

TESTIMONY
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
AUTHORIZATION, STANDARDS, AND PROCEDURES FOR WHETHER, HOW,
AND WHEN INDIAN TRIBES SHOULD BE NEWLY RECOGNIZED
BY THE FEDERAL GOVERNMENT: PERSPECTIVE OF THE DEPARTMENT OF THE INTERIOR

MARCH 19, 2013

Good morning Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee. My name is Kevin Washburn, and I am a member of the Chickasaw Nation of Oklahoma, and currently serve as the Assistant Secretary - Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide the Department's views on Federal acknowledgment of Indian tribes.

Implications of Federal Acknowledgment

The acknowledgment of the continued existence of another sovereign entity is one of the most solemn and important responsibilities undertaken by the Department. Federal acknowledgment permanently confirms the existence of a nation-to-nation relationship between an Indian tribe and the United States.

The decision to acknowledge an Indian tribe often involves input from a number of parties including other Indian tribes and state, and local governments. Once federally acknowledged, the tribe is generally eligible for federal services and programs and other rights as recognized by federal law. In 1994, Congress confirmed that federal agencies must not make distinctions among federally-acknowledged tribes.

Background of the Federal Acknowledgment Process

The Department's process for acknowledging an Indian tribe is set forth at 25 C.F.R. Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe." (Part 83 Process) This process provides for the Assistant Secretary to make a decision on whether to acknowledge a petitioner's nation-to-nation relationship with the United States. These regulations include seven "mandatory" criteria, by which a petitioner must demonstrate that:

- (a) It has been identified as an American Indian entity on a substantially continuous basis since 1900;
- (b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
- (c) It has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

- (d) It has provided a copy of the group's present governing document including its membership criteria;
- (e) 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;
- (f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian Tribe; and,
- (g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship.

The Department considers a criterion satisfied if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. This consideration does not mean that the Department applies a "preponderance of the evidence" standard to each petition. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the existence of a group as an Indian tribe.

The Office of Federal Acknowledgment (OFA) is located with the Office of the Assistant Secretary – Indian Affairs and makes acknowledgment recommendations to the Assistant Secretary. OFA is currently staffed with a Director, an administrative assistant, four anthropologists, four genealogists, and four historians. Generally, a team composed of one professional from each of these three disciplines reviews each petition.

Recent Actions Under the Acknowledgment Process

The Department has issued twelve decisions on acknowledgment petitions since 2009. These include five proposed findings and seven final determinations. Of these final determinations, the Department issued a positive decision acknowledging the Shinnecock Indian Nation in New York. The six negative final determinations were as follows:

- October 27, 2009 final determination not to acknowledge the Little Shell Tribe of Chippewa Indians of Montana (#31).
- March 15, 2011 final determination not to acknowledge the Juaneno Band of Mission Indians, Acjachemen Nation (#84A).
- March 15, 2011 final determination not to acknowledge the Juaneno Band of Mission Indians (#84B).
- April 21, 2011 final determination not to acknowledge the Choctaw Nation of Florida.
- March 23, 2012 final determination not to acknowledge the Central Band of Cherokee.
- September 9, 2012 final determination not to acknowledge the Brothertown Indian Nation (#67).

Since the establishment of the Part 83 Process in 1978, the Department has issued 53 final determinations and 7 reconsidered final determinations. Overall, the Department has federally recognized 17 Indian tribes and denied 34 groups.

The Department currently has 9 petitions under active consideration, and 4 petitions awaiting active consideration. In addition, 265 groups have submitted only letters of intent or partially documented petitions, and are not ready for evaluation.

In the foreseeable future, the following proposed findings may be issued:

- Southern Sierra Miwuk.
- Muscogee Nation of Florida.
- Meherrin Indian Tribe.
- Piro-Manso-Tiwa.
- Pamunkey Indian Tribe.

Recent Actions in Addition to the Acknowledgment Process

The Part 83 Process is used by the Department to acknowledge Indian tribes that “are not currently acknowledged as Indian tribes by the Department.” The Department may also reaffirm a nation-to-nation relationship with tribes by rectifying previous administrative errors by the Bureau to omit a tribe from the original Federal Register list of entities recognized and eligible to receive services from the Bureau of Indian Affairs or by resolving litigation with tribes that were erroneously terminated.

Early in the first term of President Obama’s Administration, then Assistant Secretary Echo Hawk committed to consider requests for the reaffirmation of tribal status for those tribes that were not included on previous lists of federally recognized tribes due to administrative error. After a careful review of information submitted over a period of years, Assistant Secretary Echo Hawk reaffirmed the government-to-government relationship between the United States and the Tejon Indian Tribe in December 2011. The Tejon Indian Tribe had been omitted from the 1979 list of Indian tribes due to a unilateral administrative error on the part of the United States.

In 2009, the Department, working with the Department of Justice, entered into an agreement as part of the settlement of litigation to restore the United States government-to-government relationship with the Wilton Rancheria. The Wilton Rancheria had been erroneously terminated by the United States under the California Rancheria Act of 1958, Pub. L. No. 85-671, *amended* by Pub. L. No. 88-419. The settlement agreement, and the corresponding court order, provides that the Wilton Rancheria is restored to the same status it enjoyed prior to the distribution of its trust assets, and that the Tribe is entitled to any of the benefits or services provided or performed by the United States for Indian tribes.

Principles Guiding Improvements in the Federal Acknowledgment Process

Some have criticized the Part 83 Process as expensive, inefficient, burdensome, intrusive, less than transparent and unpredictable. The Department is aware of these critiques and, as we have previously indicated, we are reviewing our existing regulations to consider ways to improve the process to address these criticisms. Based upon our review, which includes consideration of the views expressed by members of Congress, former Department officials, petitioners, subject matter experts, tribes and interested parties, we believe improvements must address certain guiding principles:

- **Transparency** – Ensuring that standards are objective and that the process is open and is easily understood by petitioning groups and interested parties.

- **Timeliness** – Moving petitions through the process, responding to requests for information, and reaching decisions as soon as possible, while ensuring that the appropriate level of review has been conducted.
- **Efficiency** – Conducting our review of petitions to maximize federal resources and to be mindful of the resources available to petitioning groups.
- **Flexibility** – Understanding the unique history of each tribal community, and avoiding the rigid application of standards that do not account for the unique histories of tribal communities.

We have created an internal workgroup that is closely examining these suggestions and developing options to improve Part 83. The workgroup is also considering processes to implement 25 U.S.C. § 473a, also known as the Alaska amendment to the Indian Reorganization Act (IRA) of 1934, which provides that groups of Indians in Alaska not recognized prior to 1936 may organize under the IRA if they satisfy certain criteria.

The Department is working toward a goal of distributing a discussion draft of the Part 83 regulation this Spring. We plan to make the discussion draft available to the public for comment, to consult with federally recognized tribes and to meet with non-federally recognized groups for their input. Following this first round of consultation and public input, we will further revise the draft to address comments received and then prepare a proposed rule for publication in the Federal Register. This will open a second round of consultation and the formal comment period to allow for further refining of the regulations prior to publication as a final rule. The timing for publication of a final rule depends upon the volume and complexity of comments and revisions necessary to address those comments, but our ultimate goal is to have a final rule published in 2014.

Conclusion

I would like to thank you for the opportunity to provide my statement on the federal acknowledgment process. I will be happy to answer any questions the Subcommittee may have.