

**TESTIMONY OF NEAL A. MCCALED**  
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**U.S. DEPARTMENT OF THE INTERIOR**  
**AT THE HEARING**  
**BEFORE THE**  
**SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES**  
**AND REGULATORY AFFAIRS OF THE COMMITTEE ON GOVERNMENT REFORM**  
**U.S. HOUSE OF REPRESENTATIVES**  
**ON**  
**THE GAO RECOMMENDATIONS**  
**AND THE**  
**FEDERAL ACKNOWLEDGMENT PROCESS**

**February 7, 2002**

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to speak on behalf of the Department of the Interior (Department) about the findings and recommendations of the General Accounting Office (GAO) following its year long review of the Federal acknowledgment process. In November 2001, the GAO issued its report entitled "Indian Issues: Improvements Needed in [the] Tribal Recognition Process" (Report).

**BACKGROUND**

The Federal acknowledgment of an Indian tribe, which has inherent sovereignty and is entitled to a sovereign-to-sovereign relationship with the United States, is a serious decision for the Department and the Federal Government. It is important that a thorough and deliberate evaluation occur before we acknowledge a group's tribal status, which carries with it certain immunities and privileges. These decisions must be fact-based, equitable, and thus defensible. The existing criteria should not be diluted in an attempt to quicken the pace of the process.

The Branch of Acknowledgment and Research (BAR), as part of the Bureau of Indian Affairs Office of Tribal Services, implements 25 CFR Part 83, *Procedures for Establishing that an American Indian Group Exists*

*as an Indian Tribe*. The acknowledgment process is the executive branch's administrative process by which groups are given Federal recognition as Indian tribes and which makes them eligible to receive services provided to Indians. The BAR makes recommendations to the Assistant Secretary - Indian Affairs who acknowledges tribal existence and establishes a sovereign-to-sovereign relationship.

By applying anthropological, genealogical and historical research methods, the BAR reviews and evaluates petitions for Federal acknowledgment of tribes. The BAR makes recommendations for proposed findings and final determinations to the Assistant Secretary - Indian Affairs, consults with petitioners and third parties, provides copies of the regulations and guidelines, prepares technical assistance review letters, maintains petitions and administrative correspondence files, and conducts special research projects for the Department. The BAR also performs other administrative duties which include maintaining lists of petitioners and responding to appeals, litigation, and Freedom of Information Act requests.

### **THE GAO RECOMMENDATIONS**

In its Report, the GAO recommended that Federal acknowledgment decisions made in the regulatory process of the Department be more (1) predictable and (2) timely. We concurred with these two general recommendations. The GAO accepted the existence of an acknowledgment process within the Department, and suggested that improvements be made to that process. In our October 2001 response to the GAO draft recommendations, we provided a detailed response which outlined the steps the Bureau of Indian Affairs (BIA) will take in order to analyze the resources required for this function and to develop strategic action plans for implementing specific improvements in this process. We stated that these plans would take six months to develop, so we have not yet completed the planning process.

More specifically, the Report recommended that the Department: (1) establish new Government Performance Results Act (GPRA) goals "to improve program performance;" (2) "provide a clearer understanding of the basis used in recognition decisions by developing and using transparent guidelines that help interpret key aspects of the criteria and supporting evidence used in federal recognition decisions," and (3) "develop a strategy that identifies how to improve the responsiveness of the process for federal recognition."

## **COMMENTS**

During my confirmation hearing, I was asked my opinion concerning the Federal acknowledgment process. I have been working within the Department and with the BIA since my confirmation in coming to some conclusions about the concerns that Tribal leadership, state governments, petitioning groups and others had shared with me about the process when I assumed the Assistant Secretary's position. These concerns included:

- (1) identifying the impediments to the acknowledgment process;
- (2) identifying ways to improve the process from within the Department; and 3) identifying and implementing solutions for improving the process which would be equitable to all petitioners and interested parties, while maintaining the integrity of the process.

The Report confirms that an important part of the solution is to increase the staff and resources devoted to reviewing acknowledgment requests. We all must look at the need for staffing and resources that certain bills have proposed for an alternative acknowledgment process. The workload of the Branch of Acknowledgment and Research (BAR), including the number of petitions, FOIA requests, decisions, appeals, and litigation, has escalated in the past 10 years, cancelling out the improved efficiency of the process resulting from revisions to the regulations in 1994 and from internal changes in 2000.

## **ACTIONS TAKEN BY THE BIA**

- *Develop a Strategy That Identifies How to Improve the Responsiveness of the Process for Federal Recognition*

By mid-April 2002, we will provide a strategic plan that includes an analysis of the acknowledgment workload, prepare a needs assessment, and develop a recommendation for staffing needs that will result in more timely decisions.

- *Increase the Human Resources within the BAR*

The Department has held several meetings to explore ways to increase the productivity of BAR and

maintain the integrity of the Federal acknowledgment process. Our first concern is the lack of human resources and how it affects the speed of evaluating the petitions and the quality of the research. Currently, the BAR has seven researchers on their nine person staff who perform this function.

To maintain the confidence of the public in the acknowledgment decisions, petition documentation must be evaluated carefully under the regulations at 25 CFR Part 83. The BIA must maintain objectivity in the evaluation of petitions. It does not assume that the submissions and claims are accurate. An interdisciplinary approach is taken on each petition. A research team representing the disciplines of cultural anthropology, genealogy, and history is assigned to each petition.

I would also like to mention that the Department is reviewing a proposal from the BIA to restructure the Office of Tribal Services and make the BAR a separate and distinct division within that Office.

- *GPRA Goals*

The BIA has taken steps to revise GPRA goals for the acknowledgment process. In December, the BIA participated in the Departmental GPRA workgroup which will assist in establishing goals for the Department and its Bureaus, Offices, Divisions, and Branches. The BIA expects to establish these revised goals in late spring of 2002.

- *Provide a Clearer Understanding of the Basis Used in Recognition Decisions by Developing and Using Transparent Guidelines That Help Interpret Key Aspects of the Criteria and Supporting Evidence Used in Federal Recognition Decisions*

We believe that prior acknowledgment decisions, technical assistance meetings, as well as earlier court findings and statutes provide guidance to petitioners, interested parties, the BIA staff, and the Department's decision makers. We agree that precedents can and should be made more readily available.

By mid-April 2002, we will have developed a plan to make these precedents more accessible and to provide clearer guidelines to the regulations; thus ensuring consistency and improving public understanding of acknowledgment decisions. We included a number of steps within the GAO response that we will consider in the development of this plan.

- *Other Avenues to Improve Responsiveness*

We are looking at alleviating other impacts on the process (1) by developing administrative changes; (2) by considering legislation establishing criteria, standards, and a sunset rule; (3) by proposing amendments legislative language to make petition materials publicly available; and (4) by addressing internal BIA management issues.

## **CONCLUSION**

Thank you for the opportunity to testify on this issue. I will be happy to answer any questions you may have.