintered in the country of the Clatsops after traversing Kathlamet, Wahkiakum, and Chinook Country. Our people traded with them on fair terms, only to have them steal one of our canoes for the return journey. One of Wm. Clark's descendants is making arrangements to replace the canoe, showing that honor is still alive after over 200 years. Overall, the encounter was friendly, as shown by Lewis & Clark's turning over Fort Clatsop and its furnishings to Clatsop Chief Coboway on their departure for the United States and regular trade with our people up to their last days in our country. This is confirmed by Captain Lewis's journal entry of March 22d, 1806, Captain Clark's entry of that date, and their entries of March 23d, 25th, and 26th, reprinted in *The Definitive Journals of Lewis & Clark*, Volume 6, p. 444, and Volume 7, pp. 7-19, Ed. by G. Moulton (University of Nebraska Press: 1990). When Astor's Pacific Fur Company built its post at Astoria, we traded with them, until they sold the post to the Hudson's Bay Company on learning of the outbreak of the War of 1812. Our next encounter with an American expedition came in 1841, when the U.S. Exploring Expedition entered the Columbia. Without waiting for one of our pilots to guide his vessel over the Columbia Bar, Captain Hudson ran the *U.S.S. Peacock* aground. The Columbia slowly pounded the *Peacock* to pieces. This was and remains one of the most dangerous river entrances in America. A Chinook pilot guided the entire crew and officers to safety in a canoe and the ship's boats.

Soon after the United States acquired rights to the Oregon Country, its agents conducted treaties with tribes on and near the Lower Columbia. Anson Dart, Superintendent of Indian Affairs for Oregon Territory, led the treaty negotiations with our ancestors at Tansy Point near Astoria in August of 1851, which resulted in several treaties, collectively known as the Treaty of Tansy Point. The treaty with the Clatsops reserved the land between Tansy Point and the coast south of Point Adams to the tribe (the northwestern corner of the present State of Oregon). The treaty with the Wahkiakums reserved their village and rights in the ceded woodlands. The treaty with the Kathlamets reserved their largest villages and islands in the Columbia. The treaty with the Lower Chinooks and the Willapas reserved all of the land around their villages. In short, the Treaty of Tansy Point contained the vital promise that most of modern-day Pacific County and the sites of our other main villages would be our reservation in exchange for the cession of the rest of our land. The failure of the U.S. Senate to ratify our treaty was the beginning of the unjust treatment of the Chinook Nation by the United States. In 1855, at the start of his marathon treaty-making journey, Territorial Governor Stevens treated with us. He demanded that we move to the Quinault Reservation. When we said that we already had a treaty and asked

that it be followed or, at least, this new treaty leave us in our lands, Stevens angrily walked out of the treaty negotiation. He did not return and the United States did not send another treaty commissioner. This left our people confident in the belief that the Treaty of Tansy Point would be honored.

During the Allotment Period, agents of the United States set aside timber allotments for Chinook tribal members in their effort to relocate and incorporate the Chinook Nation on the Quinault Reservation. Some of our families accepted these heavily forested allotments but most were not habitable. Almost all of our people stayed in our villages on the Columbia and Willapa Bay. In 1899, the Congress passed S. 1941 to permit us to pursue litigation in the U.S. Claims Court for taking of our aboriginal lands. On May 1, 1899, 37 tribal elders signed the attorney contract for our first claims case. It took until 1914 to obtain payment.

Our people continued to adapt to the challenges of the hostile policies of the United States. In 1925, we adopted our first written constitution, years before most tribes did so under the Indian Reorganization Act. In the early 1930's, we won the *Halbert v. United States* Supreme Court case, 283 U.S. 753 (1931), and secured hundreds of on-reservation allotments as members of the Chinook Tribe on the Quinault Reservation. In 1953, we set up a nonprofit corporation, which exists to this day. Our membership numbered 979 then, as reported by BIA Agent Bitney. Just two years before termination, the State of Washington issued "blue cards" to Indian fishermen for use if challenged by fish and game wardens. The BIA certified the identity of Chinook members to the state and the state issued blue cards to all of our fishermen.

The Bureau of Indian Affairs monitored, counted, reported on, and served the Chinook Tribe continuously through several different agencies from the Treaty of Tansey Point signing until termination, as follows:

- Clatsop Plains Agency, 1851-52
- Southern Indian District Agency, 1854-56
- Western (or Coast) District Agency, 1856-62
- Chehalis Locality Agency, 1862-85
- Nisqually-Puyallup Agency, 1874-88
- Puyallup (Consolidated) Agency, 1888-1916
- Taholah Agency, 1916-30's
- Western Washington Agency, ca. 1935-50
- Portland Area Office, 1950-55

Termination of our Nation's federal tribal status came in 1954, with the Western Oregon Termination Act. Act of August 13, 1954, 25 U.S.C. Sections 691-708. Western Washington Agency Superintendent Robertson invited Chinook leaders to meetings on Public Law 280 and Termination. Because we did not have a reservation and BIA services were so poorly funded in the 1950's, there was little immediate impact of termination. We gradually came to realize that the BIA had ceased to treat us as a federally recognized tribe.

Much more information on our history during the first two centuries of the United States is found in *The Chinook Indians: Traders of the Lower Columbia River*, R. Ruby and J. Brown (University of Oklahoma Press: 1976).

In 1979, we began to research the possibility of recognition through BIA's Federal Acknowledgment Program, or FAP. Unaware of the option of a bill for Restoration, the Chinook Nation filed its Petition for Federal Acknowledgment in 1987. Four years later, the FAP responded with its "letter of obvious deficiency review". In 1994, the Chinook Nation filed responses to the FAP letter with the BIA in Washington, D.C. Then the great day came: On January 3d, 2001, Assistant Secretary for Indian Affairs Kevin Gover announced federal recognition of the Chinook Nation. Our people finally had access to health care, economic development programs, housing assistance, and the other programs and services available to members of federally recognized tribes. This measure of justice was short-lived. On the day after Independence Day, 2002, Assistant Secretary for Indian Affairs Neal McCaleb rescinded Assistant Secretary Gover's final determination of recognition for the Chinook Tribe. The last Bush Administration did this mainly because they rejected our extensive evidence of tribal government activity before 1951. They also misstated the number of Chinook people who had left our homeland, not that this is unusual for members of terminated tribes, but acknowledged that our Nation "consists mostly of non-reservation Chinook descendants." "Final Determination Declines Chinook Recognition", Assistant Secretary McCaleb Press Release of July 5th, 2002. This decision relied incorrectly on the belief that our people were only active in the tribal government on the Quinault Reservation.

Since becoming aware of the likelihood of Restoration in 2006, we have directed all of our effort to developing a restoration bill with Congressman Brian Baird. The congressman represents most of our aboriginal territory and our headquarters and understands the importance of the Chinook Nation to his region, past, present, and future. He understands the dreams of the Chinook People, for adequate health care, care for our children and youth, economic self-sufficiency, restoration of a Chinook homeland via our Reservation Plan and with a reservation, the preservation of our culture. We are grateful to Congressman Baird for introducing H.R. 3084 and giving our People hope for a future of mutual respect between the United States and the Chinook Nation.

The Chinook Nation Meets All Six Criteria For Tribal Restoration by the Congress

The Chinook Nation suffered termination at the hands of the Congress. For justice to be served, it is up to the Congress to restore the Nation to federal tribal status. There are six criteria for restoration of a tribe by the Congress, which are,

1. Ongoing, identifiable community of Indians who are members or descendants of the Tribe;
2. Located in the vicinity of the former reservation;
3. Performing self-governing functions through elected representatives or general membership meetings;
4. Current use of aboriginal language, customs, and culture;

5. Marked deterioration in socioeconomic conditions of members since termination; and
6. Socioeconomic conditions of members are more severe than in adjacent rural areas or other comparable areas within the State.

The Chinook People are well known to our neighbors and leaders of our state, satisfying the prime restoration criterion of being an ongoing, identifiable community of Indians who are members or descendants of the Tribe. Our governing councils continued throughout the contact period right down to the present day. They undertook legal actions that required discipline and coordination that could only be done by a tribal community. In the 1890's, our elders began pursuit of land claims that continued into the 1950's. In the 1920's and '30's, our leaders fought in the courts for the right to trust allotments. The Supreme Court in the *Halbert* decision acknowledged our tribal existence in 1931. Our Nation chose to incorporate in 1953, and has continued to have a corporate existence under Washington law. Every tribe that the Congress has restored did the same, pending restoration. Our Nation pursued litigation over fishing rights in the *Wahkiakum* case in the 1970's, and federal recognition of our tribal status ever since. Our Tribal Council has maintained friendly relations with neighboring tribal, state and local governments throughout the half century of termination. Support from our neighbors demonstrates our ongoing, identifiable community. Our closest neighbor, the Shoalwater Bay Indian Tribe, recently adopted a resolution of support for our Restoration bill, which is attached. So does our neighbor to the south, the Confederated Tribes of the Grand Ronde Community of Oregon. We meet regularly with our state legislators, state officials, and county commissioners. Recognition of our Nation by the United States for over a year in 2001-2002, alone should prove that we are an "ongoing, identifiable community of Indians who are members or descendants of the Tribe."

In 2002, Assistant Secretary-Indian Affairs McCaleb used the presence of Chinook members on various reservations to deny our tribal existence. The fact that agents of the United States spent over a century pushing our people onto the Quinalt Reservation and other tribes' reservations did not destroy our nation. Historic misuse of power cannot be an obstacle to restoration. The Congress has restored several tribes in a similar situation to our own that had the stubbornness to stay where the Creator put them. The tribes of Western Oregon also made treaties with the United States in 1851 that the Senate failed to ratify. The agents of the United States solemnly agreed that their people would keep their main villages along the Clackamas River, the Coos River, the Coquille River, the Siuslaw, the Umpqua, and so forth. Then they turned around and told them they had to leave their homes forever and march to distant reservations. The Army removed the Cow Creek Band of the Umpqua Tribe from Southwest Oregon to the Grand Ronde Reservation in Northwest Oregon. The Army removed the Coos Tribe, the Lower Umpqua Tribe, the Siuslaw Tribe, and the Coquille Tribe from the South Coast of Oregon to the Coast Reservation, later known as the Siletz Reservation. Some of the Cow Creek Band eluded the Army and never moved to the reservation they had had no say in selecting. Others escaped from Grand Ronde and made their way home to the South Umpqua River. More than a century later, despite the Umpqua being one of the main tribes of the Grand Ronde confederation, the Congress restored the Cow Creek Band of Umpqua to federal tribal status. Cow Creek Band of Umpqua Restoration Act, P.L. No. 97-391, 25 U.S.C. Section 712-712e. Members of the Coos Tribe, the Lower Umpqua Tribe, and the Siuslaw Tribe escaped

from the Coast Reservation and made their way back to the homeland around Coos Bay. After a period of harassment, the United States held allotments in trust for many of these families until enforcement of the Western Oregon Termination Act. Congress relented after 30 years and restored their federal tribal status in 1984, by the Coos, Lower Umpqua, and Siuslaw Restoration Act. P.L. No. 98-481, 25 U.S.C. Section 714-714f. A few of the Coquille Tribe members also escaped from the Coast Reservation, swam the broad river mouths between Oregon's central coast and the Coquille River, and stayed put in their homeland. They, too, gained trust allotments, only to lose federal status in 1954, under the same sweeping Act. Congress restored that status in 1989 with the Coquille Restoration Act. P.L. No. 101-42, 25 U.S.C. Section 715-715f.

In Nebraska, the Army tricked the Ponca Tribe into moving to Oklahoma after mistakenly including their reservation in the Great Sioux Reservation. Most of the Ponca chose to remain in northern Oklahoma. As the strange climate and diseases killed his people, however, Chief Standing Bear and his followers chose to risk all and return to their Niobrara home. They gave the Army the slip and kept one step ahead of them all the way back to Northeast Nebraska. See *United States ex rel. Standing Bear v. General Crook*, 25 F. Cas. 690 (C.C.D. Neb. 1879). Then in 1962, the Congress terminated the Northern Ponca Tribe. Their failure to follow illegitimate orders and the continued federal recognition of the more numerous Southern Ponca did not deter the Congress from passing the Ponca Restoration Act in 1990. P.L. No. 101-84, 25 U.S.C. Section 983-983h.

A small number—no more than 100--of our people are enrolled in other tribes. The presence of a minority of our members on reservations—no matter how large--is not a basis for denying federal status to the Chinook Nation. The Congress has ample precedent for restoration, even when the majority of descendants of a tribe have chosen or been forced to stay on a reservation and become members of a tribal confederation.

The Chinook Nation meets the second criterion by being located in the vicinity of the promised reservation as there is no former one. The Chinook Nation has never had a reservation because of the failure of the U.S. Senate to ratify our treaties. Congress has restored at least three bands that did not have their own reservation. The Cow Creek Band of Umpqua Indian Tribe in Southwest Oregon is the closest and most similar example to our Nation. The United States removed the Cow Creek Band of Umpqua to the Grand Ronde Reservation after promising them their own reservation in an 1851 Anson Dart treaty. Their treaty was unratified, like ours. With no former reservation, they were allowed to demonstrate their location in the aboriginal territory in the vicinity of the *promised* reservation. Congress did not require the Cow Creek Band of Umpqua to prove the impossible. Likewise, we would be judged on our staying near the reservation promised by the U.S. treaty negotiators. The United States and the Chinook Nation negotiated major reservations along the Lower Columbia River and Willapa Bay in the Tansy Point Treaties. The ancestor Tribes were to retain all of their villages. The Lower Chinook and Willapa reserved areas included most of present-day Pacific County. Treaty with Lower Chinook Band, Article 2 (August 9, 1851); Treaty with Willapa Tribe, Article 2 (August 9, 1851). To this day, our headquarters and core membership, including our Chairman, Chief, and Secretary are in Pacific County. All other Tribal Council members live within 75 miles of the county. Most Chinook Nation members live in Western Washington and Northwest Oregon. Nearly one third of Chinook Nation members live in Pacific and the other counties where our

villages were located. The rest of our members responded to termination as did members of other tribes so treated. They moved where they could find work: Olympia, Tacoma, Seattle, Portland, and other Western cities.

The Nation meets the third criterion by performing self-governing functions through its elected Tribal Council and general membership meetings. The Tribe operates through a nonprofit corporation structure, chartered in 1953, amended in 1994, and renewed in the year 2000. Tribal Council members are elected every three years and have been since termination. The Tribal Council holds regular meetings at least once per month. General membership meetings are held at least once per year. Our most recent general meeting was held on June 20th, in South Bend, Washington. The agenda included nominations for Tribal Council positions and consideration of support for the Restoration Act. The people voted overwhelmingly to support this Act and reelected the chairman and two other council members. Our Tribal Councils' decades-long work for recognition and our history of regular Tribal Council elections and actions is proof of self-government.

The fourth criterion is met through Chinook members' use of aboriginal language, customs, and culture. Our language is probably the best known in America, for lending itself to the lingua franca of trade throughout the Northwest Coast and Plateau regions, Chinook Jargon. Many of our members still speak Chinookwawa, including our Chief and Vice-Chair. One of our members is an outstanding, award-winning teacher of Chinookwawa in the employ of the Confederated Tribes of Grand Ronde, Tony Johnson. Chinookwawa was his first language and it is the first language of his children. Our customs are still very much alive. We celebrate, as did our ancestors, the First Salmon Ceremony at Chinook Cove near the mouth of the Columbia River. This year, the ceremony was held on June 19th, and was attended by nearly 200 people. We also continue the Winter Gathering at the Cathlepotle Longhouse at one of our main village sites, located on the Ridgefield National Wildlife Refuge. Members of at least a dozen other tribes join us to celebrate the return of the light in January. For these and other ceremonies, we engage in cultural fishing and hunting as we have for millennia. Our culture is alive as well in our Canoe Family, which has pulled all the way from our home along the Pacific Coast into the Straits of Georgia and Puget Sound. The Chinook People have been tenacious in continuing customs and preserving culture without the shelter of a reservation.

The fifth criterion, marked deterioration in socioeconomic conditions since termination, almost goes without saying. In 1954, the year of enactment of the Western Oregon Termination Act, our members were largely self-sufficient. They were fishermen, loggers, and millworkers. Now, constant requests for assistance from members pour into our office. We serve at least 20 tribal families from our small food bank alone. About 30% of our members locally are on food stamps or other assistance. Over half of our members lack health coverage.

The final criterion, tribal members' socioeconomic conditions are more severe than in adjacent rural areas or other comparable areas within the State, is evident. Simply compare our Nation to three neighboring tribes, the Confederated Tribes of the Chehalis Reservation, the Confederated Tribes of the Grand Ronde Community of Oregon, and the Shoalwater Bay Indian

Tribe, all within 100 miles of Chinook Nation headquarters. We have only one part-time employee and our members suffer high unemployment. The Confederated Tribes of the Chehalis to the north has some 800 enrolled members and employs over 1,000 people. They were never terminated and enjoy full employment. The Confederated Tribes of Grand Ronde to the south has some 5,200 enrolled members and employs nearly 2,000 people. As the U.S. Senate observed, 20 years after its passage, the Grand Ronde Restoration Act “provided the means for the Confederated Tribes [of Grand Ronde] to achieve the goals of cultural restoration, economic self-sufficiency, and the attainment of a standard of living equivalent to that enjoyed by other citizens of the United States . . . “ S.R. 246 (2003).

Summary of H.R. 3084 and Comparison With Prior Restoration Acts

H.R. 3084, the Chinook Nation Restoration Act, would give federal recognition to the Chinook Nation and apply all general Indian laws to the Nation. Because it will take some time to establish a reservation, the members living in the Service Area would get federal Indian services as if they lived on an Indian reservation. These include Indian Health Service funding and care, housing assistance from Housing and Urban Development and BIA, and education assistance (generally available regardless of residence on a reservation). The Service Area would be six counties, Pacific, Wahkiakum, Cowlitz, Clark Clatsop, and Columbia. In the four Washington counties in the Service Area, the bill would give the Nation immediate power to handle child custody cases under the Indian Child Welfare Act. The language is mainly taken from the Grand Ronde Restoration Act; the Indian Child Welfare Act language is from the more recent Pokagon Restoration Act.

The bill would set deadlines for the membership roll, adopting a constitution, and holding the election for the Tribal Council:

- Membership roll: 9 months after enactment of the bill
- Constitution adoption election: 1 year “ “
- Tribal Council election: 6 months after adoption of constitution

The Nation could take these steps sooner. The language tracks the Grand Ronde Restoration Act and is similar to other restoration acts, with longer times reflecting the reduced tribal government staff of BIA to work on constitution elections in recent years.

The Nation and BIA would have two years to prepare a Reservation Plan to send to Congress for it to pass a Reservation Bill. The Reservation must be within Pacific, Wahkiakum, and Cowlitz Counties. No land on the Reservation can ever be taxed by the federal, state or local governments. There would be a public process to aid in preparing the Reservation Plan. In the meantime, there is a mandatory trust acquisition provision so that BIA can take land owned by the Nation into trust at the Nation’s request in Pacific and Wahkiakum Counties. The language for the Reservation Plan comes from the Grand Ronde Restoration Act; mandatory trust land language tracks that of the Coquille Restoration Act, without the acreage limit.

The bill generally does not confirm and is neutral about hunting and fishing rights. It would confirm ceremonial fishing and hunting as the Nation customarily practices them in Pacific and Wahkiakum Counties, Washington. Congress has used neutral language like this in every tribal restoration act that mentions hunting and fishing rights. The ceremonial fishing provision is a unique part of this restoration bill, acknowledging the importance of our culture and customs.

The final section of the bill would authorize federal funding of \$2,000,000 for FY 2010, \$3,000,000 for FY 2011, and \$4,000,000 for FY 2012. This would pay for the Reservation Plan, land purchase, and supplementing the Nation's share of federal services to Tribes and our members.

In closing, the needs of the Chinook People for health care, housing, economic development, and other services is desperate. These federal services should be provided to our members just as they are to other tribes. You have it in your hands to grant our People justice that we have sought for over a century and a half. On behalf of the Chinook Nation, I urge your favorable consideration of our bill and the Committee's swift action to move it to the floor of the House of Representatives.

Thank you, Chairman and members of the Committee for hearing my testimony.