

**TESTIMONY OF  
KEVIN WASHBURN  
ASSISTANT SECRETARY FOR INDIAN AFFAIRS  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
ON  
S. 1132, S. 161, and S. 1074**

**OCTOBER 30, 2013**

Good afternoon Madam Chair Cantwell, Vice-Chairman Barrasso and members of the Committee. My name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide the Administration's testimony on three legislative bills that would federally recognize several groups that are seeking, or have sought, or are precluded from seeking federal recognition under the Department's regulations at 25 C.F.R. Part 83: S.1132, the "Lumbee Recognition Act", S.1074, the "Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013," and S.161, the "Little Shell Tribe of Chippewa Indians Restoration Act of 2013."

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities of the United States. Under the United States Constitution, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe. 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 recognizes certain legal rights under federal law.

We note that the authority to acknowledge a tribe has been delegated to the Secretary of the Interior to act in appropriate cases. As the Committee is aware, the process has been subject to criticism over the years. 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.

This past summer, the Department released a discussion draft on potential revisions to the Part 83 regulation. We received numerous helpful comments. We are working through comments received and plan to proceed with 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 hope is to have a final rule published in 2014.

While the Department's process is a rigorous one that we hope to further improve, we also recognize that it is sometimes appropriate for Congress to engage in recognition of Indian tribes. Thus, we are happy to provide our views on the individual bills under consideration.

### **S.1132, 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.

Given that it is Congress that has specifically addressed the Lumbee Indians on a previous occasion and has barred Interior from undertaking this review, only Congress can take up the matter of federal recognition for the Lumbee Indians. We support S.1132 with amendments as discussed below.

S.1132 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 S.1132, 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 S.1132, 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 over 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, S.1132 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 for the Lumbee Tribe for programs, services and benefits to the Lumbee Tribe. The appropriate means for communicating to Congress a determination of needs for programs administered by the Department of the Interior and the Department of Health and Human Services is the President’s Budget. Finally, the Department notices that some text in S.1132 may have been inadvertently omitted. In 2009, H.R. 31, an almost identical “Lumbee Recognition Act,” included several passages of “Whereas,” language in Sec. 2 (3) after “clauses:” that is not in the current S.1132.

### **S. 161, the “Little Shell Tribe of Chippewa Indians Restoration Act of 2013”**

S. 161, the Little Shell Tribe of Chippewa Indians Restoration Act of 2013 would acknowledge 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. A Determination against the federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana was issued on October 27, 2009, and published in the Federal Register on November 3, 2009, 74 Fed Reg. 56861. The decision is not final and effective for the Department because the Little Shell Tribe filed a request for reconsideration before the Interior Board of Indian Appeals (IBIA) on February 1, 2010. On June 12, 2013, the IBIA affirmed the Determination against acknowledgment and referred issues to the Secretary. On September 16, 2013, the Secretary referred those issues to the Assistant Secretary as possible grounds for reconsideration of the affirmed Determination. The current deadline for reconsideration of these matters is 120 days from September 16, 2013. The Little Shell petitioner also requested that the Department suspend reconsideration of the petitioner pending the enactment of revised acknowledgment regulations. These requests are under review.

As we noted above, under the United States Constitution, Congress has the authority to recognize American Indian groups as Indian tribes with a government-to-government relationship with the United States. For this reason, we do not oppose enactment of S. 161.

### **S.1074, “Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013”**

S.1074 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.

Given that we are awaiting more information and have not concluded our own review as to the merits of recognition for these groups, we have not developed views on the merits of Congressional recognition in this instance.

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