

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 2678, H.R. 1358, H.R. 3084, AND H.R. 3120**

July 15, 2009

Good morning, Mr. Chairman and Members of the Committee. My name is George Skibine. I am the Acting Principal Deputy Assistant Secretary – Indian Affairs at the Department of the Interior (Department). With me today is Lee Fleming, the Director of the Office of Federal Acknowledgment (OFA). We are here today to provide the Administration’s testimony on four separate pieces of legislation: H.R. 2678, To extend Federal recognition to the Duwamish Tribe; H.R. 1358, To reaffirm and clarify the Federal relationship of the Burt Lake Band; H.R. 3084, To restore Federal recognition to the Chinook Nation; and H.R.3120, Little Shell Tribe of Chippewa Indians Restoration Act of 2009.

The recognition of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. The Department believes that the Federal acknowledgment process allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship.

In 1978, the Department promulgated regulations for the Federal process for groups seeking acknowledgment as Indian tribes. These Departmental regulations are found at Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR part 83) “Procedures for Establishing that an American Indian Group exists as an Indian Tribe.”

To be granted Federal acknowledgment under the Department’s Part 83 regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

- (1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;
- (2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
- (3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
- (4) provide a copy of the group’s present governing document including its membership criteria;

(5) demonstrate that its membership consists of individuals who descend from an historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;

(6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

(7) demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the continued tribal existence of a group as an Indian tribe under the Part 83 regulatory process.

The Department's acknowledgment process provides the thorough and deliberate evaluation which must occur before the Department acknowledges a group's tribal status. These decisions must be fact-based, equitable, and thus legally defensible. We recognize that under the United States Constitution, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe but it is also important that all parties have the opportunity to review all the information available before recognition is granted. That is why we support the Department's administrative recognition process that requires groups to go through the Federal acknowledgment process because it provides a deliberative uniform mechanism to review and consider groups seeking Indian tribal status.

While Congress may grant recognition to Indian tribes, the Department's position is that legislative action should be used sparingly in cases where there is an overriding reason or reasons to bypass the Department's regulatory process. Three of these bills concern groups that have already received a final determination against acknowledgment by the Department. Having been denied acknowledgment as Indian tribes through the Department's regulatory process, these three groups now have turned to Congress to recognize them since there is no other avenue to obtain tribal status. Another bill concerns a group whose final determination is scheduled to be issued later this month.

H.R. 2678, "Duwamish Tribal Recognition Act"

The Department completed the acknowledgment process on the Duwamish petitioner on May 8, 2002, when the Final Determination not to acknowledge it as an Indian tribe became final and effective. The Department found that the petitioner failed to meet three of the mandatory criteria under the regulations for acknowledgment. First, the Duwamish petitioner did not provide sufficient evidence under Criterion 83.7(a) that it was identified since 1900 by non-members as an Indian entity. Second, the petitioner did not demonstrate under criterion 83.7(b) that it existed continuously as a community throughout history. Third, the petitioner did not demonstrate under criterion 83.7(c) that it exercised political influence or authority over its members throughout history.

The Final Determination found that this group descends from Duwamish individuals who married outside the Tribe and that the descendants became widely dispersed and did not interact with each other or with the historical Duwamish Tribe on the Muckleshoot, Port Madison, and other reservations. These conclusions are consistent with the holding in *United States v. Washington*, 641 F.2d 1374 (9th Circuit 1981) On May 7, 2008, the Duwamish petitioner challenged the Final Determination in court under the Administrative Procedure Act. We are defending this action, and therefore are limited in the comments we can make. The Administration cannot support H. R. 2678, but we acknowledge that Congress has authority to and may have reasons to legislatively grant recognition to this group.

H.R. 1358, “Burt Lake Band of Ottawa and Chippewa Indians Reaffirmation Act”

The Department completed the acknowledgment process on the Burt Lake Band of Ottawa and Chippewa Indians (Burt Lake Band) on January 3, 2007, when the Final Determination not to acknowledge it as an Indian tribe became final and effective. The Department found that the Burt Lake Band petitioner failed to meet three of the mandatory criteria under the regulations for acknowledgment. First, the Burt Lake Band petitioner did not provide sufficient evidence under criterion 83.7(b) that it existed continuously as a community throughout history. Second, the petitioner did not demonstrate under criterion 83.7(c) that it exercised political influence or authority over its members throughout history. Third, the petitioner did not demonstrate under 83.7(e) that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity.

Many descendants of the historical Burt Lake Band and many members of the Burt Lake Band petitioner when it first petitioned have become members of a federally recognized Indian tribe, the Little Traverse Bay Bands of Odawa Indians. The bill, as written, would recognize a group of individuals who cannot meet the membership requirements of the federally recognized Little Traverse Bay Bands of Odawa Indians. The Administration cannot support H.R. 1358, but we acknowledge that Congress may have reasons to legislatively grant recognition to this group.

H.R. 3084, “Chinook Nation Restoration Act”

The Department completed the acknowledgment process on the Chinook petitioner on July 12, 2002, when the Reconsidered Final Determination not to acknowledge it as an Indian tribe became final and effective. The Chinook petitioner’s members descend from the Lower Band of Chinook; from the various Chinookan-speaking bands; and the Clatsop Tribe, also a Chinookan-speaking group that lived historically along the lower Columbia River in Washington. The Department found that the petitioner failed to meet three of the mandatory criteria under the regulations for acknowledgment.

First, the Chinook petitioner did not provide sufficient evidence under criterion 83.7(a) that it was identified since 1900 by non-members as an Indian entity. Second, the petitioner did not demonstrate under criterion 83.7(b) that it existed continuously as a community throughout history. Third, the petitioner did not demonstrate under criterion 83.7(c) that it exercised political

influence or authority over its members throughout history. From the mid-1850's until 1951, there is insufficient evidence that the ancestors of Chinook petitioner existed as a distinct social or political entity. After 1951, Chinook descendants organized to pursue historical Chinook claims.

However, with approximately 100 years with insufficient evidence that it existed as a social or political entity, the Department concluded that the petitioner could not be considered as a continuously existing Indian tribe. Pursuant to the Department's regulations, continuous tribal existence is an essential requirement for Federal acknowledgment as an Indian tribe. The Administration cannot support H.R. 3084, but we acknowledge that Congress may have reasons to legislatively grant recognition to this group.

H. R. 3120, "Little Shell Tribe of Chippewa Indians Restoration Act"

H.R. 3120, the "Little Shell Tribe of Chippewa Indians Restoration Act of 2009" would provide Federal recognition as an Indian tribe to a Montana group known as the Little Shell Tribe of Chippewa Indians of Montana. This group, Petitioner #31 in the Department's Federal acknowledgment process, submitted its letter of intent to the Department in 1978, and completed documenting its petition in 1995. Currently, this group is on "Active Consideration", and a final determination is expected in a few weeks. The Administration recommends the Congress defer action on the bill since the Department is expected to provide a final determination in the next few weeks on the group's federal acknowledgment application

In closing, if the Congress chooses to move forward with any of these recognition bills, we would like to work with the Committee on amending language and clarifying some issues related to the Department's findings.

This concludes our prepared statement. I am happy to answer any questions the Committee may have.