TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON S. 437 AND S. 480

June 21, 2006

Good morning, Mr. Chairman and Members of the Committee. My name is Lee Fleming and I am the Director for the Office of Federal Acknowledgment at the Department of the Interior. I am here today to provide the Administration's testimony on S. 437, the "Grand River Band of Ottawa Indians of Michigan Referral Act" and S. 480, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2005."

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. Acknowledgment carries with it certain immunities and privileges, including exemptions from state and local jurisdictions and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

The Department recognizes that under the United States Constitution Indian Commerce Clause, 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 the Department of the Interior supports a recognition process that requires groups go through the Federal acknowledgment process because it provides a deliberative uniform mechanism to review and consider groups seeking Indian tribal status. Legislation such as S. 437 and S. 480 would allow these groups to bypass this process - allowing them to avoid the scrutiny to which other groups have been subjected. While legislation in Congress can be a tool to accomplish this goal, a legislative solution should be used sparingly in cases where there is an overriding reason to bypass the process.

Interior strongly supports all groups going through the Federal acknowledgement process under 25 CFR Part 83. The Department believes that the Federal acknowledgment process set forth in 25 CFR Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship. Before the development of these regulations, the Federal government and the Department of the Interior made determinations as to which groups were Indian tribes when negotiating treaties and determining which groups could reorganize under the Indian Reorganization Act (25 U.S.C. 461). Ultimately, treaty rights litigation on the West coast, and land claims litigation on the East coast,

highlighted the importance of these tribal status decisions. Thus, the Department, in 1978, recognized the need to end *ad hoc* decision making and adopt uniform regulations for Federal acknowledgment.

Under the Department's 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;
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> (4) provide a copy of the group's present governing document including its membership criteria;
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> (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. Currently, the Department's workload of 19 groups seeking Federal acknowledgment consists of 10 petitions on "Active Consideration" and 9 petitions on the "Ready, Waiting for Active Consideration" lists.

S. 437

The Grand River Band of Ottawa Indians (Petitioner #146) and another petitioning group, the Burt Lake Band of Ottawa and Chippewa Indians, Inc. (Petitioner #101) both are affected by the timing of deadlines for the distribution of judgment funds under Public Law 105-143, the Michigan Indian Land Claims Settlement Act (Settlement Act). Both groups have applied for federal acknowledgment under 25 CFR Part 83. The Grand River Band of Ottawa Indians, which would receive recognition under S. 437, has not submitted a complete documented petition demonstrating its ability to meet all seven mandatory criteria. The group did submit

partial documentation in December 2000 and received a technical assistance review letter from the Office of Federal Acknowledgment in January 2005. The purpose of the technical assistance review is to provide the group with opportunity to supplement its petition due to obvious deficiencies and significant omissions. As of last week, the Grand River Band of Ottawa Indians submitted additional documentation in response to the technical assistance review letter.

Under Section 110 of the Settlement Act, if the Grand River Band of Ottawa Indians or the Burt Lake Band of Ottawa and Chippewa Indians, Inc. are acknowledged before December 15, 2006, each could receive a significant lump sum from the judgment fund, in excess of $4.4 million, provided that the group and its membership meet the other eligibility criteria set forth under the Settlement Act. If no new tribes are recognized before that date, the money is instead distributed per capita to the Indians on the descendant roll. The Secretary would have 90 days to segregate the funds and to deposit those funds into a separate account established in the group's name.

Section 205 of S. 437 provides that:

> Notwithstanding section 110 of the Michigan Indian Land Claims Settlement Act (111 Stat. 2663), effective beginning on the date of enactment of this Act, any funds set aside by the Secretary for use by the Tribe shall be made available to the Tribe.

Under S. 437 and the Settlement Act, funds are not set aside for the Grand River Band of Ottawa Indians until they are recognized. Although not clear, we interpret section 205 of S. 437 to mean that if the Grand River Band is acknowledged prior to December 15, 2006, any funds set aside for them under section 110 of the Settlement Act would not be subject to plans approved in accordance with the Settlement Act.

We do not support Section 205 because it takes away the membership's right to participate in the development of the use and distribution plan for the judgment funds. If S. 437 is enacted, we suggest that section 205 be amended as follows:

> Notwithstanding section 105 of the Michigan Indian Land Claims Settlement Act (111 Stat. 2663), the Grand River Band shall have one year from the date of its federal recognition to submit a plan to the Secretary for the use and distribution of any funds it receives under section 110 of the Michigan Indian Land Claims Settlement Act.

The Department also has concerns over the three different membership lists referenced in Section 102 and Section 202. It is unclear why three different lists would be required. In addition, S. 437 appears to be ambiguous concerning the nature and extent of jurisdiction, and possible conflicts with treaty rights of other federally recognized tribes.

The Department would like to work with the Committee in order to find an equitable solution to all parties connected to the Settlement Act.

S. 480

S. 480, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2005," provides 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.

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. As stated above, the purpose of the technical assistance review 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 demonstrating their ability to meet all seven mandatory criteria.

The Federal acknowledgment regulations provide a uniform mechanism to review and consider groups seeking Indian tribal status. S. 480 and S. 437, however, allow these groups to bypass these standards – allowing them to avoid the scrutiny to which other groups have been subjected. We look forward to working with these groups and assisting them further as they continue under the Federal acknowledgment process.

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