TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE NATURAL RESOURCES COMMITTEE
ON H.R. 31 AND H.R. 1385

March 18, 2009

Good afternoon, Mr. Chairman, Mr. Ranking Member, and Members of the Committee. My name is George Skibine. I am currently the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior. I am here today to provide the Administration's testimony on H.R. 31, the "Lumbee Recognition Act" and H.R. 1385, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009."

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state, and local governments. Acknowledgment carries with it certain immunities and privileges, including governmental activities exempt from state and local jurisdictions and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

We recognize that under the United States Constitution, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe. But along with that authority, it is 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.

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;
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> (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;
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> (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.

H.R. 31, the "Lumbee Recognition Act"

In 1956, Congress designated Indians then "residing in Robeson and adjoining counties of North Carolina" as the "Lumbee Indians of North Carolina" in the Act of June 7, 1956 (70 Stat. 254). Congress went on to note the following:

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

In 1989, the Department's Office of the Solicitor advised that the 1956 Act forbade the federal relationship within the meaning of the acknowledgment regulations, and that the Lumbee Indians were therefore precluded from consideration for federal acknowledgment under the administrative process. Because of the 1956 Act, the Lumbee Indians have been deprived of the ability to seek Federal acknowledgment through administrative means.

There are rare circumstances when Congress should intervene and recognize a tribal group, and the case of the Lumbee Indians is one such rare case. We support H.R. 31 with amendments as discussed below.

H.R. 31 extends Federal recognition to the "Lumbee Tribe of North Carolina" and permits any other group of Indians in Robeson and adjoining counties whose members are not enrolled in the Lumbee Tribe to petition under the Department's acknowledgment regulations. The Office of Federal Acknowledgment has received letters of intent to petition from six groups that may overlap with each other. In addition, we have identified over 80 names of groups that derive from these counties and are affected by the 1956 Lumbee Act. Some of these groups claim to be

the "Lumbee Tribe". Therefore, we recommend Congress clarify the Lumbee group that would be granted recognition under this bill based on the group's current governing document and its current membership list. Not doing so could potentially expose the Federal government to unwarranted lawsuits and possibly delay the recognition process for the other groups of Indians in Robeson and adjoining counties not enrolled in the Lumbee Tribe.

Under H.R. 31, any fee land that the Lumbee seeks to convey to the United States to be held in trust shall be considered an "on-reservation" trust acquisition if the land is located within Robeson County, North Carolina. The current language in the bill implies that the Secretary has the authority to take land into trust; however, the bill does not expressly provide that authority. Section 4 of the bill should be amended to clarify that Congress intends to delegate authority to the Secretary to acquire land in trust for the Lumbee Indians.

In addition, the bill would prohibit the Lumbee Indians from conducting gaming activities under any federal law, including the Indian Gaming Regulatory Act or its corresponding regulations.

Under H.R. 31, the State of North Carolina has jurisdiction over criminal and civil offenses and actions on lands within North Carolina owned by or held in trust for the Lumbee Tribe or "any dependent Indian community of the Lumbee Tribe." The legislation, however, does not address the State's civil regulatory jurisdiction, which includes jurisdiction over zoning, and environmental regulations. Additionally, the Secretary of the Interior is authorized to accept a transfer of jurisdiction over the Lumbee from the State of North Carolina, after consulting with the Attorney General of the United States and pursuant to an agreement between the Lumbee and the State of North Carolina. Such transfer may not take effect until two years after the effective date of such agreement.

We are concerned with the provision requiring the Secretary, within two years, to verify the tribal membership and then to develop a determination of needs and budget to provide Federal services to the Lumbee group's eligible members. Under the provisions of this bill, the "Lumbee Tribe", which the Department understands includes over 40,000 members, would be eligible for benefits, privileges and immunities that are similar to those possessed by other Federally recognized Indian tribes. In our experience verifying a tribal roll is an extremely involved and complex undertaking that can take several years to resolve with much smaller tribes. While we believe there are approximately 40,000 members, we do not currently have access to the Lumbee's membership list and thus do not have the appropriate data to estimate the time to verify them nor do we know how many Lumbee members may be eligible to participate in Federal needs based programs. Moreover, H.R. 31 is silent as to the meaning of verification for inclusion on the Lumbee group's membership list roll.

In addition, section 3 may raise a problem by purporting to require the Secretary of the Interior and the Secretary of Health and Human Services to submit to the Congress a written statement of a determination of needs and budget for the Lumbee Tribe for programs, services and benefits to the Lumbee Tribe. The appropriate means for communicating to Congress a determination of needs and budget for programs administered by the Department of the Interior and the Department of Health and Human Services is the President's Budget.

Should Congress choose not to enact H.R. 31, the Department feels that at a minimum, Congress should amend the 1956 Act to afford the Lumbee Indians and all groups "residing in Robeson and adjoining counties of North Carolina" the opportunity to petition for Federal acknowledgment as an Indian tribe under the Department's regulations.

H.R. 1385
"Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009."

H.R. 1385 would provide Federal recognition as Indian tribes to six Virginia groups: the Chickahominy Indian Tribe, the Chickahominy Indian Tribe – Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, all of which are currently petitioners in the Department's Federal acknowledgment process. Under 25 CFR Part 83, these six groups have submitted letters of intent and partial documentation to petition for Federal acknowledgment as Indian tribes. Some of these groups are awaiting technical assistance reviews under the Department's acknowledgment regulations. The purpose of the technical assistance reviews is to provide the groups with opportunities to supplement their petitions due to obvious deficiencies and significant omissions. To date, none of these petitioning groups have submitted completed documented petitions to demonstrate their ability to meet all seven mandatory criteria.

The Department acknowledges the authority of Congress to recognize Indian tribes, but again, in most circumstances we prefer the uniformity and certainty provided by the existing administrative process.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.