FEDERAL RECOGNITION OF INDIAN TRIBES

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 2549

A BILL TO ESTABLISH ADMINISTRATION PROCEDURES TO EXTEND FEDERAL RECOGNITION TO CERTAIN INDIAN GROUPS

H.R. 4462

A BILL TO PROVIDE FOR ADMINISTRATIVE PROCEDURES TO EXTEND FEDERAL RECOGNITION TO CERTAIN INDIAN GROUPS, AND FOR OTHER PURPOSES

H.R. 4709

A BILL TO MAKE CERTAIN TECHNICAL CORRECTIONS, AND FOR OTHER PURPOSES

JULY 22, 1994—WASHINGTON, DC

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APPENDIX

July 22, 1994

FEDERAL RECOGNITION OF INDIAN TRIBES

FRIDAY, JULY 22, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 9:45 a.m. in room 1324, Longworth House Office Building, Hon. Bill Richardson (chairman of the subcommittee) presiding.

Mr. RICHARDSON. Today we will be taking testimony on H.R. 2549 and H.R. 4462, which are bills to establish administrative procedures to recognize Indian tribes. In this hearing, we will seek to find out whether the current system of recognizing Indian tribes in the BIA is sufficient, whether we need a new statute which keeps the acknowledgment process in the BIA, or whether we need a new separate commission to recognize tribes. We will also take testimony on H.R. 4709, a bill that makes technical corrections in restoring Indian laws.

I ask all witnesses to summarize their statements. Your full written statement will be made part of the record which will be open for 2 weeks. I would ask unanimous consent that the bills, backgrounds, and section-by-section analyses be made a part of the record.

[The information follows:]

I

103D CONGRESS
1ST SESSION

H. R. 2549

To establish administrative procedures to extend Federal recognition to certain Indian groups.

IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1993

Mr. FALEOMAVAEGA (for himself and Mr. ABERCROMBIE) introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To establish administrative procedures to extend Federal recognition to certain Indian groups.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

For purposes of this Act:

(1) The term "Assistant Secretary" means the Assistant Secretary of the Interior for Indian Affairs.

(2) The term "autonomous" means having its own tribal council, internal process, or other organizational mechanism which the Indian group has used

as its own means of making decisions independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the culture and social organization of that Indian group.

(3) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(4) The term "community" means any people living within such a reasonable proximity as to allow group interaction and a maintenance of tribal relations.

(5) The term "continuously" means extending from generation to generation throughout the Indian group's history essentially without interruption.

(6) The term "Department" means the Department of the Interior.

(7) The term "historical" means dating back to the earliest documented contact between—

(A) the aboriginal Indian group from which the petitioners descended; and

(B) citizens or officials of the United States, colonial or territorial governments, or if relevant, citizens and officials of foreign governments from which the United States acquired territory.

(8) The term "Indian group" means any Indian entity that—

(A) is located within any of the States of the United States; and

(B) is not recognized by the Secretary of the Interior to be an Indian tribe.

(9) The term "Indian tribe" means any Indian entity that—

(A) is located within any of the States of the United States; and

(B) is recognized by the Secretary of the Interior to be an Indian tribe.

(10) The term "Indian tribe acknowledgment regulations" means part 83 of title 25, Code of Federal Regulations and former part 54 of title 25, Code of Federal Regulations.

(11) The term "indigenous" means native to the area that constitutes the continental United States in that at least part of the group's aboriginal range extended into what is now the area that constitutes the continental United States.

(12) The term "member of an Indian group" means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

(13) The term "member of an Indian tribe" means an individual who—

(A) meets the membership requirements of the Indian tribe, as set forth in its governing document or recognized collectively by those persons comprising the governing body of the Indian tribe; and

(B) has continuously maintained tribal relations with the Indian tribe or is listed on the tribal rolls of that Indian tribe as a member, if such rolls are maintained.

(14) The term "other party" means any affected person or organization other than the petitioner who submits comments or evidence in support of, or in opposition to, a petition.

(15) The term "a petition" means a petition submitted to the Secretary under section 3.

(16) The term "petitioner" means any entity which has submitted, or submits, a petition to the Secretary requesting recognition that the entity is an Indian tribe.

(17) The term "Secretary" means the Secretary of the Interior.

SEC. 2. APPROVAL AND RATIFICATION OF PRIOR DECISIONS.

All final decisions made prior to the date of enactment of this Act under Indian tribe acknowledgment regulations are hereby approved and ratified. Such approval and ratification shall not prejudice the rights of any petitioner or other party in any judicial review of such final decision.

SEC. 3. PETITIONS FOR RECOGNITION.

(a) IN GENERAL.—Any Indian group that is indigenous and ethnically and culturally identifiable (including any Indian group whose relationship with the Federal Government was terminated by statute) may submit to the Secretary, during the 6-year period beginning on the date of enactment of this Act, a petition requesting that the Secretary recognize that the Indian group is an Indian tribe. The Secretary shall not recognize as an Indian tribe any Indian group that does not submit such a petition during such time period.

(b) APPLICABILITY.—The provisions of this Act shall not apply to—

(1) any Indian tribe, organized band, pueblo or community which is already recognized by the Secretary to be an Indian tribe and is receiving services from the Bureau;

(2) any association, organization, corporation, or group of any character formed in recent times, except a group meeting the requirements of subsection (c) which has recently incorporated or otherwise formalized its existing autonomous process;

(3) any splinter group, political faction, community, or group of any character which separates from the main body of an Indian tribe that, at the time of such separation, is recognized as being an Indian tribe by the Secretary, unless it can be clearly established that the group, faction, or community has functioned throughout history until the present as an autonomous Indian tribal entity;

(4) any Indian group that, in any action in a United States court to which the United States or any recognized Indian tribe was a party, has previously attempted to establish its status as an Indian tribe or as the successor-in-interest to an Indian tribe that was a party to a treaty with the United States; and—

(A) was determined by such court not to be an Indian tribe;

(B) was determined by such court not to be a successor-in-interest to an Indian tribe

that was a party to a treaty with the United States;

(C) was the subject of a determination by such court that the group has not maintained an organized tribal structure in a political sense; or

(D) was the subject of findings of fact by such court which, if made in the administrative recognition process, would prevent the group from satisfying one or more of the criteria for recognition in this Act; and

(5) any Indian group that, prior to the date of enactment of this Act, petitioned for, and was denied or refused recognition or acknowledgment as an Indian tribe in a final determination made under Indian tribe acknowledgment regulations.

(c) REQUIREMENTS OF PETITION.—Any petition submitted under subsection (a) by an Indian group shall be in a readable form which clearly indicates that it is a petition requesting the Secretary to recognize that the Indian group is an Indian tribe and shall contain each of the following:

(1) A statement of facts establishing that the petitioner has been identified from historical times until the present, on a substantially continuous

basis, as Indian or aboriginal. A petitioner shall not fail to satisfy any requirement of this subsection merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the substantially continuous Indian identity of the petitioner shall include one or more of the following:

(A) Repeated identification of the petitioner by Federal authorities.

(B) Longstanding relationships of the petitioner with State governments based on identification of the petitioner as an Indian group.

(C) Repeated dealings of the petitioner with a county, parish, or other local government in a relationship based on the Indian identity of the petitioner.

(D) Identification of the petitioner as an Indian group by records in courthouses, churches, or schools.

(E) Identification of the petitioner as an Indian group by anthropologists, historians, or other scholars.

(F) Repeated identification of the petitioner as an Indian group in newspapers and books.

(G) Repeated identification of the petitioner as an Indian group by, and dealings of the petitioner as an Indian group with, Indian tribes or recognized national Indian organizations.

(2) Evidence that—

(A) a substantial portion of the membership of the petitioner lives in a community viewed as Indian and distinct from other populations in the area;

(B) all members of the petitioner are descendants of an Indian group which historically inhabited a specific area and of which the petitioner claims to be the successor-in-interest; and

(C) the membership of the petitioner is composed principally of persons who are not members of any other Indian tribe.

(3) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout its history until the present.

(4) A statement of facts establishing the specific territory over which the petitioner, throughout

its history until the present, has maintained tribal political influence.

(5) A copy of the present governing document of the petitioner or, in the absence of a written document, a statement describing in full the membership criteria of the petitioner and the procedures through which the petitioner currently governs its affairs and members.

(6) A list of all known current members of the petitioner and a copy of each available former list of members based on the petitioner's own defined criteria. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from an Indian group which existed historically or from historical Indian groups which combined and functioned as a single autonomous entity. Evidence acceptable to the Secretary of tribal membership for this purpose includes (but is not limited to)—

(A) descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes;

(B) State, Federal, or other official records or evidence identifying present members of the

petitioner, or ancestors of present members of the petitioner, as being an Indian descendant and a member of the petitioner;

(C) church, school, and other similar enrollment records indicating membership in the petitioner;

(D) affidavits of recognition by tribal elders, leaders, or the tribal governing body as being an Indian descendant of the Indian group and a member of the petitioner; and

(E) other records or evidence identifying the person as a member of the petitioner.

SEC. 4. NOTICE OF RECEIPT OF PETITION.

(a) NOTICE AND PUBLICATION.—Within 30 days after a petition is submitted to the Secretary under section 3(a), the Assistant Secretary shall—

(1) send an acknowledgment of receipt in writing to the petitioner; and

(2) have published in the Federal Register a notice of such receipt including—

(A) the name, location, and mailing address of the petitioner and other information that identifies the petitioner;

(B) the date the petition was received by the Secretary; and

(C) the location where a copy of the petition may be examined.

(b) NOTICE TO STATE.—The Assistant Secretary shall notify, in writing, the Governor and attorney general of any State in which a petitioner resides.

(c) NOTICE TO TRIBES.—The Assistant Secretary shall notify, in writing, all federally recognized tribes located within the State in which a petitioner resides.

(d) PUBLICATION IN NEWSPAPER.—The Assistant Secretary shall publish notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest the location of the petitioner.

(e) OPPORTUNITY FOR COMMENT.—(1) The notice described in subsection (d) shall include, in addition to the information described in subsection (a), notice of opportunity for other parties to submit evidence and factual or legal arguments in support of, or in opposition to, the petition.

(2) Any submissions received by the Assistant Secretary under paragraph (1) shall be made available to the petitioner and the petitioner shall be provided an opportunity to respond prior to a determination on the petition by the Assistant Secretary.

SEC. 5. PROCESSING.

(a) APPLICABILITY OF ACT.—(1) Upon receipt of a petition, the Assistant Secretary shall conduct a review to determine whether, under the criteria set forth in section 3(b), the provisions of this Act are applicable to the petitioner.

(2) If the Assistant Secretary determines that the provisions of this Act are not applicable to the petitioner, the Assistant Secretary shall, not later than 30 days after the receipt of a petition—

(A) publish a summary of such determination in the Federal Register;

(B) deliver a copy of such determination and summary to the petitioner; and (c) (see next page)

(b) REVIEW.—(1) If the Assistant Secretary determines under subsection (a) that the provisions of this Act are applicable to the petitioner, the Assistant Secretary shall conduct a review to determine whether the petitioner is entitled to be recognized as an Indian tribe.

(2) The review conducted under paragraph (1) shall include consideration of the petition, supporting evidence, and the factual statements contained in the petition.

(3) The Assistant Secretary may also initiate other research for any purpose relative to analyzing the petition and obtaining additional information about the petition-

er's status and may consider any evidence which may be submitted by other parties.

(c) NOTIFICATION OF OBVIOUS DEFICIENCIES OR OMISSIONS.—Prior to actual consideration of the petition and by no later than the date that is three months after the date on which the petition is submitted to the Secretary, the Assistant Secretary shall notify the petitioner of any obvious deficiencies, or significant omissions, that are apparent upon an initial review of the petition and provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or clarification.

(d) PRIORITY OF PROCESSING.—(1) Except as otherwise provided in this subsection, petitions shall be considered on a first come, first served basis, determined by the date of the original filing of the petition with the Secretary. The Assistant Secretary shall establish a priority register including those petitions pending before the Department.

(2) Petitions that are submitted to the Secretary by Indian groups whose relationship with the Federal Government was terminated by a statute—

(A) shall receive priority consideration over petitions submitted by any other Indian groups; and

(B) shall be considered on an expedited basis.

(C) send to petitioner

(i) the date on which the petition was received; and

(ii) the name, office address, and office telephone number of the primary Bureau staff member reviewing the petition, the backup to this staff member, and the supervisor of this staff member.

SEC. 6. PROPOSED FINDINGS AND DETERMINATION.

(a) PROPOSED FINDINGS.—(1) Not later than 1 year after the petition is filed the Assistant Secretary shall issue proposed findings on the petition and shall publish such proposed findings in the Federal Register.

(2) The Assistant Secretary may delay making proposed findings on a petition for 90 days upon a showing of due cause to the petitioner.

(3) In addition to the proposed findings, the Assistant Secretary shall prepare a report on each petition which summarizes the evidence supporting the proposed findings. Copies of such report and supporting evidence shall be available to the petitioner and to other parties upon written request.

(4) Upon publication of the proposed findings under paragraph (1), any individual or organization wishing to challenge the proposed findings shall have a response pe-

riod of 120 days to present factual or legal arguments and evidence to rebut the evidence upon which the proposed findings are based. Upon a showing of good cause, the Assistant Secretary may extend such response period for not more than 30 additional days.

(b) DETERMINATION.—(1) After consideration of any written arguments and evidence submitted to rebut the proposed findings made under subsection (a)(1), the Assistant Secretary shall make a determination, on behalf of the Secretary, of whether the petitioner is recognized by the Secretary to be an Indian tribe.

(2) The determination required under paragraph (1) shall be made, a summary of the determination published in the Federal Register, and a copy of the determination and summary delivered to the petitioner and other involved parties, by no later than the date that is 60 days after the close of the response period described in subsection (a)(4).

(3) A determination made under paragraph (1) shall become final on the date that is 60 days after the date on which the summary of the determination is published under paragraph (2) unless the determination is appealed under section 8.

(c) RECOGNITION AS INDIAN TRIBE.—(1) In making the proposed findings and determination under this sec-

tion with respect to any petition, the Assistant Secretary shall decide to recognize the petitioner on behalf of the Secretary as an Indian tribe only if the petition meets all the requirements of section 3.

(2) A determination made under this Act to recognize an Indian group as an Indian tribe shall not—

(A) have the effect of depriving or diminishing the right of any other Indian tribe to govern and enjoy the benefits of its treaty reserved resources or its reservation and reservation resources as such resources or reservation existed prior to such determination; or

(B) have the effect of depriving or diminishing any property right held in trust or recognized by the United States for such other Indian tribe prior to such determination.

(d) DETERMINATION OF NONRECOGNITION.—If the Assistant Secretary determines under subsection (b)(1) that the petitioner should not be recognized to be an Indian tribe, the Assistant Secretary shall analyze and forward to the petitioner other options, if any, under which application for services and other benefits of the Bureau may be made.

SEC. 7. TIME LIMIT FOR DEPARTMENTAL ACTION.

If the Assistant Secretary has not published a summary of a determination made under section 6(b) with respect to a petition before the date that is 90 days after the date on which the petition was submitted to the Secretary, the petitioner shall be entitled to mandamus relief requiring the Assistant Secretary to complete the review and determination required by this Act with due diligence.

SEC. 8. APPEALS.

(a) RECONSIDERATION AND FINAL DETERMINATION.—(1) The determination made by the Assistant Secretary under section 5(a) and section 6(b) shall be final for the Department unless the Secretary requests the Assistant Secretary to reconsider such determination within 60 days of publication of the decision.

(2) If the Secretary recommends reconsideration, the Assistant Secretary shall promptly notify the petitioner and all other involved parties of such reconsideration and the reasons for such reconsideration.

(3) In reconsidering a determination, the Assistant Secretary shall consult with the Secretary, review the initial determination, and, not later than 30 days after the request for reconsideration, make a final determination, a summary of which shall be published in the Federal Register and a copy of which shall be delivered to the peti-

tioner. Such determination shall be final and effective upon publication.

(b) INFORMATION CONSIDERED.—The Secretary may, when considering the Assistant Secretary's determination, review any information available, whether formally part of the record or not. In any case in which reliance is placed by the Secretary on information not of record, such information shall be identified as to source and nature and inserted in the record.

(c) RECONSIDERATION REQUIRED.—The Secretary may request reconsideration of any decision by the Assistant Secretary but shall request reconsideration of any decision for which significant new evidence has been received subsequent to the publication of the decision.

SEC. 9. JUDICIAL REVIEW.

(a) IN GENERAL.—By no later than 180 days after the date of a final determination by the Department on the merits of a petition for recognition, and not otherwise, the petitioner or any other party may petition for judicial review under chapter 7 of title 5, United States Code.

(b) FEES AND COSTS.—If the petitioner prevails in the judicial review of the final Department action on the petition, petitoner shall be eligible for an award of attorney fees and costs under the provisions of section 2412 of title 28, United States Code.

SEC. 10. IMPLEMENTATION OF DECISIONS.

(a) ELIGIBILITY AND OBLIGATIONS.—Upon recognition by the Secretary that the petitioner is an Indian tribe, the Indian tribe shall be eligible for services and benefits from the Federal Government that are available to other federally recognized tribes and entitled to the privileges and immunities available to other federally recognized Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship to the United States, as well as having the responsibilities and obligations of such Indian tribes. Such recognition shall subject the Indian tribes to the same authority of Congress and the United States to which other federally recognized tribes are subject.

(b) NO ENTITLEMENT CREATED.—While the Indian tribes that are newly recognized under this Act shall be eligible for benefits and services, recognition of the Indian tribe under this Act shall not create an immediate entitlement to existing programs of the Bureau. Such programs shall become available upon appropriation of funds by law. Requests for appropriations shall follow a determination of the needs of the newly recognized Indian tribe.

(c) BUDGET RECOMMENDATIONS.—Within 180 days after an Indian tribe is recognized under this Act, the appropriate area office of the Bureau shall consult and develop in cooperation with the Indian tribe, and forward

to the Assistant Secretary, a determination of the needs of the Indian tribe and a recommended budget required to serve the newly recognized Indian tribe. The recommended budget shall be considered along with other recommendations by the Assistant Secretary in the usual budget-request process.

SEC. 11. LIST OF RECOGNIZED INDIAN TRIBES.

By no later than the date that is 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary shall publish in the Federal Register a current list of all Indian tribes which are recognized by the Federal Government and receiving services from the Bureau.

SEC. 12. NOTICE.

Any notice which by the terms of this Act must be published in the Federal Register, shall also be mailed to the petitioner, the governors and attorney generals of the States involved, and to other parties which have commented on the proposed findings.

SEC. 13. GUIDELINES AND ADVISEMENT.

(a) GUIDELINES.—By no later than the date that is 90 days after the date of enactment of this Act, the Secretary shall make available suggested guidelines for the format of petitions, including general suggestions and guidelines regarding the mechanics of researching the in-

formation required to substantiate petitions. Such guidelines shall not preclude the use of any other format.

(b) ADVISEMENT.—The Assistant Secretary shall, upon request by the petitioner, provide advisement regarding research into such petitioner's historical background and Indian identity. The Assistant Secretary shall not be responsible for actual research on behalf of the petitioner.

SEC. 14. ASSISTANCE IN PREPARING PETITIONS.

(a) IN GENERAL.—(1) The Commissioner of the Administration for Native Americans of the Department of Health and Human Services may award grants to Indian groups seeking Federal recognition to enable the Indian groups to—

(A) conduct the research necessary to substantiate petitions under this Act; and

(B) prepare documentation necessary for the submission of a petition under this Act.

(2) The grants made under this subsection shall be in addition to any other grants the Commissioner of the Administration for Native Americans is authorized to provide under any other provision of law.

(b) CRITERIA FOR ASSISTANCE.—Grants provided under subsection (a) shall be awarded competitively based on objective criteria prescribed by regulation by the Commissioner of the Administration for Native Americans.

SEC. 15. REGULATIONS.

The Secretary is authorized to prescribe such regulations as may be necessary to carry out the provisions and purposes of this Act.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF THE INTERIOR.—There is authorized to be appropriated to the Secretary $1,500,000 for the fiscal year in which this Act is enacted and for each of the 12 succeeding fiscal years to carry out this Act.

(b) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—There is authorized to be appropriated to the Secretary of Health and Human Services for the Administration for Native Americans $500,000 for the fiscal year in which this Act is enacted and for each of the 12 succeeding fiscal years to carry out section 14.

○

SECTION-BY-SECTION ANALYSIS ON H.R. 2549

SECTION 1. DEFINITIONS.

Section 1 provides definitions for terms used in the bill.

SECTION 2. APPROVAL AND RATIFICATION OF PRIOR DECISIONS.

Section 2 provides that decisions on federal acknowledgement of tribes prior to enactment are approved and ratified, but any judicial review of decisions shall not be prejudiced by the ratification.

SECTION 3. PETITIONS FOR RECOGNITION.

Subsection (a) provides that any Indian group may submit a petition to the Secretary during the 6 year period following enactment which requests that the group be recognized as an Indian tribe.

Subsection (b) provides that the Act does not apply to recognized tribes, recently formed groups not meeting the requirements of Subsection (c), splinter groups from existing tribes, groups determined by courts not to be tribes, and groups found not to be tribes under acknowledgement regulations.

Subsection (c) states the requirements for a petition which should include historical identification as a tribe, evidence that the group maintained political authority over its members throughout history, evidence that the group maintained political influence over its territory throughout history, a governing document or statement, and a list of members based on evidence acceptable to the Secretary.

SECTION 4. NOTICE OF RECEIPT OF PETITION.

Subsection (a) provides that within 30 days of the submission of a petition to the Secretary, the Secretary shall acknowledge receipt and publish the receipt in the Federal Register.

Subsection (b) requires the Assistant Secretary to notify the Governor and the attorney general of the group's state as to the filing of the petition.

Subsection (c) provides that the federally recognized tribes in the group's state be notified by the Assistant Secretary as to the filing of the petition.

Subsection (d) provides that notice of receipt must be published in a major newspaper of general circulation in the town

nearest the petitioner.

Subsection (e) provides that the notice should allow other parties to submit comment and the petitioner to receive those comments.

SECTION 5. PROCESSING.

Subsection (a) provides that the Assistant Secretary must conduct a review of a petition on receipt, and if the Act does not apply to the petitioner, then within 30 days the determination must be published in the Federal Register and delivered to the petitioner.

Subsection (b) provides that if the Act is found to apply, the Assistant Secretary is to conduct a review to determine whether federal recognition is appropriate. The review should include the consideration of evidence submitted and the initiation of research.

Subsection (c) provides that within 18 months of submission, the Assistant Secretary is to notify the group of any obvious deficiencies or omissions from the petition.

Subsection (d) provides that petitions are to be on a first come, first served basis, but tribes terminated by federal statute are to be considered on an expedited basis; and the petitioner and commenting parties are to be provided with the date the petition comes under active consideration and the name of the BIA staff reviewing the petition.

SECTION 6. PROPOSED FINDINGS AND DETERMINATION.

Subsection (a) provides that within 1 year after active consideration has begun, the Assistant Secretary shall issue proposed findings and publish them in the Federal Register. However, by showing due cause, the Assistant Secretary may delay proposed findings for 90 days. A report on the evidence is to be made available to the petitioner and other parties on request, and challenges to the proposed findings must be made within 120 days of publication with a possible extension of 30 days upon a showing of good cause.

Subsection (b) provides that the Assistant Secretary shall make a determination on recognition after reviewing evidence submitted to rebut the proposed finding within 60 days of the close of the comment period. The decision becomes final 60 days after the summary of the determination is published, unless the determination is appealed.

Subsection (c) provides that the Assistant Secretary shall make a determination only if the petition meets all the requirements of Section 3. Recognition is not to affect any other

tribe's treaty or property rights.

Subsection (d) provides that if a group is not recognized, the Assistant Secretary is to forward any other options in which BIA services may be obtained.

SECTION 7. TIME LIMIT FOR DEPARTMENTAL ACTION.

Section 7 provides that if a petition is not considered within 90 days after the date on which the petition was submitted the petitioner is entitled to mandamus relief.

SECTION 8. APPEALS.

Subsection (a) provides that the Secretary may request the Assistant Secretary to reconsider the petition within 60 days of publication of the decision. Within 30 days of the request, a final determination is made by the Secretary and published in the Federal Register and delivered to the Petitioner.

Subsection (b) provides that the Secretary may rely on any information available in making the review.

Subsection (c) provides that the Secretary may review any petition but must review petitions for which significant new evidence is received after publication of the decision.

SECTION 9. JUDICIAL REVIEW.

Subsection (a) provides that within 180 days after final determination, the petitioner may petition for judicial review.

Subsection (b) provides that prevailing parties are eligible for an award of attorney fees and costs.

SECTION 10. IMPLEMENTATION OF DECISIONS.

Subsection (a) provides that upon recognition, petitioners are eligible for all federal services provided to Indian tribes.

Subsection (b) provides that federal recognition does not create an entitlement and funds are based on available appropriations.

Subsection (c) provides that within 180 days of recognition, the BIA Area office of the petitioner shall determine tribal financial needs and recommend a budget.

SECTION 11. LIST OF RECOGNIZED INDIAN TRIBES.

Subsection 11 provides that within 90 days of enactment, the Secretary shall publish a list of recognized tribes in the Federal

Register.

SECTION 12. NOTICE.

Section 12 provides that a notice under the Act published in the Federal Register are to be mailed to the petitioners, the governors and attorney generals of the states involved and to commenting parties.

SECTION 13. GUIDELINES AND ADVISEMENT.

Subsection (a) provides that the Secretary must suggest guidelines for petitioners within 90 days of enactment.

Subsection (b) provides that the Assistant Secretary shall provide advisement regarding research upon request but shall not be responsible for research for petitioners.

SECTION 14. ASSISTANCE IN PREPARING PETITIONS.

Section 14 provides that the Commissioner of the Administration for Native Americans may make grants to petitioning tribes to conduct research.

SECTION 15. REGULATIONS.

Section 15 provides that the Secretary is authorized to prescribe regulations for the Act.

SECTION 16. AUTHORIZATION OF APPROPRIATIONS.

Subsection (a) provides an annual $1.5 million authorization to the Interior Department for 12 years.

Subsection (b) provides an annual $500,000 authorization to the Health and Human Services Department for ANA grants for 12 years.

BACKGROUND ON H.R. 2549 AND 4462

H.R. 2549 and H.R. 4462 are bills to provide administrative procedures to extend Federal recognition to certain Indian groups. The process of recognizing Indian tribes is currently done in two ways. First, groups may petition the Bureau of Indian Affairs under 25 CFR Section 83. The "procedures for establishing that an American group exists as an Indian tribe" were established in regulations after recommendations from the American Indian Policy Review Commission Report in 1977. The Commission specifically identified 133 unrecognized tribes. Under the "Federal Acknowledgement Process" (FAP) Indian tribes must satisfy certain criteria to prove that they are a group deserving Federal recognition. In recent years, this process has come under fire as lengthy and expensive. Critics of the process point out that since the FAP began in 1978, only 9 tribes have been recognized. The second manner of obtaining recognition is through the Congress. This method is often criticized as imprecise and overly politicized.

H.R. 2549, introduced by Rep. Faleomavaega on June 29, 1993, establishes administrative procedures within the Department of Interior for recognizing tribes. The bill takes many of the resources and regulations already in place and provides a statutory basis for them. H.R. 4462 was introduced by Mr. Richardson on May 19, 1994, and the bill is co-sponsored by Mr. Thomas. The Richardson-Thomas bill would establish a new commission for recognizing Indian tribes.

I

103D CONGRESS
2D SESSION

H. R. 4462

To provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1994

Mr. RICHARDSON (for himself and Mr. THOMAS of Wyoming) introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Federal Recognition Administrative Procedures Act of 1994".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to establish an administrative procedure to extend Federal recognition to certain Indian groups;

(2) to extend to Indian groups the protection, services, and benefits available from the Federal Government pursuant to the Federal trust responsibility;

(3) to provide clear and consistent standards of administrative review of recognition petitions for Indian groups; and

(4) to expedite the administrative review process by providing definitive timelines for review and adequate resources to process recognition petitions.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) The term "aboriginal group" means any Indian entity whose members inhabited or whose range extended into any part of the area now constituting the United States of America, Canada, or the United States of Mexico prior to the first sustained contact of such members with Euro-Americans.

(2) The term "autonomous", in the context of decisionmaking, means having its own tribal council, internal process, or other organizational mechanism which the Indian group has used as its own means of making decisions independent of the control of any other Indian tribe, and in using such term for purposes of this Act, such term must be understood

in the context of the culture and social organization of that Indian group.

(3) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(4) The term "Commission" means the Commission on Indian Recognition established under section 4.

(5) The term "community" means any people living within such a reasonable proximity as to allow group interaction and maintenance of tribal relations.

(6) The term "continuous" means, with respect to any Indian group, extending from generation to generation throughout the Indian group's history essentially without interruption.

(7) The term "Department" means the Department of the Interior.

(8) The term "historical" means dating back to the earliest documented contact between—

(A) the aboriginal group from which the petitioners descended; and

(B) citizens or officials of the United States, colonial or territorial governments, or citizens and officials of foreign governments.

(9) The term "Indian group" means any Indian entity that—

(A) is located within any of the States of the United States; and

(B) is not recognized by the Secretary to be an Indian tribe.

(10) The term "Indian tribe" means any Indian entity that—

(A) is located within any of the States of the United States; and

(B) is recognized by the Secretary to be an Indian tribe.

(11) The term "Indian" means any individual who is a descendant of an aboriginal group.

(12) The term "member of an Indian group" means an individual who—

(A) is recognized by an Indian group as meeting its membership criteria;

(B) consents to being listed as a member of that group; and

(C) is not a member of any Indian tribe.

(13) The term "member of an Indian tribe" means an individual who—

(A) meets the membership requirements of the Indian tribe, as set forth in its governing

document or recognized collectively by those persons comprising the governing body of the Indian tribe; and

(B) has continuously maintained tribal relations with the tribe or is listed on the tribal rolls of that Indian tribe as a member if such rolls are maintained.

(14) The term "petition" means a petition submitted to the Commission under section 5 or transferred to the Commission under section 5 of this Act.

(15) The term "petitioner" means any entity which has submitted, or submits, a petition to the Secretary requesting recognition that the entity is an Indian tribe.

(16) The term "Secretary" means the Secretary of the Interior.

(17) The term "treaty" means any treaty—

(A) negotiated and ratified by the United States with, or on behalf of, any Indian group;

(B) made by any sovereign with, or on behalf of, any Indian group from which the United States acquired territory by purchase, conquest, or cession; or

(C) negotiated by the United States with, or on behalf of, any Indian group in California, whether or not the treaty was subsequently ratified.

SEC. 4. COMMISSION ON INDIAN RECOGNITION.

(a) ESTABLISHMENT.—There is established, as an independent commission, the Commission on Indian Recognition.

(b) MEMBERSHIP.—(1)(A) The Commission shall consist of three members appointed by the President, by and with the advice and consent of the Senate.

(B) In making appointments to the Commission, the President shall give careful consideration to—

(i) recommendations received from Indian tribes; and

(ii) individuals who have a background in Indian law or policy, anthropology, genealogy, or history.

(2) No more than two members of the Commission may be members of the same political party.

(3) Each member of the Commission shall be appointed for a term of four years.

(4) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made. Any member ap-

pointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office.

(5)(A) Each member of the Commission not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties authorized by the Commission.

(B) Except as provided in subparagraph (C), a member of the Commission who is otherwise an officer or employee of the United States Government shall serve on the Commission without additional compensation, but such service shall be without interruption or loss of civil service status or privilege.

(C) All members of the Commission shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Commission while away from home or their regular place of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) At the time appointments are made under paragraph (1), the President shall designate one of such appointees as Chairman of the Commission.

(c) MEETINGS AND PROCEDURES.—(1) The Commission shall hold its first meeting no later than 30 days after the date on which all members of the Commission have been appointed and confirmed by the Senate.

(2) Two members of the Commission shall constitute a quorum for the transaction of business.

(3) The Commission may adopt such rules (consistent with the provisions of this Act) as may be necessary to establish its procedures and to govern the manner of its operations, organization, and personnel.

(4) The principal office of the Commission shall be in the District of Columbia.

(d) DUTIES.—The Commission shall carry out the duties assigned to the Commission by this Act, and shall meet the requirements imposed on the Commission by this Act.

(e) POWERS AND AUTHORITIES.—(1) Subject to such rules and regulations as may be adopted by the Commission, the Chairman of the Commission is authorized to—

(A) appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the

competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director of the Commission and of such other personnel as the Chairman deems advisable to assist in the performance of the duties of the Commission, at a rate not to exceed a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) procure, as authorized by section 3109(b) of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch, but at rates not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(2) The Commission is authorized to—

(A) hold such hearings and sit and act at such times;

(B) take such testimony;

(C) have such printing and binding done;

(D) enter into such contracts and other arrangements, subject to the availability of funds;

(E) make such expenditures; and

(F) take such other actions,

as the Commission may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(3)(A) The Commission is authorized to secure directly from any officer, department, agency, establishment, or instrumentality of the Federal Government such information as the Commission may require for the purpose of this Act, and each such officer, department, agency, establishment, or instrumentality is authorized and directed to furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman of the Commission.

(B) Upon the request of the Chairman of the Commission, the head of any Federal department, agency, or instrumentality is authorized to make any of the facilities and services of such department, agency, or instrumentality available to the Commission and detail any of the personnel of such department, agency, or instrumentality to the Commission, on a nonreimbursable basis, to assist the Commission in carrying out its duties under this section.

(C) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act shall not apply to the Commission.

SEC. 5. PETITIONS FOR RECOGNITION.

(a) IN GENERAL.—(1) Any Indian group may submit to the Commission a petition requesting that the Commission recognize that the Indian group is an Indian tribe.

(2) The provisions of this Act do not apply to the following groups or entities, which shall not be eligible for recognition under this Act—

(A) Indian tribes, organized bands, pueblos, communities, and Alaska Native entities which are recognized by the Secretary as of the date of enactment of this Act as eligible to receive services from the Bureau;

(B) splinter groups, political factions, communities, or groups of any character which separate from the main body of an Indian tribe that, at the time of such separation, is recognized as being an Indian tribe by the Secretary, unless it can be clearly established that the group, faction, or community

has functioned throughout history until the date of such petition as an autonomous Indian tribal entity;

(C) groups, or successors in interest of groups, that prior to the date of enactment of this Act, have petitioned for and been denied or refused recognition as an Indian tribe under regulations prescribed by the Secretary; and

(D) any Indian group whose relationship with the Federal Government was expressly terminated by an Act of Congress.

(3) No later than 30 days after the date on which all of the members of the Commission have been appointed and confirmed by the Senate, the Secretary shall transfer to the Commission all petitions pending before the Department that request the Secretary, or the Federal Government, to recognize or acknowledge an Indian group as an Indian tribe. On the date of such transfer, the Secretary and the Department shall cease to have any authority to recognize or acknowledge, on behalf of the Federal Government, any Indian group as an Indian tribe. Petitions transferred to the Commission under this paragraph shall, for purposes of this Act, be considered as having been submitted to the Commission as of the date of such transfer.

(b) PETITION FORM AND CONTENT.—Except as provided in subsection (c), any petition submitted under sub-

section (a) by an Indian group shall be in a form which clearly indicates that it is a petition requesting the Commission to recognize that the Indian group is an Indian tribe and shall contain each of the following:

(1) A statement of facts establishing that the petitioner has been identified from historical times until the present, on a substantially continuous basis, as an Indian entity, except that a petitioner shall not be considered as having failed to satisfy any requirement of this subsection merely because of fluctuations of tribal activity during various years. Evidence which can be offered to demonstrate Indian identity of the petitioner on a substantially continuous basis shall include one or more of the following:

(A) Repeated identification of the petitioner as an Indian entity by Federal authorities.

(B) Longstanding relationships of the petitioner with State governments based on identification of the petitioner as an Indian entity.

(C) Repeated dealings of the petitioner with a county, parish, or other local government in a relationship based on the Indian identity of the petitioner.

(D) Repeated identification of the petitioner as an Indian entity by records in private or public archives courthouses, churches, or schools.

(E) Repeated identification of the petitioner as an Indian entity by anthropologists, historians, or other scholars.

(F) Repeated identification of the petitioner as an Indian entity in newspapers, books, or similar media.

(G) Repeated identification of the petitioner as an Indian entity by, and dealings of the petitioner as an Indian entity with, Indian tribes, aboriginal groups or recognized national Indian organizations.

(2) Evidence that—

(A) a substantial portion of the membership of the petitioner lives in an Indian community which is distinct from other populations in the area; and

(B) members of the petitioner are descendants of an Indian group or groups which historically inhabited a specific area.

(3) A statement of facts which establishes that the petitioner has maintained tribal political influ-

ence or other authority over its members as an autonomous entity from historical times until the present.

(4) A copy of the present governing document of the petitioner describing in the full membership criteria of the petitioner and the procedures through which the petitioner currently governs its affairs and members.

(5) A list of all current members of the petitioner and their current addresses and a copy of each available former list of members based on the petitioner's own defined criteria. The membership must consist of individuals who have established descendancy from an Indian group which existed historically or from historical Indian groups which combined and functioned as a single autonomous entity. Evidence of tribal membership required by the Commission includes (but is not limited to)—

(A) descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes;

(B) State, Federal, or other official records or evidence identifying present members of the petitioner, or ancestors of present members of

the petitioner, as being an Indian descendant and a member of the petitioner;

(C) church, school, and other similar enrollment records indicating membership in the petitioner;

(D) affidavits of recognition by tribal elders, leaders, or the tribal governing body as being an Indian descendant of the Indian group and a member of the petitioner; and

(E) other records or evidence identifying the person as a member of the petitioner.

(c) A petition from an Indian group which can demonstrate by a preponderance of the evidence that it was or is the successor in interest to—

(1) a party to a treaty or treaties with the Federal Government; or

(2) a group acknowledged by any agency of the Federal Government as eligible to participate in the Indian Reorganization Act of 1934 (25 U.S.C. 461 et. seq.),

shall be required to establish the criteria set forth in subsection (b)(1) only from the date of the treaty or acknowledgement of eligibility to the present.

SEC. 6. NOTICE OF RECEIPT OF PETITION.

(a) PETITIONER.—Within 30 days after a petition is submitted or transferred to the Commission under section 5(a), the Commission shall send an acknowledgement of receipt in writing to the petitioner and shall have published in the Federal Register a notice of such receipt, including the name, location, and mailing address of the petitioner and such other information that will identify the entity who submitted the petition and the date the petition was received by the Commission. The notice shall also indicate where a copy of the petition may be examined.

(b) OTHERS.—The Commission shall also notify, in writing, the Governor and attorney general of, and each recognized Indian tribe within, any State in which a petitioner resides.

(c) PUBLICATION; OPPORTUNITY FOR SUPPORTING OR OPPOSING SUBMISSIONS.—The Commission shall publish the notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest the location of the petitioner. The notice shall include, in addition to the information described in subsection (a), notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to, the petition. Such submissions shall be provided to the petitioner upon receipt by the Commission. The petitioner shall be provided an opportunity to respond to such submissions

prior to a determination on the petition by the Commission.

SEC. 7. PROCESSING THE PETITION.

(a) REVIEW.—(1) Upon receipt of a petition, the Commission shall conduct a review to determine whether the petitioner is entitled to be recognized as an Indian tribe.

(2) The review conducted under paragraph (1) shall include consideration of the petition, supporting evidence, and the factual statements contained in the petition.

(3) The Commission may also initiate other research for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status and may consider any evidence which may be submitted by other parties.

(b) NOTICE OF DEFICIENCIES.—Prior to actual consideration of the petition and by no later than the date that is 12 months after the date on which the petition is submitted or transferred to the Commission, the Commission shall notify the petitioner of any obvious deficiencies, or significant omissions, that are apparent upon an initial review of the petition and provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification.

(c) CONSIDERATION.—(1) Except as otherwise provided in this subsection, petitions shall be considered on a first come, first served basis, determined by the date of the original filing of the petition with the Commission, or the Department if the petition is one transferred to the Commission pursuant to section 5(a). The Commission shall establish a priority register including those petitions pending before the Department on the date of enactment of this Act.

(2) Petitions that are submitted to the Commission by Indian groups that as set forth in subsection 5(c) shall—

(A) receive priority consideration over petitions submitted by any other Indian groups, and

(B) be considered on an expedited basis.

(d) NOTICE OF ACTIVE CONSIDERATION.—The Commission shall provide notice of the date on which the petition comes under active consideration to the petitioner and other parties submitting comments on the petition.

(e) WITHDRAWAL AND RESUBMITTAL.—A petitioner may, at its option and upon written request, withdraw its petition prior to publication in the Federal Register by the Commission of proposed findings under section 8(a) and may, if it so desires, resubmit a new petition. A petitioner shall not lose its priority date by withdrawing and resub-

mitting its petitions, but the time periods provided in section 8(a) shall begin to run upon active consideration of the resubmitted petition.

SEC. 8. PROPOSED FINDINGS AND DETERMINATION.

(a) IN GENERAL.—(1) Within one year after notifying the petitioner under section 7(d) that active consideration of the petition has begun, the Commission shall make a proposed finding on the petition and shall publish the proposed finding in the Federal Register.

(2) The Commission may delay making proposed findings on a petition under paragraph (1) for 180 days upon a showing of good cause by the petitioner.

(3) In addition to the proposed findings, the Commission shall prepare a report on each petition which summarizes the evidence for the proposed findings. Copies of such report shall be available to the petitioner and to other parties upon request.

(4) Upon publication of the proposed findings under paragraph (1), any individual or organization wishing to challenge the proposed findings shall have a response period of 120 days to present factual or legal arguments and evidence upon which the proposed findings are based.

(b) DETERMINATION OF RECOGNITION.—(1) After consideration of any written arguments and evidence submitted to rebut the proposed findings made under sub-

section (a)(1), the Commission shall make a determination of whether the petitioner is recognized by the Federal Government to be an Indian tribe. Except as otherwise provided by this Act, the determination shall be considered to be a determination on such recognition by the Federal Government, and shall also be treated as a determination on such recognition by the Secretary, for all purposes of law.

(2) By no later than the date that is 60 days after the close of the 120 day response period described in subsection (a)(4), the Commission shall—

(A) make a determination of whether the petitioner is a federally recognized Indian tribe;

(B) publish a summary of the determination in the Federal Register; and

(C) deliver a copy of the determination and summary to the petitioner.

(3) Any determination made under paragraph (1) shall become effective on the date that is 60 days after the date on which the summary of the determination is published under paragraph (2).

(c) RECOGNITION CRITERIA.—In making the proposed findings and determination under this section with respect to any petition, the Commission shall recognize the petitioner as an Indian tribe if the petition meets all the

requirements of section 5(b). The Commission shall not make such findings or determination of recognition of the petitioner if such requirements have not been met by the petitioner.

(d) NOTIFICATION OF OTHER OPTIONS.—If the Commission determines under subsection (b)(1) that the petitioner should not be recognized by the Federal Government to be an Indian tribe, the Commission shall analyze and forward to the petitioner other options, if any, under which application for services and other benefits of the Bureau may be made.

(e) SITUATIONS NOT AFFECTED BY DETERMINATION.—A determination by the Commission that an Indian group is recognized by the Federal Government as an Indian tribe shall not have the effect of—

(1) depriving or diminishing the right of any other Indian tribe to govern its reservation as such reservation existed prior to the recognition of such Indian group;

(2) depriving or diminishing any property right held in trust or recognized by the United States for such other Indian tribe prior to the recognition of such Indian group; or

(3) depriving or diminishing any previously or independently existing claim by a petitioner to any

such property right held in trust by the United States for such other Indian tribe prior to the recognition of such Indian group.

SEC. 9. APPEALS.

(a) IN GENERAL.—By no later than 60 days after the date on which the summary of the determination of the Commission with respect to a petition is published under section 8(b), the petitioner, or any other party, may appeal the determination to the United States District Court for the District of Columbia.

(b) ATTORNEY FEES AND COSTS.—The prevailing parties in the appeal described in subsection (a) shall be eligible for an award of reasonable attorney fees and costs under the provisions of section 504 of title 5, United States Code, or section 2412 of title 28 of such Code, as the case may be.

SEC. 10. IMPLEMENTATION OF DECISIONS.

(a) ELIGIBILITY FOR SERVICES AND BENEFITS.—(1) Subject to paragraph (2), upon recognition by the Commission that the petitioner is an Indian tribe, the Indian tribe shall be eligible for the services and benefits from the Federal Government that are available to other federally recognized Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States, as well as having the respon-

sibilities and obligations of such Indian tribes. Such recognition shall subject the Indian tribes to the same authority of Congress and the United States to which other federally recognized tribes are subject.

(2) Recognition of the Indian tribe under this Act does not create an immediate entitlement to existing programs of the Bureau. Such programs shall become available upon appropriation of funds by law. Requests for appropriations shall follow a determination under subsection (b) of the needs of the newly recognized Indian tribe.

(b) NEEDS DETERMINATION.—Within 6 months after an Indian tribe is recognized under this Act, the appropriate area offices of the Bureau of Indian Affairs and the Indian Health Service shall consult and develop in cooperation with the Indian tribe, and forward to the respective Secretary, a determination of the needs of the Indian tribe and a recommended budget required to serve the newly recognized Indian tribe. The recommended budget shall be considered along with other recommendations by the appropriate Secretary in the budget-request process.

SEC. 11. LIST OF RECOGNIZED INDIAN TRIBES.

By no later than the date that is 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary shall publish in the Federal Register an up-to-date list of all Indian tribes which are recognized by

the Federal Government and receiving services from the Bureau.

SEC. 12. ACTIONS BY PETITIONERS FOR ENFORCEMENT.

Any petitioner may bring an action in the district court of the United States for the district in which the petitioner resides, or the United States District Court for the District of Columbia, to enforce the provisions of this Act, including any time limitations within which actions are required to be taken, or decisions made, under this Act and the district court shall issue such orders (including writs of mandamus) as may be necessary to enforce the provisions of this Act.

SEC. 13. REGULATIONS.

The Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions and purposes of this Act. All such regulations must be published in accordance with the provisions of title 5, United States Code.

SEC. 14. GUIDELINES AND ADVICE.

(a) GUIDELINES.—No later than 90 days after the date of enactment of this Act, the Commission shall make available suggested guidelines for the format of petitions, including general suggestions and guidelines on where and how to research required information, but such examples shall not preclude the use of any other format.

(b) RESEARCH ADVICE.—The Commission, upon request, is authorized to provide suggestions and advise to any petitioner for his research into the petitioner's historical background and Indian identity. The Commission shall not be responsible for the actual research on behalf of the petitioner.

SEC. 15. ASSISTANCE TO PETITIONERS.

(a) GRANTS.—(1) The Secretary of Health and Human Services may award grants to Indian groups seeking Federal recognition to enable the Indian groups to—

(A) conduct the research necessary to substantiate petitions under this Act; and

(B) prepare documentation necessary for the submission of a petition under this Act.

(2) The grants made under this subsection shall be in addition to any other grants the Secretary of Health and Human Services is authorized to provide under any other provision of law.

(b) COMPETITIVE AWARD.—Grants provided under subsection (a) shall be awarded competitively based on objective criteria prescribed in regulations promulgated by the Secretary of Health and Human Services.

SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMISSION.—There are authorized to be appropriated for the Commission for the purpose of carrying

out the provisions of this Act (other than section 15), $1,500,000 for fiscal year 1995 and $1,500,000 for each of the 12 succeeding fiscal years.

(b) SECRETARY OF HHS.—There are authorized to be appropriated for the Administration for Native Americans of the Department of Health and Human Services for the purpose of carrying out the provisions of section 15, $500,000 for fiscal year 1995 and $500,000 for each of the 12 succeeding fiscal years.

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SECTION-BY-SECTION ANALYSIS OF H.R. 4462

SECTION 1. SHORT TITLE.

Section 1 provides that the short title of the bill is the "Indian Federal Recognition Administrative Procedures Act of 1994."

SECTION 2. PURPOSES.

Section 2 provides the purposes of the Act which include the establishment of procedures, to extend services, to provide consistent standards and to expedite the administrative review process.

SECTION 3. DEFINITION.

Section 3 provides definitions for terms used in the Act.

SECTION 4. COMMISSION ON INDIAN RECOGNITION.

Subsection (a) provides that the Commission on Indian Recognition is established.

Subsection (b) provides that the Commission shall consist of 3 members appointed by the President with the advice and consent of the Senate. Recommendations from Indian tribes and individuals with a background in Indian law or policy, anthropology, genealogy or history will be given consideration. No more than two members of the Commission may be a member of the same political party. Members are appointed for 4 years. Vacancies are filled in the same manner as the original appointments. Compensation for commissioners is provided for. Commissioners that are employees of the U.S. shall serve without compensation. Commissioners may be reimbursed for travel. The President may designate the Chairperson.

Subsection (c) provides that the Commission shall hold its first meeting no later than 30 days after all members are confirmed. Two members shall constitute a quorum. The Commission may adopt rules. The commission will be located in the District of Columbia.

Subsection (d) provides that the Commission shall carry out the duties assigned it under this Act.

Subsection (e) provides that the Chairman is authorized to hire an executive director, and procure services. The Commission is also authorized to hold hearings, to request facilities and services from other Departments, and to use the mail as do other Departments.

Subsection (f) provides that the provisions of the Federal Advisory Committee Act shall not apply to the Commission.

SECTION 5. PETITIONS FOR RECOGNITION.

Subsection (a) provides that any Indian group may submit a petition to the Commission to request Federal recognition. The following groups are not eligible for recognition: recognized tribes, splinter groups, groups that have been denied recognition by the Secretary, and terminated tribes.

Subsection (b) provides that within 30 days of confirmation of the Commission, the Secretary shall transfer pending petitions to the Commission.

Subsection (c) provides that an Indian group with a treaty or acknowledged under the Indian Reorganization Act is required only to submit the criteria contained in subsection (b).

SECTION 6. NOTICE OF RECEIPT OF PETITION.

Subsection (a) provides that the Commission shall send an acknowledgement of receipt in writing to the petitioner and have it published in the Federal Register.

Subsection (b) provides that the Commission shall notify the Governor, attorney general and other Indian tribes in the state of the petition.

Subsection (c) provides that the Commission shall publish the notice of receipt in newspapers.

SECTION 7. PROCESSING THE PETITION.

Subsection (a) provides that the Commission shall review petitions as to whether the petitioner is to be recognized as an Indian tribe. This review shall include consideration of facts and evidence. In addition, the Commission may initiate such other research as it deems necessary.

Subsection (b) provides that within (12) months the Commission shall notify the petitioner of deficiencies and omissions.

Subsection (c) provides that petitions are to be considered on a first come first served basis.

Subsection (d) provides that the Commission is to provide notice of the date on which the petition comes under active consideration.

Subsection (e) provides that the petitioner may withdraw its petition and resubmit it.

SECTION 8. PROPOSED FINDINGS AND DETERMINATION.

Subsection (a) provides that within one year after notifying the petitioner or active consideration, the Commission shall make a proposed finding. The Commission may delay

making proposed finding for 180 days upon a showing of good cause. The Commission shall summarize the evidence in the proposed finding and challenges to the finding may be filed within 120 days.

Subsection (b) provides that after rebuttal evidence is submitted, the Commission shall make a determination as to whether or not the tribe will be recognized. The determination shall be published in the Federal Register and delivered to the petitions. The determination becomes effective 60 days after the publishing of the determination.

Subsection (c) provides that petitioners that meet all the requirements of 5(b) are to be recognized.

Subsection (d) provides that the Commission shall provide petitioners, who are denied recognition, with options under which application for services of the Bureau may be made.

Subsection (e) provides that a determination that a group is recognized shall not deprive the right of any tribe to govern its reservation, diminish any property right held in trust, or deprive or diminish any claim of any tribe.

SECTION 9. APPEALS.

Subsection (a) provides that 60 days after a determination, any party may appeal to federal court.

Subsection (b) provides that prevailing parties shall be awarded attorney fees.

SECTION 10. IMPLEMENTATION OF DECISIONS.

Subsection (a) provides that recognized tribes are eligible for federal services, but such services are not an entitlement.

Subsection (b) provides that 6 months after recognition the BIA and the IHS are to determine tribal needs and a budget.

SECTION 11. LIST OF RECOGNIZED TRIBES.

Section 11 provides that 90 days after enactment and annually thereafter, the Secretary is to publish a list of federally recognized Indian tribes.

SECTION 12. ACTIONS BY PETITIONERS FOR ENFORCEMENT.

Section 12 provides that any petitioner may bring an action in federal district court to enforce provisions of this Act.

SECTION 13. REGULATIONS.

Section 13 provides that the Commission is authorized to promulgate regulations.

SECTION 14. GUIDELINES AND ADVICE.

Subsection (a) provides that 90 days after enactment the Commissioner shall make guidelines for the format of petitions.

Subsection (b) provides that the Commission is authorized to provide suggestions for petitioners.

SECTION 15. ASSISTANCE TO PETITIONERS.

Subsection (a) provides that the Secretary of Health and Human Services may award grants to petitioners.

Subsection (b) provides that grants are to be awarded competitively.

SECTION 16. AUTHORIZATION OF APPROPRIATIONS.

Subsection (a) provides that $1.5 million is authorized for FY 95 and each succeeding fiscal year for 12 years for funding the Commission.

Subsection (b) provides that $500,000 is authorized for FY 95 and each succeeding fiscal year for 12 years for funding petitioners under Administration for Native American grants.

I

103D CONGRESS
2D SESSION

H. R. 4709

To make certain technical corrections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 1994

Mr. RICHARDSON (for himself and Mr. THOMAS of Wyoming) introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To make certain technical corrections, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEASING AUTHORITY OF THE INDIAN PUEBLO FEDERAL DEVELOPMENT CORPORATION.

Notwithstanding the provisions of section 17 of the Act of June 18, 1934 (25 U.S.C. 477), the Indian Pueblo Federal Development Corporation, whose charter was issued pursuant to such section by the Secretary of the Interior on January 15, 1993, shall have the authority to lease or sublease trust or restricted Indian lands for up to 50 years.

SEC. 2. GRAND RONDE RESERVATION ACT.

(a) LANDS DESCRIBED.—Section 1 of the Act entitled "An Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes", approved September 9, 1988 (102 Stat. 1594), is amended—

(1) in subsection (c)—

(A) by striking "9,811.32" and inserting "10,239.65"; and

(B) by striking all after "5 8 17 All 5.55" and inserting in lieu thereof the following:

"6	8	1	SW¼SW¼,W½SE¼SW¼	53.78
6	8	1	S½E½,SE¼SW¼	9.00
6	7	8	Tax lot 800	5.55
4	7	30	W½	320.0
4	7	30	SW¼NE¼	40.0
			Total	10,239.65.";

and

(2) by adding at the end the following:

"(d) CLAIMS EXTINGUISHED; LIABILITY.—

"(1) CLAIMS EXTINGUISHED.—All claims to lands within the State or Oregon based upon recognized title to the Grand Ronde Indian Reservation established by the Executive order of June 30, 1857, pursuant to treaties with the Kalapuya, Molalla, and other tribes, or any part thereof by the Confederated

Tribes of the Grand Ronde Community of Oregon, or any predecessor or successor in interest, are hereby extinguished, and any transfers pursuant to the Act of April 28, 1904 (Chap. 1820; 33 Stat. 567) or other statute of the United States, by, from, or on behalf of the Confederated Tribes of the Grand Ronde Community of Oregon, or any predecessor or successor interest, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including, but not limited to, the Trade and Intercourse Act of 1790 (Act of July 22, 1790; 25 U.S.C. 177, ch. 33, sec. 4; 1 Stat. 137)).

"(2) LIABILITY.—The United States and the Tribe shall share equally liability for lost revenues, if any, to any county because of the transfer of revested Oregon and California Railroad grant lands in section 30, Township 4 South, Range 7 West.".

(b) CIVIL AND CRIMINAL JURISDICTION.—Section 3 of such Act (102 Stat. 1595) is amended by adding at the end the following: "Such exercise shall not affect the Tribe's concurrent jurisdiction over such matters.".

SEC. 3. CONFEDERATED TRIBES OF THE SILETZ INDIANS OF OREGON.

Section 2 of the Act of September 4, 1980 (Public Law 96–340; 94 Stat. 1072) is amended—

(1) by inserting "(a)" after "SEC. 2."; and

(2) by adding at the end the following:

"(b)(1) The Secretary of the Interior, acting at the request of the Confederated Tribes of the Siletz Indians of Oregon, shall accept (subject to all valid liens, rights-of-way, licenses, leases, permits, and easements existing on the date of such request) any deed or other instrument conveying to the United States in trust for the Confederated Tribes of Siletz Indians of Oregon the following parcels of land located in Lincoln County, State of Oregon:

"(A) In Township 10 South, Range 8 West, Willamette Meridian—

"(i) a tract of land in the northwest and the northeast quarters of section 7 consisting of 208.50 acres, more or less, conveyed to the Tribe by warranty deed from John J. Jantzi and Erma M. Jantzi on March 30, 1990; and

"(ii) 3 tracts of land in section 7 consisting of 18.07 acres, more or less, conveyed to the Tribe by warranty deed from John J. Jantzi and Erma M. Jantzi on March 30, 1990, and.

"(B) In Township 10 South, Range 10 West, Willamette Meridian—

"(i) a tract of land in section 4, including a portion of United States Government Lot 31 lying west and south of the Siletz River, consisting of 15.29 acres, more or less, conveyed to the Tribe by warranty deed from Patrick J. Collson and Patricia Ann Collson on February 27, 1991;

"(ii) a tract of land in section 9, located in Tract 60, consisting of 4.00 acres, more or less, conveyed to the Tribe by contract of sale from Gladys M. Faulkner on December 9, 1987;

"(iii) a tract of land in section 9, including portions of the north one-half of United States Government Lot 15, consisting of 7.34 acres, more or less, conveyed to the Tribe by contract of sale from Clayton E. Hursh and Anna L. Hursh on December 9, 1987;

"(iv) a tract of land in section 9, including a portion of the north one-half of Government Lot 16, consisting of 5.62 acres, more or less, conveyed to the Tribe by warranty deed from Steve Jebert and Elizabeth Jebert on December 1, 1987;

"(v) a tract of land in the southwest quarter of the northwest quarter of section 9, consisting of 3.45 acres, more or less, conveyed to the Tribe by warranty deed from Eugenie Nashif on July 11, 1988; and

"(vi) a tract of land in section 10, including United States Government Lot 8 and portions of United States Government Lot 7, consisting of 29.93 acres, more or less, conveyed to the Tribe by warranty deed from Doyle Grooms on August 6, 1992; and

"(C) In the northwest quarter of section 2 and the northeast quarter of section 3, Township 7 South, Range 11 West, Willamette Meridian, a tract of land comprising Lots 58, 59, 63, and 64, Lincoln Shore Star Resort, Lincoln City, Oregon.

"(2) The parcels of land described in paragraph (1), together with the following tracts of lands which have been conveyed to the United States in trust for the Confederated Tribes of Siletz Indians of Oregon—

"(A) a tract of land in section 3, Township 10 South, Range 10 West, Willamette Meridian, including portions of United States Government Lots 25, 26, 27, and 28, consisting of 49.35 acres, more or less, conveyed by the Siletz Tribe to the United

States in trust for the Tribe on March 15, 1986, and

"(B) a tract of land in section 9, Township 10 South, Range 10 West, Willamette Meridian, including United States Government Lot 33, consisting of 2.27 acres, more or less, conveyed by warranty deed to the United States in trust for the Confederated Tribes of Siletz Indians of Oregon from Harold D. Allridge and Sylvia C. Alldridge on June 30, 1981;

shall be subject to the limitations and provisions of sections 3, 4, and 5 of this Act.

"(3) As soon as practicable after the transfer of the parcels provided in paragraphs (1) and (2), the Secretary of the Interior shall convey such parcels and publish a description of such lands in the Federal Register.".

SEC. 4. TRANSFER OF PARCEL BY YSLETA DEL SUR PUEBLO.

(a) RATIFICATION.—The transfer of the land described in subsection (b), together with fixtures thereon, on July 12, 1991, by the Ysleta Del Sur Pueblo is hereby ratified and shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians (including section 2116 of the

Revised Statutes (25 U.S.C. 177)) as if Congress had given its consent prior to the transfer.

(b) LANDS DESCRIBED.—The lands referred to in subsection (a) are more particularly described as follows:

Tract 1–B–1 (1.9251 acres) and Tract 1–B–2–A (0.0748 acres), Block 2 San Elizario, El Paso County, Texas.

SEC. 5. AUTHORIZATION FOR 99–YEAR LEASES.

The second sentence of subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)), is amended by inserting "the Viejas Indian Reservation," after "Soboba Indian Reservation,".

SEC. 6. WIND RIVER INDIAN IRRIGATION PROJECT.

Funds appropriated for construction of the Wind River Indian Irrigation Project in fiscal year 1990 (Public Law 101–121), fiscal year 1991 (Public Law 101–512), fiscal year 1992 (Public Law 102–154), and hereafter shall be made available on a nonreimbursable basis.

SEC. 7. REIMBURSEMENT OF COSTS INCURRED BY GILA RIVER FARMS FOR CERTAIN RECLAMATION CONSTRUCTION.

The Secretary of the Interior is authorized to pay $1,842,205 to the Gila River Farms as reimbursement for the costs incurred by the Gila River Farms for construction allocated to irrigation on the Sacaton Ranch that

would have been nonreimbursable if such construction had been performed by the Bureau of Reclamation under section 402 of the Colorado River Basin Project Act (43 U.S.C. 1542).

SEC. 8. RECONVEYANCE OF CERTAIN EXCESS LANDS.

(a) IN GENERAL.—The Congress finds that the Sac and Fox Nation of Oklahoma has determined the lands described in subsection (b) to be excess to their needs and should be returned to the original grantors or their heirs. The Secretary of the Interior shall convey, without consideration, to the persons as specified in subsection (b), all right, title, and interest of the United States in and to the lands described in subsection (b).

(b) PERSONS AND LANDS.—The lands and individuals referred to in subsection (a) are as follows:

(1) To Sadie Davis, now Tyner, or her heirs or devisees, the lands in Lincoln County, Oklahoma, described as the SE¼SE¼SE¼SE¼ of Section 28, Township 17 North of Range 6 East, containing two and one half acres, more or less.

(2) To Mabel Wakole, or her heirs, the lands in Pottawatomie County, Oklahoma, described as the NE¼NE¼ of Lot 6 of NW¼ of Section 14, Township 11 North, Range 4 East, containing 2.50 acres.

SEC. 9. TITLE I OF THE ACT OF JANUARY 12, 1983, PERTAINING TO THE DEVILS LAKE SIOUX TRIBE.

Paragraph (1) of section 108(a) of title I of the Act of January 12, 1983 (96 Stat. 2515) is amended by striking out "of the date of death of the decedent" and inserting in lieu thereof "after the date on which the Secretary's determination of the heirs of the decedent becomes final".

SEC. 10. NORTHERN CHEYENNE LAND TRANSFER.

(a) IN GENERAL.—Notwithstanding any contrary provision of law, the Secretary of the Interior or his authorized representative ("Secretary") is hereby authorized and directed to transfer by patent to Lame Deer High School District No. 6, Rosebud County, Montana ("School District"), all right, title, and interest of the United States and the Northern Cheyenne Tribe ("Tribe") in and to the lands described below ("Subject Lands"), to be held and used by the School District for the exclusive purpose of constructing and operating thereon a public high school and related facilities. The Subject Lands consist of a tract of approximately 40 acres within the Northern Cheyenne Indian Reservation, more particularly described as follows:

A tract of land located in the W½ SE¼ and the E½ SW¼ of Section 10, Township 3 South, Range 41 East, M.P.M., described as follows: Beginning at the south ¼ corner of said Section 10, thence south 89 degrees 56 minutes west 393.31 feet on and

along the south line of said Section 10 to the true point of beginning, thence south 89 degrees 56 minutes west 500.0 feet on and along said Section line, thence north 00 degrees 00 minutes east, 575.0 feet, thence north 54 degrees 9 minutes 22 seconds east 2382.26 feet, thence south 23 degrees 44 minutes 21 seconds east 622.56 feet, thence south 51 degrees 14 minutes 40 seconds west 2177.19 feet to the true point of beginning, containing in all 40.0 acres, more or less.

(b) PATENT AND LEASE.—The patent issued under this section shall provide that—

(1) title to all coal and other minerals, including oil, gas, and other natural deposits, within the Subject Lands shall remain in the Secretary in trust for the Tribe, as provided in the Act of July 24, 1968 (82 Stat. 424);

(2) the Subject Lands may be used for the purpose of constructing and operating a public high school and related facilities thereon, and for no other purpose;

(3) title to the Subject Lands, free and clear of all liens and encumbrances, shall automatically revert to the Secretary in trust for the Tribe, and the patent shall be of no further force or effect, if, with-

in eight years of the date of the patent, classes have not commenced in a permanent public high school facility established on the Subject Lands, or if such classes commence at the facility within such eight-year period, but the facility subsequently permanently ceases operating as a public high school; and

(4) at any time after the conclusion of the current litigation (including all trial and, if any, appellate proceedings) challenging the November 9, 1993, decision of the Superintendent of Public Instruction for the State of Montana granting the petition to create the School District, and with the prior approval of the Superintendent of Public Instruction ("Superintendent's Approval"), the Tribe shall have the right to replace the patent with a lease covering the Subject Lands issued under the Act of August 9, 1955, as amended (25 U.S.C. 415(a)) having a term of 25 years, with a right to renew for an additional 25 years.

Under such lease, the Subject Lands shall be leased rent free to the School District for the exclusive purpose of constructing and operating a public high school and related facilities thereon. The lease shall terminate if, within eight years of the date of the patent, classes have not commenced in a permanent public high school facility estab-

lished on the Subject Lands, or if such classes commence at the facility within such eight-year period, but the facility subsequently permanently ceases operating as a public high school. In the event the Tribe seeks and obtains the Superintendent's Approval, it may tender a lease, signed by the Tribe and approved by the Secretary, which complies with the provisions of this subsection. Upon such tender, the patent shall be of no further force or effect, and, subject to the leasehold interest offered to the School District, title to the Subject Lands, free and clear of all liens and encumbrances, shall automatically revert to the Secretary in trust for the Tribe. The Tribe may at any time irrevocably relinquish the right provided to it under this subsection by resolution of the Northern Cheyenne Tribal Council explicitly so providing.

(c) EFFECT OF ACCEPTANCE OF PATENT.—Upon the School District's acceptance of a patent delivered under this section, the School District, and any party who may subsequently acquire any right, title or interest of any kind whatsoever in or to the Subject Lands by or through the School District, shall be subject to, be bound by, and comply with all terms and conditions set forth in paragraphs (1) through (4) of subsection (b).

SEC. 11. INDIAN AGRICULTURE AMENDMENT.

(a) LEASING OF INDIAN AGRICULTURAL LANDS.—Section 105 of the American Indian Agriculture Resource Management Act (25 U.S.C. 3701 et seq.) is amended—

(1) in subsection (b)—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following:

"(5) shall approve leases and permits of tribally owned agricultural lands at rates determined by the tribal governing body."; and

(2) in subsection (c), by amending paragraph (1) to read as follows: "(1) Nothing in this section shall be construed as limiting or altering the authority or right of an individual allottee or Indian tribe in the legal or beneficial use of his, her, or its own land or to enter into an agricultural lease of the surface interest of his, her, or its allotment or land under any other provision of law.".

(b) TRIBAL IMMUNITY.—The American Indian Agriculture Resource Management Act (25 U.S.C. 3701 et seq.) is amended by adding at the end the following:

"SEC. 306. TRIBAL IMMUNITY.

"Nothing in this Act shall be construed to affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by Indian tribes.".

SEC. 12. INDIAN HEALTH AMENDMENT.

Section 4(n) of the Indian Health Care Improvement Act (25 U.S.C. 1603(n)) is amended to read as follows:

"(n) 'Health profession' means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, allied health professions, and other health professions.".

○

SECTION-BY-SECTION ANALYSIS OF H.R. 4709

SECTION 1. LEASING AUTHORITY OF THE INDIAN PUEBLO FEDERAL DEVELOPMENT CORPORATION.

Section 1 provides that the Indian Pueblo Federal Development Corporation is to have the authority to lease Indian lands for up to 50 years.

SECTION 2. GRAND RONDE RESERVATION ACT.

Subsection (a) provides that certain parcels of land described in the Bill ~~which total about 10,000 acres~~ are to be added to the Act which established the Grand Ronde reservation in Oregon. A new "subsection" is to be added to the Act which provides that all claims to the land are extinguished and the U.S. and the Tribe are to equally share the liability for any lost revenues to any county because of the land transfer.

Subsection (b) provides that the concurrent jurisdiction of the Tribe is not affected.

SECTION 3. CONFEDERATED TRIBES OF THE SILETZ INDIANS OF OREGON.

Section 3 provides that the Secretary of Interior shall accept a parcel of land in trust for the Confederated Tribes of Siletz Indians of Oregon in Lincoln County, Oregon.

SECTION 4. TRANSFER OF PARCEL BY YSLETA DEL SUR PUEBLO.

Subsection (a) provides that the July 12, 1991 transfer of land by the Ysleta Del sur Pueblo is ratified.

Subsection (b) sets out the land description.

SECTION 5. AUTHORIZATION FOR 99-YEAR LEASES.

Section 5 provides a 99 year lease for the Viejas Indian Reservation.

SECTION 6. WIND RIVER INDIAN IRRIGATION PROJECT.

Section 6 provides that funds appropriated for the construction of the Wind River Indian Irrigation Project are to be made available on a nonreimbursable basis.

SECTION 7. REIMBURSEMENT OF COSTS INCURRED BY GILA RIVER FARMS FOR CERTAIN RECLAMATION CONSTRUCTION.

Section 7 provides that the Secretary of Interior is authorized to pay the Gila River Farm for reimbursement of construction costs.

SECTION 8. RECONVEYANCE OF CERTAIN EXCESS LANDS.

Subsection (a) provides that the Congress finds that the Sac and Fox Nation of Oklahoma has determined certain lands to be excess and the lands should be returned to the original grantors or their heirs.

Subsection (b) describes the lands and the grantors.

SECTION 9. TITLE I OF THE ACT OF JANUARY 12, 1983, PERTAINING TO THE DEVILS LAKE SIOUX TRIBE.

Subsection 9 clarifies that the Secretary is to determine the "heirs of the decedent" under the Act of January 12, 1983 pertaining to the Devil's Lake Sioux Tribe.

SECTION 10. NORTHERN CHEYENNE LAND TRANSFER.

Subsection (a) provides that the Secretary is authorized to transfer by patent to a high school district in Montana, the title to a parcel of land currently held in trust for the Northern Cheyenne Tribe. A public high school is to be constructed thereon.

Subsection (b) provides that the mineral title remains in trust for the Tribe and the lands may be used only for a school. The land reverts to the U.S. if classes have not commenced within 8 years, and after the current litigation, the Tribe shall have the right to replace the patent with a lease for 25 years. Under the lease, the land shall be leased rent free to the school.

Subsection (c) provides that upon the school District's acceptance of a patent, it is bound by all terms and conditions of the Act.

SECTION 11. INDIAN AGRICULTURE AMENDMENT.

Subsection (a) amends the American Indian Agriculture Resource Management Act by providing that the Secretary of Interior shall approve leases of tribally owned agricultural lands at rates determined by the governing body. It further provides that nothing in the section is to be construed as limiting an allottee or tribe in the legal use of their land or to enter into agricultural leases.

Subsection (b) provides that the Act is amended to clarify that nothing therein is to affect, modify, diminish the sovereign immunity of Indian tribes.

SECTION 12. INDIAN HEALTH AMENDMENT.

Section 12 clarifies the term "health profession" as used in the Indian Health Care Improvement act.

Mr. RICHARDSON. I would like to welcome our first set of witnesses, the Hon. Mike Kopetski, U.S. Representative from Oregon, 5th District, a dynamic Member of the House of Representatives, and we have asked the Hon. Leslie AuCoin, once a Member of Congress always a Member of Congress. We are delighted to see him again. We also have the Honorable Mark Mercier, chairman, Confederated Tribe of the Grande Ronde Tribal Council, and Mike Mason, their attorney, of Grande Ronde, OR.

The gentleman from Wyoming.

STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Thank you, Mr. Chairman. I have been involved in this for some time. I do have a statement I would like to make. Mr. Chairman, I have long awaited the day that we would take up an overhaul of the BIA recognition process.

Let me state at the outset that while I greatly appreciate the intent of the gentleman from American Samoa in introducing 2549, I do not believe that this bill, which merely codifies the existing process, goes far enough. We need to make some concrete and some substantial changes in the FAP process.

Regardless of whether the problems with the FAP process are real or perceived, it is clear something needs to be done. While the alleged backlog of petitions at the BIA is not nearly as great as some would have us believe, the perception is that the process is overly cumbersome, political, and ineffective. We are faced with an ever-growing number of tribes that pursue congressional recognition as a result.

As the chairman knows, I strongly believe that pursuing that course is disastrous and can only lead to the recognition of some groups based not on any Indian ancestry but solely on the power and the party affiliation of their sponsor—the Lumbee and Mowa come to mind.

In order to bring some semblance of effectiveness to the process, I am pleased to support and cosponsor H.R. 4462. This is a very complex issue, and I know our staffs have worked hard on crafting legislation that is both workable and effective. Let me comment briefly on some of the more important changes that we propose to make.

First, I believe that removing the process from the BIA is an important step. Although the BIA has done the best job it can with the resources it has to do it with, placing the process with an independent commission will insulate it from charges of antirecognition bias.

I have long been troubled by the appearance, and I stress the word "appearance," of impropriety involved in allowing the same agency responsible for providing services to the tribes to make decisions regarding the recognition that would increase their service population, in some cases by many thousands.

Second, one of the most important changes is that if a petitioning group can demonstrate its descendence from a treaty signatory or from a group that was found eligible to participate in the Indian Reorganization Act, it must then only establish the first three recognition criteria back to the date of the treaty or the IRA eligibility, and not all the way to precolonial days. This would cut down

on a substantial amount of paperwork and research for many groups, and eliminate one of the more prominent complaints about the present system.

In that regard, I want to stress for our witnesses today that this is obviously not a polished product. There are several substantive changes that need to be made that are not included in the bill as introduced in the interests of getting the bill into the system and into the committee.

For instance, as presently worded, it would seem the treaty signatory/IRA eligibility exemption of subsection 5(c) applies only to subsection (b)(1). This is an error, however; the bill is meant to make the exception applicable to all three of the first historical criteria. Our staffers are in agreement on these changes and I am certain that they will be made a part of the bill in markup.

I am sure that we will hear complaints about this bill from all sides. I expect the BIA, like any bureaucracy, will complain that we are making a grave mistake by removing the process from their control. I am equally sure we will hear from some Indian groups who think we have not gone far enough. Mr. Chairman, this is the most workable solution I have seen yet.

I look forward to the testimony today and want to stress to the chairman that swift passage of this bill is of highest importance to me, and I would hope we can move it through the committee and get it to the other body in time for the President's signature this year.

We have been talking about this for 6 years and it is time that we do something about it. Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman and I agree with his statement. I commend him for his efforts on this issue. He has devoted a lot of time to it.

[Prepared statement of Mr. Thomas follows:]

OPENING STATEMENT
OF
THE HON. CRAIG THOMAS
ON
HR 2549 & HR 4462: BILLS TO AMEND THE FAP PROCESS

Mr. Chairman, I have long awaited the day that we would take up an overhaul the BIA recognition process.

Let me state at the outset that while I greatly appreciate the intent of the gentleman from American Samoa in introducing H.R. 2549, I do not believe that his bill -- which merely codifies the existing process -- goes far enough. We need to make some concrete and substantial changes in the FAP process.

Regardless of whether the problems with the FAP process are real or perceived, it is clear that something needs to be done. While the alleged "backlog" of petitions at the BIA is not nearly as great as many would

have us believe, the perception is that the process is overly cumbersome, political, and ineffective. We are faced with an ever-growing number of tribes which seek to circumvent the process and pursue congressional recognition as a result. As the Chairman knows, I strongly believe that pursuing that course is disastrous. It can only lead to the recognition of some groups based not on any Indian ancestry but solely on the power and party affiliation of their sponsor -- the Lumbee and Mowa groups come to mind.

In order to bring some semblance of effectiveness to the process, I am pleased to support and cosponsor H.R. 4462. This is a very complex issue, and I know our staffs have worked hard to craft legislation that is both workable and effective. Let me comment briefly on some of the more important changes we propose to make.

First, I believe that removing the process from the BIA is an important step. Although I feel that the BIA has done the best job it can with the resources available to it, placing the process with an independent commission will insulate it from charges of anti-recognition bias. I have long been troubled by the appearance -- and I stress the word appearance -- of impropriety involved in allowing the same agency responsible for providing services to the tribes making decisions on recognition that would increase their service population, in some cases by many thousands.

Second, one of the more important changes is that if a petitioning group can demonstrate its descendence from a treaty signatory or from a group that was found eligible to participate in the Indian Reorganization Act, it must only establish the first three recognition criteria

back to the date of the treaty or IRA eligibility, and not all the way to precolonial days. This should help cut down on a substantial amount of paperwork and research for many groups -- and eliminate one of the more prominent complaints about the present system.

In that regard, I want to stress for our witnesses today that this bill is obviously not a polished product. There are several substantive changes that need to be made that were not included in the bill as introduced in the interests of getting the bill into the system and into committee. For instance, as presently worded, it seems that the treaty signatory/IRA eligibility exemption of subsection 5(c) applies only to subsection 5(b)(1). This is an error, however; the bill is meant to make the exemption applicable to al three of the first historical criteria. Our staffs are in agreement on these changes, and I'm

certain that they will be made a part of the bill at mark-up.

I am sure that we will hear complaints about this bill from all sides. I expect that the BIA, like any bureaucracy, will complain that we are making a grave mistake in removing the process from their control. I am equally sure that we will hear from some Indian groups who think that we have not gone far enough. But Mr. Chairman, this is the most workable solution I have seen yet.

I look forward to the testimony today. I want to stress to the Chairman that swift passage of this bill is of the highest importance to me. I would hope that we can move this through committee and get it to the other body in time for the President to sign it into law this year. We have been talking about this for the last six years; it is high time we actually did something about it.

Mr. RICHARDSON. Let me mention that the distinguished vice chairman of the Senate Indian Affairs Committee, the Honorable John McCain, has arrived and has a companion bill on the Federal acknowledgment process, and the Chair will now recognize him for his opening statement. Welcome, Senator.

STATEMENT OF HON. JOHN McCAIN, A UNITED STATES SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Thank you, very much, Mr. Chairman and Congressman Thomas. Thank you. I would be very brief, Mr. Chairman, because I think Congressman Thomas and you have covered most of the points.

I just would like to emphasize the compelling reason for legislation and that is that the system today is unfair. It is not fair for Indian tribes that are seeking recognition to have powerful friends in Congress, either in the House or in the Senate, and thereby get recognition. Other tribes who do not, then languish for years and years and years and years and years in the process. It needs to be addressed—there is a compelling reason for this issue to be addressed for that reason alone, in my view.

Second of all, obviously in my view, Mr. Chairman, it should not be an open-ended process. There are a limited number of people seeking recognition and I am very pleased to see that our legislation in both bodies is nearly identical and it seems to me that we have an opportunity this year to get it passed.

I think we need one process with fair standards and firm time lines to ensure impartiality. In my view, the process should be managed by an independent Federal commission rather than Congress or BIA.

There is one difference between the two bills, Mr. Chairman, and I would urge your consideration, and that is the Senate bill requires all petitions to be filed within 6 years after enactment and the review of all petitions would have to be completed no later than 12 years after enactment. I would urge your consideration, especially since the tribes themselves are strong supporters of some kind of an ending to this process.

Mr. Chairman, I want to thank you for everything you and Congressman Thomas are doing on native American issues. We have seen a degree of cooperation and a degree of effort that I think is really very significant, and I want to express my personal appreciation for the relationship that we have, Senator Inouye and yours and my staff, and we appreciate it very much. And this legislation you are taking up is just another sign of the commitment that you have to Indian country, and I thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman and I know he has to return to the Senate.

[Prepared statement of Senator McCain follows:]

STATEMENT
OF
SENATOR JOHN McCAIN
FOR THE HEARING ON
H.R. 4462, THE INDIAN FEDERAL RECOGNITION
ADMINISTRATIVE PROCEDURES ACT OF 1994

BEFORE THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

JULY 22, 1994

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you today to offer a few comments on H.R. 4462, the Indian Federal Recognition Administrative Procedures Act of 1994. I commend Chairman Richardson and Representative Thomas for their leadership in bringing this issue before the subcommittee.

H.R. 4462 is very similar to S. 1844 which I introduced in the Senate on February 10, 1994. S. 1844 was cosponsored by Senator Inouye and Senator Cochran and it reflects over sixteen years of work by the Senate Committee on Indian Affairs to find a sensible way to reform the process by which the Federal government extends recognition to Indian tribes. With the introduction of H.R. 4462, for the first time we now have legislation pending in both the House and Senate which, if enacted, would lead to the necessary reform of the process.

As the members of this subcommittee know all too well, we currently have two processes by which an Indian tribe can be federally recognized. One of those is right here in the Congress. It involves little or no application of objective standards or criteria

and relies almost exclusively on the political strength of the congressional delegation of the state in which the Indian tribe happens to be located. There are six recognition bills currently pending in Congress and it is fair to assume that at least a few of these will be enacted before the adjournment of this Congress. We have legislatively recognized at least 14 Indian tribes since 1978.

The Department of the Interior also has a process for Federal recognition. In 1978, regulations were promulgated by the Department to govern that process. Earlier this year those regulations were revised and updated in an effort by the Department to respond to criticism from Indian tribes and the Congress. Since 1978 the Department has received 147 petitions from Indian groups seeking recognition. Of those, 29 have been resolved and 75 are letters expressing an intent to petition. Seven petitioners have been deemed by the Department to require legislative authority to proceed through the Department's review process. The remaining 35 petitions are in various stages of review by the Department.

In hearings held by the Senate Committee on Indian Affairs in 1978, 1983, 1988, 1989 and 1992 we have repeatedly heard that the recognition process in the Department is time consuming and costly. Some tribal groups allege that it leads to unfair and unfounded results and that the criteria for recognition are not applied in a consistent manner. Until very recently, the Department's process has often been hindered by a lack of staff and resources. When this situation is combined with the fact that the Congress often extends recognition with little or no reference to the legal standards and criteria included in the Department's regulations, we get a predictable result--unfairness for most petitioners.

H.R. 4462, like S. 1844, would correct this situation by establishing one process for all petitioners. Every petition would be evaluated by the same criteria. Firm timelines would be applied to ensure that reviews do not drag on for ten or more years, as they currently do. Appropriations are authorized to ensure that the necessary staff and resources are available to review petitions. Appropriations are also authorized to assist petitioners in the development and presentation of the evidence necessary to reach a determination of whether recognition should be extended. Both bills would establish an independent three member Federal commission to evaluate petitions and make final determinations.

While there are some differences between S. 1844 and H.R. 4462, I believe that they are minor with one exception. S. 1844 would establish a firm timeline of six years from the date of enactment for all petitions to be submitted for review and a deadline of twelve years from the date of enactment for all reviews to be completed by the Commission. I believe that these provisions of S. 1844 are extremely important. Everyone involved in this process needs finality. The Indian tribes need to know if they are going to be recognized and when. The Congress and the Executive Branch agencies need certainty as to the number of Indian tribes requiring federal assistance and services. I do not believe that there are an infinite number of Indian tribes to be recognized. It seems reasonable and consistent with sound public policy to insist that there be an end point for the recognition process. Accordingly, I urge the members of this subcommittee to consider including the provisions of S. 1844 in H.R. 4462 to establish firm deadlines for the submission of all petitions and the completion of this process.

I thank you for your consideration. On behalf of Chairman Inouye and the members of the Senate Committee on Indian Affairs, I want to assure you that we are prepared to work closely with you to secure enactment of this legislation this year.

Senator MCCAIN. At least I am not going to Haiti. Thank you, Mr. Chairman.

Mr. RICHARDSON. I thank the gentleman and I wish him the best and thank him for his testimony.

Mr. RICHARDSON. The Chair will now recognize the dynamic Member from Oregon, Mr. Kopetski, who has provided leadership on so many issues, defense, trade, and many other issues, and today would testify to views of his constituents. The Chair recognizes the Honorable Mike Kopetski.

STATEMENT OF HON. MICHAEL J. KOPETSKI

Mr. KOPETSKI. Thank you, Mr. Chairman, and thank you for those kind words, and if you need assistance in going to Haiti, I would be glad to help. It is an important issue.

Mr. Chairman, Mr. Thomas, thank you for the opportunity to testify before the subcommittee today. I want to discuss the Grand Ronde tribes section of the native American technical corrections bill. About 99.9 percent of the Grande Ronde is in my congressional district. The one-tenth of 1 percent lies in Representative Furse's district. She is unable to attend today but wished to express her support for this section as well.

In the late 1800's, the Grand Ronde reservation was surveyed improperly, and, as a result, 84 acres of reservation lands were unaccounted for. This parcel was sold mistakenly by the Federal Government—as unallotted lands within the original reservation in 1904. The tribe has never received compensation for the value of this land, or for the value of the timber harvested from the land. In fact, the tribe was not informed of its legal rights to this land until November of 1988.

Today, parts of the land are owned by three private timber companies and the Bureau of Land Management. To alleviate the obvious legal and management problems that arise from the rightful reclaiming of its land, the tribe has proposed a land swap. Under this bill, the tribe will relinquish its claim to the 84 acres in exchange for a parcel of 360 acres of BLM land which is adjacent to the tribe's current reservation.

There are representatives from the tribe and the administration here who can address the settlement in further detail. However, it is important to note that both the tribe and the Oregon office of the BLM determined the parcels of land to be roughly equal in value in terms of compensation due to the tribe.

When the tribe brought this issue to my attention, we agreed that the easiest solution would be to approach the Department of Interior to establish a procedure to resolve this issue. The Department of Interior instructed the tribe to negotiate a settlement with the State BLM office. It was at Washington, DC's insistence that any settlement be adopted legislatively rather than through the administrative process. This is why I sought to include the agreement reached by the tribe in consultation with the State BLM and the area BIA in this technical corrections bill.

It is my understanding the Department of Interior informed the committee on June 29 that it was not in agreement with the settlement reflected in the bill. Since that time, the tribe, Representative Furse and myself have repeatedly asked the Department of Interior

to articulate specifically its specific concerns with the proposed settlement. Interior waited until yesterday to respond and to make a counteroffer to the compromise the State BLM authorities had already agreed to.

I submit that the tribe has worked in good faith with the Department of Interior in order to resolve this issue. It is unconscionable to me that Interior has withheld until this late date, this last hour, its disruptive designs revealing its intentions only after State BLM broke historic ground in forging a compromise with the tribe.

Mr. Chairman, the tribe has been forthright and flexible in their efforts to resolve this issue to the satisfaction of all parties. The President has opened a new era in native American relations by directing government agencies to work cooperatively with tribal governments to resolve disputes. The tribe has worked closer with the State BLM than ever before in drafting this proposal. This settlement compensates the tribe for a mistake made by the Federal Government and it avoids a legal battle which could cost the taxpayers and the three timber companies involved and that cost would be more than twice the value of the settlement.

I ask the subcommittee to honor the cooperative effort that went into the settlement and answer the President's call to treat this Nation's native American people fairly and honestly.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Kopetski follows:]

Congressman Mike Kopetski

Testimony before the

Subcommittee on Native American Affairs

Friday, July 22, 1994

Mr. Chairman, Mr. Thomas, thank you for the opportunity to testify before the Subcommittee today. I want to discuss the Grand Ronde section of the Native American Technical Corrections bill. My good colleague Elizabeth Furse is unable to be here today, but she wished to express her support for this section as well.

In the late 1800's, the Grand Ronde reservation was surveyed improperly, and, as a result, 84 acres of reservation land were unaccounted for. This parcel was sold mistakenly by the Federal Government -- as unalloted lands within the original reservation in 1904. The tribe has never received compensation for the value of this land, or the value of the timber harvested from the land. In fact, the tribe was not informed of its legal rights to this land until November of 1988.

Today, parts of the land are owned by 3 private timber companies and the Bureau of Land Management. To alleviate the obvious legal and management problems that arise from the rightful reclamation of their land, the tribe has proposed a land

swap. Under this bill, the tribe will relinquish their claim to the 84 acres in exchange for a parcel of 360 acres of BLM land which is adjacent to the tribe's current reservation.

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It is my understanding the Department of the Interior informed the Committee on June 29th that they were not in agreement with the settlement reflected in this bill. Since that time, the tribe, Representative Furse and myself have repeatedly asked the Department of the Interior to articulate their specific concerns with the proposed settlement. Interior waited until yesterday to articulate their concerns and make a counter offer to the compromise the State BLM authorities already agreed to. I submit that the tribe has worked in good faith with the Department of the Interior in order to resolve this issue. It is unconscionable to me that Interior has withheld, until

this late date, its disruptive designs, revealing their intentions only after the State BLM broke historic ground in forging a compromise with the tribe.

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Mr. Chairman, thank you.

PANEL CONSISTING OF HON. LES AuCOIN, CHAIR, GOVERNMENT RELATIONS, BOGLE & GATES; MARK MERCIER, CHAIRMAN, CONFEDERATED TRIBE OF THE GRANDE RONDE TRIBAL COUNCIL; AND MICHAEL D. MASON, ESQ., GRANDE RONDE, OR

Mr. RICHARDSON. The gentleman from Oregon, Mr. Les AuCoin, if he wishes to go next or introduce the Chairman or whatever. The Chair recognizes the gentleman from Oregon.

STATEMENT OF HON. LES AuCOIN

Mr. AUCOIN. Thank you, Mr. Chairman. I want to just express my own appreciation for your good work and the work of this committee, not only during the 18 years I served as a Member of Congress from Oregon's 1st District, which includes the territory and reservation of the Grand Ronde, but also since I left the Congress.

Now that I am formerly an important public person, I want to tell you that my continuing admiration pertains and obtains to the work of this committee.

I appreciate very much what Congressman Kopetski has stated, and I think he has outlined the case of the Grand Ronde very, very well. It is not my purpose to testify today, except perhaps to augment, Mr. Chairman, the statement that the tribal chair wishes to make. So thanks to you for letting us testify and thanks to you for inclusion of our provision in your bill.

I would like to turn the microphone over to Mark Mercier the chair of the Confederated Tribe of the Grand Ronde.

Mr. RICHARDSON. I thank my colleague.

Mr. Mercier, you could not have had a better introduction.

STATEMENT OF MARK MERCIER

Mr. MERCIER. Mr. Chairman, appreciate the opportunity to be here today. My oral testimony, I lost an awful lot of thunder I had to the two very eloquent speakers preceding me here.

We are here today to say more or less, or we are here to let you know, that this effort is not to demonstrate that the tribe comes in shooting from the hip, so to speak. It was in the summer of 1988 when we originally learned of this record land survey on the tribe's original reservation.

Since then, the tribe has worked on the local level with both the congressional delegation and the administration to see if we could come up with some kind of an equitable settlement to both parties. It was 2 days prior before the introduction of this particular bill that we found out the administration had some concerns. Tribal representatives then came back to meet with them to see what they were. And one of their very first questions was did the tribe work on the local level with the BLM. Which we replied, well, yes, since about the last 4 years we have done exactly that.

Now, just yesterday, we met with the Interior legislative counsel office to see if we could come to some sort of agreement just to see if we could bypass this particular effort. We will still continue to work with them prior to markup, if they continue to have concerns with this bill. But what we are really here to urge the Congress is that we feel that the tribe has made a good faith effort to resolve

this particular situation, and this is why we are here today and ask you for your consideration.

Thank you once again for the opportunity to testify.

Mr. RICHARDSON. Thank you.

[Prepared statement of Mr. Mercier follows:]

TESTIMONY DELIVERED BY MARK MERCIER

Chairman, Confederated Tribes of the Grand Ronde,

to the

UNITED STATES HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

SUBCOMMITTEE on NATIVE AMERICAN AFFAIRS

Friday, July 22, 1994

Mr. Chairman, other distinguished members of the committee, my name is Mark Mercier. I am chair of the Confederated Tribes of Grand Ronde. We are a tribe of nearly 3100 members located in the Coast Range of Oregon, about 1 1/2 hours south of Portland. I'd like to thank you for the opportunity to address the Technical Corrections Bill before your committee -- and in particular the provision dealing with the land exchange involving the Grand Ronde. This committee, and you in particular, Mr. Chairman, have been exceptionally responsive and helpful to the Confederated Tribes the Grand Ronde. We appreciate all your efforts on behalf of Native Americans and look forward to continuing to work with you.

I'd like to begin by giving you a little background on why we are here today. In 1881, David Thompson, a U.S. Deputy Surveyor, was marking the east boundary of the Grand Ronde Reservation. I don't know what he was doing that day -- maybe he was a little sleepy eyed after a nap beneath one of our majestic Douglas Fir trees, perhaps he was overwhelmed by the beauty of Oregon's Coastal Mountains, or possibly, he had a long lunch and an extra pull from his flask -- whatever the reason, he put the southeast corner of our reservation in the wrong place. He put it inside the original and correct corner that had been established in 1856.

In 1904, as part of the failed allotment policy, the United States Government sold most of the land within the Grand Ronde Reservation. The land was sold based on Thompson's incorrect boundary. The BLM detected Thompson's survey error was in 1988, shortly after Congress restored a portion of the reservation. The result was 84 acres of land was not sold and is therefore still held in trust for the tribe by the United States.

On November 1, 1988, Bureau of Indian Affairs notified the tribe that because of this survey error, these 84 acres of land were never sold or conveyed by the U.S. Government as trustee for the tribe. Because of the Claims Court statute of limitations, the tribe has until November 1st of this year to settle any claims resulting from this error.

Existing reservation lands are managed for timber harvest, the main source of revenue for the tribe. The shape and location of the 84 acres (see attached map) make it impossible to work into current management plans. In addition, the BLM, believing the Thompson Strip to be Oregon and California Railroad Grant Lands because of the survey error, has allowed timber harvesting to occur in part by three large, private timber companies occupying the land.

Reclaiming these 84 acres would put the tribe in an explosive position with these important job providers at a time of great local controversy over the President's Northwest Forest Plan. Rather than do that, the tribe would much prefer to relinquish any claim in exchange for a different parcel of land.

Working with the local BLM authorities in Oregon, we have identified a BLM parcel that is adjacent to our existing reservation and of comparable worth to the value of the Thompson Strip.

Such an exchange cannot be handled administratively -- we need your assistance to pass legislation granting us title to this BLM parcel. The bill before you today would do just that.

This bill amends the Grand Ronde Reservation Act by adding the new parcel to the existing reservation and relinquishes any claim that the Grand Ronde may have to the land that was incorrectly surveyed. Another section clarifies responsibility for payments to the O&C Counties. By agreement with the U.S. Government, these counties receive 50% of the value of timber harvested on the O&C grant lands. Because the parcel we are attempting to acquire is a part of the O&C lands, we are currently negotiating compensation for the lost future revenues with the O&C County Association. I should add that the counties are supportive of our claim and the proposed exchange. Our bill splits responsibility for payment to the O&C Counties 50-50 between the federal government and the tribe. In discussions with the Interior Department, we have come to an agreement that another section should be added providing a process to survey the Thompson Strip in order to correct the patents and give clear title to the current occupants. The cost of the survey would be split equitably between the federal government and the current occupants.

Throughout the entire valuing and identification process, we have made every effort to negotiate and work with the proper administrative authorities. In March of this year the Interior Department's Counselor's office referred us to the BLM here in Washington, D.C. We met with an official, described our problem and were instructed to negotiate with Elaine Zielinsky, the new state BLM Director in Oregon. We have had excellent meetings with Ms. Zielinsky and her staff and want to complement them all for their willingness to meet and desire to resolve this claim. They have worked well within the spirit of the President's Executive Order to remove impediments to tribal self determination. Once we had worked out a settlement, the Grand Ronde Tribe and BIA drew up draft legislation which has turned into the bill provisions you see before you today.

If everything here is so cut and dried, then you may be wondering why it is that we are here. Frankly, we're wondering the same thing. Two days before HR 4709 was introduced, the Office of Legislative Council of the Department of Interior told us they had concerns. We have continued our discussions with administration officials here in D.C. in an attempt to answer any concerns that they might have, but so far we have been frustrated by the lack of a resolution.

The objections raised by the Counselor's office revolve around the value of our claim. Our claim is determined by an appraisal of the 84 acres of incorrectly surveyed land, the value of the timber on the land and compensation for the timber harvested from that land between 1904 and 1994, while the land remains in trust for the benefit of the tribe. As your committee knows, Mr. Chairman, proper value cannot be determined without including existing timber stands, because it is part and parcel of the land. To our

surprise, the Interior Department is not recognizing our claim of compensation for harvested timber. By failing to do so, they establish a precedent that says the Federal Government has no compensable trust duty for the management of tribal timberlands.

Such precedent is unfair, unjust and just plain wrong.

The U.S. Supreme Court has consistently recognized the trust duty to protect and obtain fair value for timber on Indian trust lands. In the case United States vs. Mitchell, the Court says:

> [E]ven in its earliest regulations, the Government recognized its duties in 'managing the Indian forests so as to obtain the greatest revenue for the Indians consistent with a proper protection and improvement of the forests. . .[A] fiduciary relationship necessarily arises when the Government assumes such elaborate control over forests and property belonging to Indians.

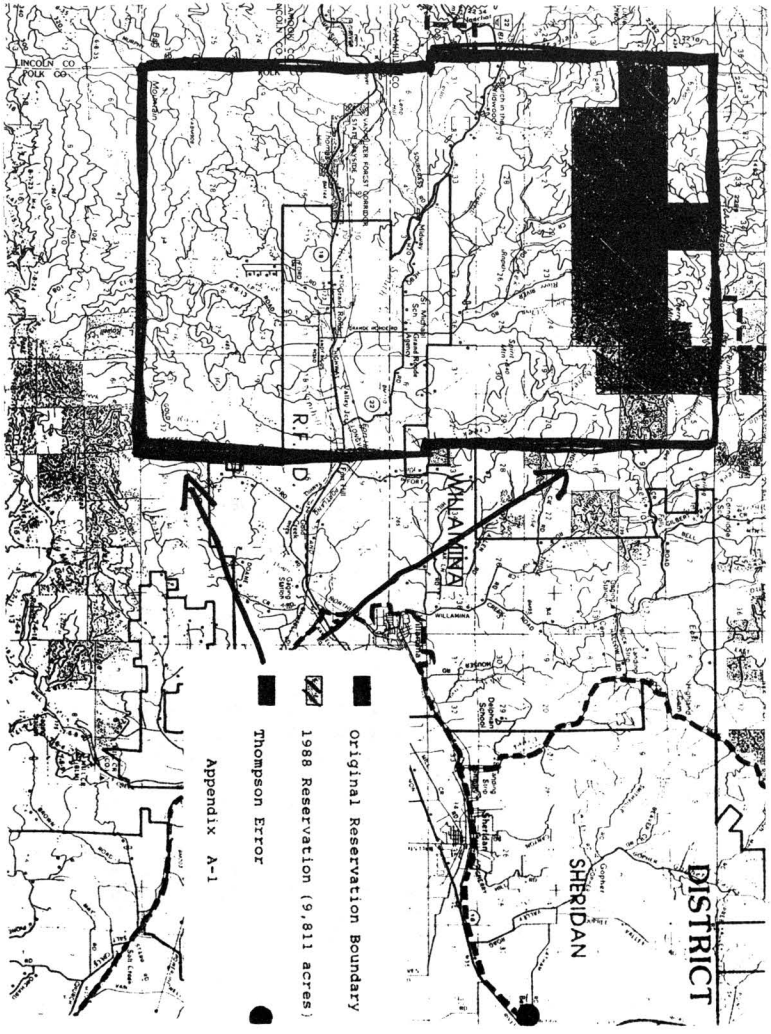
In that decision, Justice Marshall understood clearly the risk of leaving consequences out of the trust equation. He wrote:

> It would be anomalous to conclude that these enactments create a right to the value of certain resources when the Secretary lives up to his duties, but no right to the value of the resources if the Secretary's duties are not performed. Absent a retrospective damages remedy, there would be little to deter federal officials from violating their trust duties. . .

So, Mr. Chairman, the Mitchell decision confirms that the United States bears a responsibility for lost trust timber on Grand Ronde lands. That responsibility includes compensation for the value of the timber of the Tribe.

We have heard the Interior Department's counter offer to the parcel we identified with the Interior Department's regional offices. It simply does not recognize what the tribe rightfully deserves. If the committee were to agree with the agency, it would set an anti-Indian precedent of sweeping significance. We cannot believe that this distinguished committee, with its record of defending the treaty rights of Native Americans, would support such a policy.

Therefore, with all due respect for the spokesperson for the Department of Interior, who has testified today, we ask you, Mr. Chairman, and the members of the committee, to do the right thing and correct this wrong. We seek to punish no one. An honest mistake was made. We just ask for an honest settlement. Thank you.


Original Reservation Boundary
1988 Reservation (9,811 acres)
Thompson Error
Appendix A-1
WILLAMINA
SHERIDAN
DISTRICT
R.F.D.

Mr. RICHARDSON. The gentleman from Oregon.

Mr. AUCOIN. Thank you, Mr. Chairman. I just wanted to add a couple of points. I know time is limited this morning.

I want to indicate for you and for the committee and for the record that during the nine terms I did represent Oregon's 1st District, two of the major pieces of legislation I authored and moved through the Congress were, first, the legislation restoring this tribe's Federal recognition; and, second, in 1983, I authored the legislation, along with the senior Senator from Oregon, Senator Hatfield, the reservation legislation.

Mr. Chairman, had we known at the time the Reservation Act was being legislated that there was an error in the survey going back so many years, I am here to stipulate and testify for you it would have been corrected under the Reservation Act. There is absolutely no question about that.

It was only some years later in terms of, actually in October 1988, when the survey error was noticed, that denied us a chance to make the correction. But after receipt of that letter and notification to the tribe that the survey error was committed, the tribe did negotiate at the State level in good faith. And the values, the appraisal has been achieved, has been worked out with the State BLM, and so we have—this is a product, this proposal that has been put before you, is a product of extensive work and cooperation and collaboration at the State level.

Finally, let me just state this. It is true that there is some degree of disagreement or absence of agreement thus far here in Washington, DC, but we will continue the discussions to try to resolve that before your markup. But I would implore the committee that if we fail to come to terms, that the committee look not just on the absence of an agreement in making a decision as to whether to include this provision in the bill, but look at the merits of the case. And with regard to the merits of the case, I would like to submit for the record a letter dated October 28, received by the tribe October 28, 1988, written by Charles Lusher, the State director of the BLM, to Mr. Stanley Speaks, the area director of the BIA.

The third paragraph of that letter says it all, Mr. Chairman. Mr. Lusher says to Mr. Speaks, quote, "we feel you should be made aware of, parentheses, the survey error, and advised that under the 1904 act, the United States is obligated to sell all such land and disburse the proceeds received therefrom onto the Grand Ronde Indians."

He was referring to the Thompson strip which was left out of the sale in 1904, and clearly reflects an obligation on the part of the United States to make the tribe whole for that error.

I hope the committee, following its highest traditions, will base its decision on the merits of this case.

[The information follows:]

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
OREGON STATE OFFICE
P.O. BOX 2965 (825 NE MULTNOMAH STREET)
PORTLAND, OREGON 97208

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

2530 (942)

OCT 28 1988

RECEIVED
88 OCT 31 AM 10:11
BIA PORTLAND

Mr. Stanley Speaks
Area Director
Bureau of Indian Affairs
P.O. Box 3785
Portland, OR 97208

OCT 31 1988

Dear Mr. Speaks:

This past summer, the Branch of Cadastral Survey was contacted by a private land surveyor who had found an error in a 1957 Bureau of Land Management (BLM) resurvey of the boundary between Tps. 6 and 7 S., R. 7 W., Willamette Meridian, Oregon. During our field investigation of this problem, we discovered errors in 1871, 1881, 1884, and 1887 surveys which have resulted in areas of land along the boundary never being surveyed (such areas are referred to as hiatuses) and land in T. 6 S., R. 7 W., which is unpatented. The complexities of the erroneous surveys are too technical to explain in this memorandum, but basically what happened is the surveyors did not use or find corners established in prior surveys and set new corners.

Our reason for informing you of this situation is that the land in T. 6 S., R. 7 W., which was thought to be patented but isn't because of the erroneous surveys, is within the former Grand Ronde Reservation. Under the Act of April 28, 1904, a copy of which is enclosed, the United States supposedly sold all unalloted reservation land except for one allotment. This sale included that portion of the reservation located in T. 6 S., R. 7 W. However, because of the erroneous surveys, there exists a parcel of land which was never sold and therefore remains property of the Grand Ronde Indians. This parcel, comprising approximately 87 acres, is depicted on the enclosed diagram. We emphasize that the location and configuration of the property as shown on the diagram and the acreage stated are derived from preliminary data and could change as a result of an accurate, contemporary dependent resurvey.

Since the Indian title to this property has only recently come to light, we feel that you should be made aware of its existence, and advised that under the 1904 Act, the United States is obligated to sell all such land and disperse the proceeds received therefrom to the Grand Ronde Indians. Before this can be done, however, a resurvey would be required to properly identify

ATTACHMENT A

the land and determine its area. Lands adjacent to the subject parcel are in private ownership, and may, in all likelihood, be thought by the landowners to be part of these patented lands.

The discovery of this unalloted and unsold parcel leads to certain questions: Who would pay for the resurvey? Does the 1904 Act still apply as to disposal of the land, and what other legal issues might be involved? Our immediate purpose is to notify you of the existence of the land found during our field investigation and start a dialog between our offices with the objective of solving the various problems which are raised.

BLM will proceed with a resurvey of the boundary between Tps. 6 and 7 S., R. 7 W., and certain sections containing BLM lands in both townships. We will not do any survey work involving the former reservation in T. 6 S., R. 7 W. at this time.

Please contact our Branch of Cadastral Survey or Branch of Lands and Minerals Operations for any additional information you may need or regarding any questions you may have on this matter.

Sincerely,

Charles W. Luscher
State Director

2 Enclosures (as stated)

cc: District Manager, Salem

OR 943

Mr. RICHARDSON. Well, let me say I know Mr. Hayes from the BIA will be testifying next. Could you tell me, maybe the chairman, how does the amendment affect your land base? How would the amendment affect their land base? What is your current land base?

Mr. MERCIER. The current land base is 9,800 acres of timberlands. Now, what this particular amendment, what it will do is to resolve any outstanding claims the tribe may have against the Federal Government as a result of this errant survey. The errant survey itself is in a mountainous terrain and it is in the shape of an inverted "L," therefore management practices would be literally impossible.

So if this untenable amendment goes through, it will more or less turn the land over to the people who originally purchased the land thinking that the survey was correct in the first place; then it would also take some lands under the BLM management designation and turn it into lands to be held in trust for the tribe under the BIA and it will be—they are contiguous to the tribe's current reservation as well.

Mr. RICHARDSON. I will turn to the gentleman from Wyoming for questions and ask the gentleman from Montana to take the chair temporarily.

Do you think you can work these differences out before Friday? I would like to mark up this bill by next Friday. And just on an examination, a personal examination of the case involved, it is my view that the merits are on your side. Now, I think it is easier to work these differences out. Is there anything you would like to discuss in terms of the negotiations?

Mr. AUCOIN. Well, Mr. Chairman, I hope that the negotiations will go in good faith. We had a productive meeting yesterday, but it would not be accurate to say we have reached a conclusion with the Department. I am encouraged by your analysis of the justification of our claim.

We will promise you this. We will negotiate in good faith and entertain all reasonable proposals to try to come to an agreement with the Department.

This tribe does not want a fight. If it did want to fight, it would have been in court already. Its inclination all through the years has been to try to cooperate and we will continue in that spirit up to the time of markup.

Should we fail, however, Mr. Chairman, I hope that you would, and the committee would, look at our proposals on their merits because we really have to put ourselves on the mercy of this committee particularly for this reason. And it needs to be stated in this hearing, the statute of limitations will run out on this claim by November of this year; and, therefore, we do not want a situation, I am sure the Chair does not or the committee, where the absence or the inability to come to an agreement denies this tribe its right, what it rightly deserves.

We need to have the impetus and the onus and incentive for people to come to agreement, and the Chair and the committee can help us by voting on this issue.

Mr. RICHARDSON. Mr. Kopetski was quite insistent on the floor last week about this and I pledged to him we would make every effort.

Mr. WILLIAMS. Mr. AuCoin, did you say this November or next November?

Mr. AUCOIN. This November, Mr. Williams.

Mr. WILLIAMS. Thank you. So that does speak to the necessity to——

Mr. AUCOIN. Absolutely. In the absence of an agreement, this committee is the only place where we can get the relief in time. Otherwise this tribe's claim will be abandoned and forgotten, and I think the equities of that speak for themselves. I think that would be a catastrophe.

Michael Mason, the tribal attorney, would like to add a couple of points, Mr. Chairman, and then we will be finished.

STATEMENT OF MICHAEL D. MASON, ESQ.

Mr. MASON. Very briefly, thank you again, Mr. Chairman and members of the committee, for giving us an opportunity to testify on this bill, which is a very significant one to the Confederated Tribes of Grande Ronde, or rather insignificant one we submit to the Department of Interior especially on a national level.

You asked, Mr. Chairman, the question about how this would affect the tribe's land base. It would add the 360 acres directly adjacent to the tribe's current reservation, which would enhance the management capability on that land. That would be—it is just the opposite of the current situation. For us, it is a very manageable parcel. Our road network through the reservation is the only way you can reach this land. And for the BLM, on the other hand, it is an unmanageable, isolated land-locked parcel of 360 acres that I think from the management side, as we have been informed by the State director of BLM, is not valuable to them at all.

So I just want to emphasize that.

Mr. RICHARDSON. I thank the gentleman. I am going to excuse myself briefly and recognize the gentleman from Wyoming.

Before I do that, I want to say I received a phone call from Senator Claiborne Pell last night. He asked me also to look into a bill that affects his tribes in Rhode Island, and I told him we could not at this hearing but we will examine his concerns in the next few days and deal with them.

After the gentleman is recognized, I would ask the gentleman from Montana to Chair. The gentleman from Wyoming.

Mr. THOMAS. Thank you. I just wanted to observe that I have long continued to stress the opportunities to trade some lands and to block up lands so that they can be managed better. This is an occasion that quite often happens, and I have to tell you, in my experience, Interior resists that for some reason or another and it is very difficult to do this.

My understanding is that there is no controversy over the entitlement; that you do recognize the claim, isn't that correct? It is just simply how you handle it, isn't that the controversy?

Mr. KOPETSKI. That is correct.

Let me just say, Mr. Thomas, that this is a land management issue, but as you are well aware, BLM lands in the West, we have this checkerboard configuration that makes it even more difficult to manage generally, and this sort of fixes part of that problem. I

think long term, it will save the Federal Government some money, and so it just makes sense.

The BLM people on the ground in Oregon are very sensitive to land values, especially with the spotted owl controversy, et cetera, we have going on right in this area. Believe me, they are going to understand land values. And on the face you might say, well, it is 360 acres. They know the values and they are saying this is equal value.

They had struck this deal and then all of a sudden we have the people in Washington, DC, who have never walked on this land, they are saying, wait a minute, this is not a fair deal. We have had months and months of negotiations out there on this, and there is just no reason, no reason whatsoever, why this deal should not have been consummated. It is unfortunate we are even having to sit at this table today.

I understand that, Congressman, and I appreciate the situation and look forward to helping to solve it. Thank you.

Thank you. Thank you very much.

Mr. WILLIAMS [presiding]. Gentlemen, thank you all very much for being with us. Nice to see you all.

Mr. MERCIER. Our thanks to the committee.

Mr. WILLIAMS. Mr. Mason, the committee does want to make the point that, and Mr. Richardson would say this were he here, this is not an insignificant under this committee. We want you to know that we are attended to it and we do want to help.

Mr. MASON. We certainly appreciate that, and I didn't mean to indicate that it was.

Mr. WILLIAMS. I know that. I was not responding to that; I was just giving you a positive response that we are as concerned about it as you are and we are determined to help.

Mr. MASON. Thank you again.

Mr. WILLIAMS. Now, going to what was listed originally as panel one, Mr. Patrick Hayes, Acting Deputy Commissioner for Indian Affairs. I believe, Mr. Hayes, you are accompanied by some folks. If you will bring them up and introduce them to the committee and then please proceed.

Fire away, Mr. Hayes. Introduce your two colleagues and then proceed.

STATEMENT OF PATRICK A. HAYES, ACTING DEPUTY COMMISSIONER OF INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY HOLLY RECKORD, CHIEF, BRANCH OF ACKNOWLEDGMENT AND RESEARCH; AND GEORGE ROTH, CULTURAL ANTHROPOLOGIST, BRANCH OF ACKNOWLEDGMENT AND RESEARCH, BUREAU OF INDIAN AFFAIRS

Mr. HAYES. Good morning, Mr. Chairman and members of the committee. I am pleased to be here this morning to present the views of the Department of the Interior on H.R. 4462 and H.R. 2549.

I am accompanied today by Ms. Holly Reckord, who is the Chief in our Branch of Acknowledgment and Research and Mr. George Roth, who is a long-time employee of the Branch of Acknowledg-

ment and Research. George has been a member of that branch almost since its inception back in the late 1970's.

We have also in the room but not at the table, Mr. Scott Keep, who is an attorney with the Division of Indian Affairs in our Solicitor's office at the Department of the Interior. The individuals accompanying me today will provide assistance to me in answering any questions that the committee may have.

First off, Mr. Chairman, I would like to thank the Chair as well as all members of the committee for your long-standing concern for and support of our acknowledgment process. I provided a written statement to the committee and I would urge its inclusion in the record. I have a summary of that statement, Mr. Chairman.

We are both committed to assuring fair, thorough, and expeditious review of petitions from currently non-federally recognized groups; at the same time, this process must protect the sovereignty of existing recognized tribes. In order to better fulfill our commitment, the chairman is aware that we have recently published a new rule to govern this administrative process which we are confident will improve matters. Plus, we are devoting double the personnel resources for this process from that which was available even up to about a year-and-a-half ago. For those reasons, Mr. Chairman, we are of the opinion that H.R. 4462 and H.R. 2549 are not necessary at this time.

We are confident that our new rule will improve the recognition process and will lessen the concerns which led to the introduction of these bills. I would like to make a few comments on each of the bills specifically.

H.R. 4462 proposes to establish an independent commission in charge of the acknowledgment responsibility, while removing that responsibility from the Department of the Interior and the Bureau of Indian Affairs (BIA). It is commonly understood that the Department of the Interior, and BIA in particular, is the agency looked to for all matters of Indian affairs except health. While that is not to say that this same expertise could not be acquired by this commission, we believe it more logical to keep it within the agency charged with that responsibility.

Also, we have concerns about lost time. It will no doubt take a significant amount of time to get the commission created once authorized. Getting a budget and selecting commissioners are big ticket items and do not come easy. We have concerns about the adequacy of the technical staff provided for within the bill and other matters within that bill. We doubt that the review and evaluation done by the commission would be anything less than what we perform. We both would be very concerned about conveying the impression that our professional review of the petitions rests on anything but solid ground both factually and legally.

Once the suspicion arises either in the minds of the public, and certainly in the view of the Congress, that something less than a thorough professional analysis was done on one or a number of petitions, then the whole process becomes suspect and flawed. While H.R. 2459, or excuse me, H.R. 2549, adopts many rules from the old regulations but adds a new requirement, that of demonstrating control over a specific territory. This may present some difficulty in that these petitioning groups are not recognized governmental

bodies and would have no authority to control any territory. There are a few other minor concerns with that legislation or with the bill.

Having expressed these concerns with both bills, let me say that we are not opposed to some form of legislation and would be pleased to work with your staff to craft legislation which this administration could fully support. We like the sunset provisions, the ratification of previous acknowledgment decisions and other items. We also believe that a specific confirmation of the Secretary's authority to extend recognition and establish standards would be most helpful.

We believe, however, that neither bill by itself goes as far to help the process as does our revised rules. These rules have been operational for only 3 or 4 months and we should be given a chance to see how they will work.

Before closing, I would like to thank the committee for inviting us to present our views on H.R. 4709. This bill is still under review and discussion within the Department of the Interior and OMB. I am hopeful that we will reach resolution on any remaining unresolved issues very soon.

Mr. Chairman, that concludes my testimony. I will be pleased to respond to any questions you or the committee may have.

Mr. WILLIAMS. Thank you.

[Prepared statement of Mr. Hayes follows:]

STATEMENT OF PATRICK A. HAYES, ACTING DEPUTY COMMISSIONER OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS HEARING ON H.R. 4462, THE "INDIAN FEDERAL RECOGNITION ADMINISTRATION PROCEDURES ACT OF 1994" AND H.R. 2549, A BILL "TO ESTABLISH ADMINISTRATIVE PROCEDURES TO EXTEND FEDERAL RECOGNITION TO CERTAIN INDIAN GROUPS."

JULY 22, 1994

Good Morning, Mr. Chairman and Members of the Committee. I am here to present the views of the Department of the Interior on H.R. 4462, a bill "To provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes" and on H.R. 2549, a bill "To establish administrative procedures to extend Federal recognition to certain Indian groups."

I would like to thank the Chairman for his continuing concern and support for the Administration's Federal Acknowledgment Process. The Department is committed to providing a fair and speedy process to acknowledge unrecognized tribes or groups while protecting the sovereignty of recognized Tribes. As you may know, under the direction of Assistant Secretary Deer, the Bureau of Indian Affairs recently promulgated new regulations to improve the administrative recognition process and has significantly increased the resources in the Branch of Acknowledgment and Research.

We believe that the review and evaluation process must be research-based and objective in order to evaluate each case on its merits. The sovereignty of all recognized Tribes could be derogated if citizens and lawmakers believed that the sovereignty of certain Tribes did not rest on firm legal and historical foundations.

As a result, Mr. Chairman, we believe that enacting either H.R. 4462 or H.R. 2549 is unnecessary at this time. H.R. 4462 largely adopts the old regulations. We are certain that our new regulations will show improvement in the recognition process and will help alleviate your concerns. Specifically, we are certain that under our new regulations the process will be less costly, more timely, and fair.

H.R. 4462 also proposes to remove the function of recognition from the Department of the Interior and the Bureau of Indian Affairs and to establish an independent commission. As you know, the Department and the Bureau are charged with the requisite expertise to deal with issues affecting all Tribes, especially issues as complex as the recognition issue. From past experience, we know that it may take years just to establish such commissions, and they have proven to be very expensive to sustain. The Administration is attempting to reduce the number of independent commissions, and objects to language setting up new commissions.

While the other bill, H.R. 2549, also adopts many rules from the old regulations, it also contains a requirement that would be new to the administrative recognition process, requiring the petitioner to demonstrate control over a specific territory. Because the petitioners are not politically recognized, they do not have legally recognized and enforceable jurisdiction over any territory.

Therefore, while we do not entirely disagree with the concept, the territory of an unrecognized tribe or group must be defined by the demographics of the tribe's or group's population.

Also, for tribes or groups with whom the United States has terminated its political relationship, H.R. 2549 requires that a petition be reviewed under the same acknowledgment procedure and meet the same criteria as tribes or groups that have never been politically recognized by the United States. This would be a higher and more difficult standard than in the past for tribes or groups whose relationship has been terminated.

The Department could support certain provisions in both bills. For example, H.R. 4462 provides for taking into account some forms of previous recognition, a sunset rule for both the petitioners and the Department, and ratification of previous acknowledgment decisions under the regulations. However, as a whole, neither bill goes as far as the revised rules and regulations for acknowledgment which became effective only three months ago, to make the kind of in-depth changes which will greatly reduce the work and cost to the petitioner and significantly speed up the process.

The Department would also support legislation which would confirm the Secretary's authority to extend political recognition to tribes or groups on behalf of the United States and to establish standards and procedures for doing so. We believe that such legislation

would be advantageous to the United States and the petitioners. We would be happy to work with the Committee on such legislation.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have on these bills.

Mr. WILLIAMS. Mr. Hayes, how would you respond to the question should the Congress recognize tribes?

Mr. HAYES. Mr. Chairman, I would respond by saying that Congress certainly has the authority to do so. But I would add to that response, that the administrative process provides a thorough administrative analysis. It provides a historical analysis. It provides a genealogical analysis of the petitions that come in from these nonrecognized groups, and I am not sure that the Congress has either the staff or the time to give to that type of detailed analysis to assure that these petitioning groups are, in fact, eligible and entitled to recognition.

Mr. WILLIAMS. The tribes that are recognized today, do you think they could meet the current Federal acknowledgment process if they were trying to become recognized?

Mr. HAYES. Could I ask Ms. Holly Reckord to respond to that?

Ms. RECKORD. Yes, I do think they could.

Mr. WILLIAMS. In California, treaties were negotiated with tribes but never ratified. What is the status of tribes who sign an unratified treaty?

Ms. RECKORD. In the case of the California tribes, our new regulations take into consideration the fact that they signed a treaty. We assume that that indicates previous recognition, even though the treaty was not ratified.

Our reasoning is that the Government would not have been dealing with a group that was not a tribe. So in our new regulations, the requirements would be greatly reduced for such groups. They would only have to show that they have continued to exist politically since the point of last recognition. This is a great reduction in the requirements that the old regulations and the bill before you would require of such groups.

Mr. WILLIAMS. Mr. Hayes, let me use the Lumbee as an example. If they were not precluded by statutory bar and they petitioned the Federal acknowledgment process, what would be the deadline for their consideration under current regulation?

Ms. RECKORD. Could you repeat the question?

Mr. WILLIAMS. Sure. If the Lumbee were not precluded by the statutory denial, statutory bar, and they petitioned the Federal acknowledgment process, under Federal regulations what would be their deadline for consideration? How good a shot would they have to put it in simpler language?

Mr. HAYES. Mr. Chairman, as you are aware, the Lumbees represent a large group of people. I have heard estimates as high as 40,000 people as potential enrolled members of that tribe. The size alone would indicate that you were looking at a substantial process in terms of time.

In terms of there being a time limit within the existing regulations, there is no time limit. We would begin to review their petition when the documentary petition was ready for review, as is defined within the regulations.

Mr. WILLIAMS. Would you share with the committee what you believe to be a few of the most important changes that have been made in the new regulations?

Mr. HAYES. Mr. Chairman, could I ask Ms. Reckord or Mr. Roth to respond to your question?

Mr. WILLIAMS. Yes, either of them. Mr. Roth, we have not heard from you. Would you like to respond?

Mr. ROTH. OK. Well, we have gone thoroughly over these regulations and made many large and small changes. One of the biggest ones has to do with groups that can show previous acknowledgment. We take previous acknowledgment to mean not just treaties but any clear Federal action. Such groups would only have to show tribal existence from the last point of acknowledgment. Say, not when the treaty was signed but perhaps 100 years later, would have to show less evidence to do that than other groups would have to show.

We have also gone to great lengths to revise the definitions of community and political organizations which have been the subject of great controversy, and we have specified specific kinds of evidence that petitioners can use to show tribal existence, because that has also been a major question.

In particular, we have specified what we call high levels of evidence which would basically mean a group could show prima facie existence as a tribe, such as living in a separate community. Those are two of the major things. There are others I could describe as well.

Mr. WILLIAMS. My time has expired.

Mr. Thomas, questions?

Mr. THOMAS. Thank you, Mr. Chairman.

I appreciate your being here to discuss this. One of the continuing difficulties, it seems to me, is this question of time. This process, at least in the view of many people, has not been satisfactory. You suggest that we should not change, should not move it and should not do something very significant about it, but the fact is it has not been satisfactory.

One of the problems has been the petitioner asks or is told that a decision will be made on their case in a month and a month goes by and there is no decision and several months go by. The Jena Band was told recently that the decision would come by the end of April, but there is still no decision.

Is this going to continue?

Mr. HAYES. Mr. Thomas, I think that the criticism about the process, about the length of time that it takes has been an ongoing criticism, almost since the time that the office was established back in the late 1970's. While unnecessary and undue extensions of time and delays are unwarranted and uncalled for, I think that the process is of such importance that it should not be unduly rushed.

The decision made by the Secretary of the Interior, a positive decision, or for that matter, an unfavorable decision, is significant. It carries with it some fairly significant consequences. To respond to your question, I think that the regulations and the improvements in the process, as were enumerated by Mr. Roth just a minute ago, will speed up that process.

In addition, I testified to the fact that we have doubled that staff as recently as a year-and-a-half ago. We had four professional people working on these petitions, and they can only do so much. We have doubled that staff. We have doubled the amount of professional people, and hopefully, that is going to move these petitions more expeditiously.

Mr. THOMAS. I hope that is the case. It is not comforting to think that problem has been going on for a very long time, and so when we get around to introducing the bill to change it here in the Congress, then suddenly you all make some changes. That sort of indicates that there is resistance to change and that you are not going to make changes unless they are forced by the Congress; is that a fair analysis at all?

Mr. HAYES. Mr. Thomas, the proposal to amend or modify our regulations started about 3 or maybe 4 years ago, and the process——

Mr. THOMAS. I rest my case.

Mr. HAYES. The process took an extended period of time.

Mr. THOMAS. That is the problem. How many are there piled up now to come to the Congress, because at least their claim is that they are not at all timely in being considered. Let me tell you that it is not just the fact that it takes the time; it is the fact that you say there is going to be a time and you don't meet your own deadline.

Mr. HAYES. I would have to defer to Ms. Reckord in terms of how many petitioners are awaiting some action.

Mr. THOMAS. I will withdraw it. What I am saying to you is—you know, I feel very strongly about it, because I think tribes should go through this administrative process, because the Congress is not in a position to do it. As I said earlier, the decision is made in the Congress because somebody has a strong advocate here, and it is made politically. That is wrong in my judgment. But right or wrong, people seem to be—tribes seem to be forced around your process, because your process is not timely, and I just think you have to deal with that. And quite frankly, the evidence is that you don't. You are an Acting Director, for one thing. Why is that?

Mr. HAYES. Well, the reason——

Mr. THOMAS. That really doesn't matter. But you know, you have got to get organized sometimes. I know it matters to you.

I don't mean to be difficult, and I don't really have a strong feeling of where it rests. What I am interested in is performance, and what I am bothered about is that these things keep coming to us as a result of their—and I am not talking about what the decision is. I don't question the decision; I question the process, and that is what is troublesome.

Mr. HAYES. I can understand your frustration and your desire to get this thing moving along. I, for a period of time back in the early 1980's, was associated with the acknowledgment process, in that I was a Division Chief for Tribal Government Services, and this acknowledgment group was under my area of responsibility. And I, too, at the time, as well as the staff, wanted to be timely; we wanted to move things along. We are not in the business of foot-dragging. We want to move this along; but at the same time, we want to do a good job, and we want to assure that that recognition is righteous and it goes to the right groups.

Mr. THOMAS. Sure. I understand that.

Mr. HAYES. With the new regulations, I hate to say, trust us, but we have only had them for 3 or 4 months, sir, and I would certainly like to have a chance to try to operate under them.

Mr. THOMAS. When do you expect a decision on the Jena question?

Ms. RECKORD. Right now on Jena, we have completed the research for the genealogist and the anthropologists, and the historian is now finishing the research. Then we will make a decision and write the summary. So it should be out soon.

One of the problems that we are now finding, as we finally have the resources and the regulations in place, is that we are having trouble producing reports. We basically have a large research capacity and we are doing a lot of research, but we need to upgrade our ability to put out what are rather lengthy and complicated reports. We are looking into that, making that sort of change right now.

Mr. THOMAS. Well, let me just——

Ms. RECKORD. We have had good relations with the Jena on this. We have been talking to them about some of the issues that involve getting an anthropologist to work on their case. We have good relations with them now.

I know that it is frustrating to us, as well, that many of the reports do not get out on time. One of our major problems is that the petitions we receive often are not really complete, and rather than sending it back and sending it back, we often end up doing the research ourselves.

We had a very large case of almost 20,000 people that really had a very incomplete genealogy. We have had to sit down and do a lot of that research ourselves, which makes the report very late.

Mr. THOMAS. Well, I understand that, and I will not take any more of your time. But I have to tell you—and I guess as I have—I am getting frustrated at trying to stand at the gate and keep these recognitions from coming through the congressional route. And the argument that members make persuasively is that, look, we have tried to go the other way and it has been a very, very long, tedious time, and they don't feel—I understand some probably say I am going to get a negative response perhaps and don't like that. But most of them are genuinely saying, look, we have tried to go the route, the administrative route doesn't work very good. And so—at any rate, I thank you for being here.

Let me, Mr. Chairman, submit for the record a copy of BIA's most recent summary of the status of acknowledgment cases in which it lists those that are pending.

Mr. WILLIAMS [presiding]. Without objection, the gentleman from Wyoming's material will be included in the record.

[The information follows:]

SUMMARY STATUS
of
ACKNOWLEDGMENT CASES
(as of May 16, 1994)

			Totals
PETITIONS ON ACTIVE STATUS			Petitions on Active = 9
BAR's Action Items		6	
Proposed Findings in Progress:	6		
Final Determinations Pending:	0		
Petitioner's Action Items		3	
Commenting on Proposed Finding	3		
PETITIONS READY FOR ACTIVE			Petitions Ready = 4
OTHER PETITIONS			Other Petitions = 100
Incomplete Petitions (not ready)	26		
Letters of Intent to Petition	74		
IN LITIGATION			Cases being litigated = 2
CASES RESOLVED			Cases Resolved = 30
By Department		25	
Through Acknowledgment Process:	22		
Acknowledged	9		
Denied Acknowledgment	13		
Status Clarified by Legislation at Department's Request	1		
Status Clarified by Other Means	2		
By Congress		4	
Legislative Restoration	1		
Legislative Recogition	3		
By Other Means		1	
Merged with another petitioner	1		

LEGISLATIVE ACTION REQUIRED Cases requiring legislation = 7
(to permit processing under 25 CFR 83)

HISTORICAL NOTE:

40	petitions on hand when Acknowledgment staff organized Oct 1978
110	new petitioners since Oct 1978
150*	Total Petitions received to date

* includes 8 groups that initially petitioned as part of other groups but have since split off to petition separately.

PETITIONS ACTIVE, READY OR IN LITIGATION

(as of May 16, 1994)

ACTIVE STATUS

Proposed Finding in Progress - 6

Members	
17616	United Houma Nation, Inc., LA (#56) (Active 5/20/91; in draft)
356	Duwamish Indian Tribe, WA (#25) (Active 5/1/92; in draft)
c250	Huron Potawatomi Band, MI (#9) (Active 7/27/93)
313	Jena Band of Choctaws, LA (#45) (Active 7/27/93)
	Chinook Indian Tribe, Inc., WA (#57) (Active 1/28/94)
c2500	Pokagon Potawatomi Indians of Indiana & Michigan, IN (#75/78) (Active 1/28/94)

Petitioner Commenting on Proposed Finding - 3

836 Snohomish Tribe of Indians, WA (#12) (Active 1/7/81; proposed negative finding pub'd 4/11/83; edited staff notes provided 3/25/91; comment period reopened 12/1/91, extended indefinitely at petitioner's request pending resolution of Samish litigation)

313 Snoqualmie Indian Tribe, WA (#20) (Active 5/21/90; proposed positive finding pub'd 5/6/93; comment period extended to 9/30/94)

c2500 Ramapough Mountain Indians, Inc., NJ (#58) (Active 7/14/92; proposed negative finding pub'd 12/8/93, comment period extended to 10/7/94)

Final Determination Pending - 0

READY STATUS

Ready, Waiting for Active Consideration - 4

Petitioners have corrected deficiencies and/or stated their petition should be considered "ready" for active consideration. Priority among "ready" petitions is based on the date the petition is determined "ready" by the Branch of Acknowledgment and Research (BAR).

Ready Date	Name of Petitioner
11/19/91	MOWA Band of Choctaw, AL (#86) (doc'n recv'd 4/28/88; OD ltr 2/15/90; rspns recv'd 11/8/91; complete 11/19/91)
4/23/93	Yuchi Tribal Organization, OK (#121) (doc'n recv'd 9/9/91; OD ltr 9/14/92; partial rspns 3/23/93; complete 4/23/93)
9/24/93	Juaneno Band of Mission Indians, CA (#84) (doc'n recv'd 2/24/88; OD ltr 1/25/90; rspn recv'd 9/24/93, complete)
4/04/94	Cowlitz Tribe of Indians, WA (#16) (doc'n recv'd 2/1/83; OD ltr 6/15/83; rspn recv'd 2/10/87; 2nd OD ltr 10/21/88; rspns recv'd 2/24/94, complete)

IN LITIGATION

Samish Indian Tribe, WA (#14) (Denied Acknowledgment eff. 5/6/87)

Miami Nation of Indians of IN (#66) (Denied Acknowledgment eff. 8/17/92)

PETITIONS RESOLVED

(as of May 16, 1994)

RESOLVED BY DEPARTMENT - 25

Acknowledged through 25 CFR 83 - 9

Members	
297	Grand Traverse Band of Ottawa & Chippewa, MI (#3) (eff. 5/27/80)
175	Jamestown Clallam Tribe, WA (#19) (eff. 2/10/81)
200	Tunica-Biloxi Indian Tribe, LA (#1) (eff. 9/25/81)
199	Death Valley Timbi-Sha Shoshone Band, CA (#51) (eff. 1/3/83)
1170	Narragansett Indian Tribe, RI (#59) (eff. 4/11/83)
1470	Poarch Band of Creeks, AL (#13) (eff. 8/10/84)
521	Wampanoag Tribal Council of Gay Head, MA (#76) (eff. 4/11/87)
188	San Juan Southern Paiute Tribe, AZ (#71) (eff. 3/28/90)
972	Mohegan Indian Tribe, CT (#38) (eff. 5/14/94)

Denied acknowledgment through 25 CFR 83 - 13

1041	Lower Muskogee Creek Tribe-East of the MS, GA (#8) (eff. 12/21/81)
2696	Creeks East of the Mississippi, FL (#10) (eff. 12/21/81)
34	Munsee-Thames River Delaware, CO (#26) (eff. 1/3/83)
324	Principal Creek Indian Nation, AL (#7) (eff. 6/10/85)
1530	Kaweah Indian Nation, CA (#70a) (eff. 6/10/85)
1321	United Lumbee Nation of NC and America, CA (#70) (eff. 7/2/85)
823	Southeastern Cherokee Confederacy (SECC), GA (#29) (eff. 11/25/85)
609	Northwest Cherokee Wolf Band, SECC, OR (#29a) (eff. 11/25/85)
87	Red Clay Inter-tribal Indian Band, SECC, TN (#29b) (eff. 11/25/85)
304	Tchinouk Indians, OR (#52) (eff. 3/17/86)
590	Samish Indian Tribe, Inc., WA (#14) (eff. 5/6/87)
275	MaChis Lower AL Creek Indian Tribe, AL (#87) (eff. 8/22/88)
1381	Miami Nation of Indians of IN, Inc., IN (#66) (eff. 8/17/92)

Status Clarified by Legislation at Department's Request - 1

c224	Lac Vieux Desert Band of Lake Superior Chippewa Indians, MI (#6) (legis clarification of recog'n status 9/8/88)

Status Clarified by Other Means - 2

650	Texas Band of Traditional Kickapoos, TX (#54) (Determined part of recognized tribe 9/14/81; petition withdrawn)
32	Ione Band of Miwok Indians, CA (#2) (Status confirmed by Assistant Secretary 3/22/94)

RESOLVED BY CONGRESS - 4

Legislative Restoration - 1

328 Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, OR (#17) (legis restoration 10/17/84)

Legislative Recognition - 3

651	Cow Creek Band of Umpqua Indians, OR (#72) (legis recogn 12/29/82)
55	Western (Mashantucket) Pequot Tribe, CT (#42) (legis recogn 10/18/83 in association with eastern land claims suit)
611	Aroostook Band of Micmacs, ME (#103) (legis recog'n 11/26/91)

Petitions Resolved, cont.

RESOLVED BY OTHER MEANS - 1

Petition withdrawn (merged with another petition) - 1
Potawatomi Indians of IN & MI, Inc., MI (#75) and Potawatomi Indian Nation, Inc. (Pokagon), MI (#78) merged; now Pokagon...(#78)

LEGISLATIVE ACTION REQUIRED

Cases requiring legislation to permit processing under 25 CFR 83 - 7
Lumbee Regional Development Association (LRDA/Lumbee) (#65)
Hatteras Tuscarora Indians, NC (#34)
Cherokee Indians of Robeson and Adjoining Counties, NC (#44)
Tuscarora Indian Tribe, Drowning Creek Res., NC (#73)
Waccamaw Siouan Development Association, Inc., NC (#88)
Cherokee Indians of Hoke County, Inc., NC (#91)
Tuscarora Nation of North Carolina, NC (#102)

- -

HISTORICAL NOTE:
40 petitions on hand when Acknowledgment staff organized Oct 1978
110 new petitioners since Oct 1978
150* Total Petitions received to date (as of 4/29/94)

* includes 8 groups that initially petitioned as part of other groups but have since split off to petition independently.

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REGISTER
of
DOCUMENTED, READY PETITIONS
(as of May 16, 1994)

NOTE: Priority among petitions that are documented and "ready" for active consideration is based on the date the petition is determined complete and "ready" by the Branch of Acknowledgment and Research (BAR).

Date Ready	Name of Petitioner	Date Active
11/19/1991	MOWA Band of Choctaw, AL (#86)	
4/23/1993	Yuchi Tribal Organization, OK (#121)	
9/24/1993	Juaneno Band of Mission Indians, CA (#84)	
4/04/1994	Cowlitz Tribe of Indians, WA (#16)	

REGISTER
of
INCOMPLETE PETITIONS & LETTERS OF INTENT TO PETITION
(as of May 16, 1994)

ADMINISTRATIVE NOTE:
Priority numbers assigned to petitions under the "old regs" have been retained to avoid the confusion that renumbering would be likely to create. For the purpose of this Register, petitioners are listed in numerical sequence based on the chronological order in which the Branch of Acknowledgment and Research (BAR) received the petition and/or letter of intent to petition. Gaps in numbering represent petitions that have already been resolved or are now in active status.

Priority Number	Name of Petitioner
4*	Shinnecock Tribe, NY (2/8/78)
5	Piro/Manso/Tiwa Indian Tribe of the Pueblo of San Juan de Guadalupe (formerly Tiwa Indian Tribe), NM (doc'n recv'd 3/24/92; OD ltr 8/25/93)
9a*	GunLake Village Band & Ottawa Colony Band of Grand River Ottawa Indians, MI (6/24/92)
11	Steilacoom Tribe, WA (doc'n recv'd 10/27/84; OD ltr 11/30/87; response 3/25/94)
15	Mashpee Wampanoag, MA (doc'n recv'd 8/16/90; OD ltr 7/30/91)
18*	Little Shell Band of North Dakota, ND (#18, 11/11/75)
21*	Mono Lake Indian Community, CA (7/9/76)
22*	Washoe/Paiute of Antelope Valley, CA (7/9/76)

* Letter of Intent only

Incomplete Petitions & Letters of Intent to Petition, cont'd:

22a* Antelope Valley Paiute Tribe, CA (7/9/76)
23 Four Hole Indian Orgn/Edisto Tribe, SC (partial doc'n recv'd 1983)
24 Maidu Nation, CA (partial doc'n recv'd 5/30/90)
27* Cherokee Indians of Georgia, Inc., GA (8/8/77)
28* Piscataway-Conoy Confederacy & Sub-Tribes, Inc., MD (2/22/78)
30 Clifton Choctaw, LA (doc'n recv'd c.9/28/90; OD ltr 8/13/91)
31 Little Shell Tribe of Chippewa Indians of MT (OD ltr 4/18/85; partial response 11/2/87, 10/26/89; "not ready" 8/17/90)
32* Florida Tribe of Eastern Creek Indians, FL (6/2/78)
33* Delaware-Muncie, KS (#33, 6/19/78)
35 Eastern Pequot Indians of Connecticut, CT (doc'n recv'd 5/5/89; OD ltr 3/13/90)
36* Tsimshian Tribal Council, AK (7/2/78)
37* Choctaw-Apache Community of Ebarb, LA (7/2/78)
39* Coree (aka Faircloth) Indians, NC (8/5/78)
40* Nanticoke Indian Association, DE (8/8/78)
41 Georgia Tribe of Eastern Cherokees, Inc. (aka Dahlonega), GA (doc'n recv'd 2/5/80; OD ltr 8/22/80)
41a* Cane Break Band of Eastern Cherokees, GA (1/9/79)
43* Tuscola United Cherokee Tribe of FL & AL, Inc., FL (1/19/79)
46* Kah-Bay-Kah-Nong (Warroad Chippewa), MN (2/12/79)
47* Kern Valley Indian Community, CA (2/27/79)
48* Shawnee Nation U.K.B., IN (formerly Shawnee Nation, United Remnant Band, OH) (3/13/79)
49* Hattadare Indian Nation, NC (3/16/79)
50* North Eastern U.S. Miami Inter-Tribal Council, OH (4/9/79)
53* Santee Tribe, White Oak Indian Community, SC (6/4/79)
55 Delawares of Idaho (doc'n recv'd 6/14/79; OD ltr 9/24/79; partial response 12/10/79)
60* Alleghenny Nation (Ohio Band), OH (11/3/79)
61* United Rappahannock Tribe, Inc., VA (11/16/79)
62* Upper Mattaponi Indian Tribal Association, Inc., VA (11/26/79)
63 Haliwa-Saponi, NC (doc'n recv'd 10/19/89; OD ltr 4/20/90)
64* Consolidated Bahwetig Ojibwas and Mackinac Tribe, MI (12/4/79)
67* Brotherton Indians of Wisconsin, WI (4/15/80)
68 St. Francis/Sokoki Band of Abenakis of VT (OD ltr 6/14/83; "ready" 8/1/86; petitioner says "not ready" 9/18/90)
69a Nipmuc Tribal Council of MA (Hassanamisco Band) (doc'n recv'd 7/20/84; OD ltr 3/1/85; response 6/12/87; 2nd OD ltr 2/5/88)
69b Nipmuc Tribal Council of MA (Chaubunagungamaug Band) (doc'n recv'd 7/20/84; OD ltr 3/1/85; response 6/12/87; 2nd OD ltr 2/5/88)
74* Coharie Intra-Tribal Council, Inc., NC (3/13/81)
77* Cherokees of Jackson County, Alabama, AL (9/23/81)
79* Schaghticoke Indian Tribe, CT (12/14/81)
80* Coastal Band of Chumash Indians, CA (3/25/82)
81 Golden Hill Paugussett Tribe, CT (doc'n recvd 4/12/93; OD ltr 8/26/93; response 4/1/94)
82 American Indian Council of Mariposa County (aka Yosemite), CA (doc'n recv'd 4/19/84; OD ltr 5/1/85; rspn 12/12/86; 2nd OD ltr 4/11/88)

Incomplete Petitions & Letters of Intent to Petition, cont'd:

83 Shasta Nation, CA (doc'n recv'd 7/24/84; OD ltr 5/30/85; response 6/8/86; 2nd OD ltr 10/22/87)
85 Tolowa Nation, CA (doc'n recv'd 5/12/86; OD ltr 4/6/88)
89 Seminole Nation of FL (aka Traditional Seminole) (doc'n recv'd 11/10/82; OD ltr 10/5/83, lacks genealogy; prtl rspn 12/7/83)
90 North Fork Band of Mono Indians, CA (doc'n recv'd 5/15/90; OD ltr 10/28/91)
92* Dunlap Band of Mono Indians, CA (1/4/84)
93 Hayfork Band of Nor-El-Muk Wintu Indians, CA (doc'n recv'd 9/27/88; OD ltr 2/26/90)
94* Christian Pembina Chippewa Indians, ND (6/26/84)
95* Cherokee-Powhattan Indian Association, NC (9/7/84)
96* San Luis Rey Band of Mission Indians, CA (10/18/84)
97* Wintu Indians of Central Valley, California, CA (10/26/84)
98* Wintoon Indians, CA (10/26/84)
99* Chukchansi Yokotch Tribe of Coarsegold, CA (5/9/85)
100* Northern Cherokee Tribe of Indians, MO (7/26/85)
100a* Chickamauga Cherokee Indian Nation of AR & MO (9/5/91)
100b* Northern Cherokee Nation of Old Louisiana Terr, MO (2/19/92)
101* Burt Lake Band of Ottawa & Chippewa Indians, Inc., MI (9/12/85)
104 Yokayo, CA (doc'n recv'd 3/9/87; OD ltr 4/25/88)
105* Pahrump Band of Paiutes, NV (11/9/87)
106* Wukchumni Council, CA (2/22/88)
107* Cherokees of SE Alabama, AL (5/27/88)
108 Snoqualmoo of Whidbey Island, WA (docn recvd 4/16/91; OD ltr 8/13/92)
109* Choinumni Council, CA (7/14/88)
110* Coastanoan Band of Carmel Mission Indians, CA (9/16/88)
111* Ohlone/Coastanoan Muwekma Tribe, CA (5/9/89)
112 Indian Canyon Band of Coastanoan/Mutsun Indians of CA (doc'n recv'd 7/27/90; OD ltr 8/23/91)
113* Paucatuck Eastern Pequot Indians of CT (6/20/89)
114* Canoncito Band of Navajos, NM (7/31/89)
115* Little Traverse Bay Bands of Odawa Indians, MI (9/27/89)
116* Salinan Nation, CA (10/10/89)
117 Oklewaha Band of Seminole Indians, FL (doc'n recv'd 2/12/90; OD ltr 4/24/90)
118* Revived Ouachita Indians of AR & America (4/25/90)
119* Meherrin Indian Tribe, NC (8/2/90)
120* Amah Band of Ohlone/Coastanoan Indians, CA (9/18/90)
122* Etowah Cherokee Nation, TN (1/2/91)
123* Upper Kispoko Band of the Shawnee Nation, IN (4/10/91)
124* Piqua Sept of Phio Shawnee Indians, OH (4/16/91)
125* Little River Band of Ottawa Indians, MI (6/4/91)
126* Lake Superior Chippewa of Marquette, Inc., MI (12/31/91)
127* Nanticoke Lenni-Lenape Indians, NJ (1/3/92)
128* Tsnungwe Council, CA (9/22/92)
129* Mohegan Tribe and Nation, CT (10/6/92)
130* Waccamaw-Siouan Indian Association, SC (10/16/92)
131* Esselen Tribe of Monterey County, CA (11/16/92)

Incomplete Petitions & Letters of Intent to Petition, cont'd:

132* Ohlone/Costanoan-Esselen Nation, CA (12/3/92)
133* Council for the Benefit of Colorado Winnebagos, CO (1/26/93)
134* Chicora-Siouan-Indian-People, SC (2/10/93)
135* Swan Creek Black River Confederated Ojibwa Tribes, MI (5/4/93)
136* Chukchansi Yokotch Tribe of Mariposa, CA (5/25/93)
137 Wintu Tribe, CA (doc'n recv'd 8/25/93; OD ltr 12/8/93)
138* Caddo Adais Indians, Inc., LA (9/13/93)
139* Salinan Tribe of Monterey County, CA (11/15/93)
140* Gabrielino/Tongva Tribal Council, CA (3/21/94)
141* Langley Band of the Chickamogee Cherokee Indians of the Southeastern U.S., AL (4/15/94)

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Mr. WILLIAMS. I want to note that I share the gentleman from Wyoming's concern about the politics that would ensue if this process became simply that of appealing to Members of Congress for recognition. While there is obviously great value in the peculiarly American rough-and-tumble, wide-open political style of appealing to your Member of Congress, it does not always lend itself to the most thoughtful of considerations, although quite often it does. But it does seem to me that in the instance of tribal recognition, we are better off to try to keep that at least a step removed from that wide-open, American-style, rough-and-tumble, write-your-Congressman politics.

I do want to note that it is important that appropriate research be conducted when determining this critical matter of recognition. But I also want to note that nobody believes that more strongly than the people appealing for recognition. Government is not ahead of them on wanting to be right and correct and assure that the proper people are being recognized. The people that believe that most deeply are those appealing for recognition. And we are herein only trying to find a way to make more efficient the final answer, yes or no.

You remember the case of the Miamis, who, as I recall, spent 6 or 8 years and $500,000 to get the answer no. Now, should they have been told yes? I don't know that. But it does seem to me the answer no may have just as easily come under a different system 3 months and $250,000 earlier.

And so I would think that we ought to have a system that achieves fail-safe points along the way, saves hundreds of thousands of dollars for financially strapped people, and saves the stress of year upon year upon year of wait in triplicate and one more letter and five more visits to Washington and three more attorneys, and hiring one more genealogist.

I have followed a couple of these sagas, and it seems to me there ought to be a better way. But there is no question but that we want to do it right, and I am a believer, Mr. Hayes, that under the current process, you and your staff are struggling mightily to do it correctly.

The gentleman from Hawaii.

Mr. ABERCROMBIE. No statement. Your sentiments are mine.

Mr. WILLIAMS. You have been very helpful. Thank you.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Chairman, before I depart the table, I would like to reiterate the offer to work with your staff in trying to find some means to improve upon our process.

Mr. WILLIAMS. Thank you very much. And we and the staff will take you up on that. We appreciate your kind and generous offer, and we will accept it.

Mr. HAYES. Thank you, sir.

Mr. WILLIAMS. I will ask the gentleman from Hawaii to assume the Chair of the committee.

Mr. ABERCROMBIE [presiding]. Thank you, Mr. Chairman.

We will move to panel two then, Chairman Tullis, Honorable Stan Jones, and Mr. Philip Alexis.

Aloha, aloha. Good morning. Delighted to have you all here. Thank you very much for coming. Maholo Nui Loa for coming. As

affirmative action representative of the Hawaiian people here in Washington, I am delighted to make your acquaintance and welcome you to, perhaps for more than the first time, to Washington, DC, but certainly to this committee.

PANEL CONSISTING OF HON. ED TULLIS, CHAIRMAN, POARCH CREEK INDIANS OF ALABAMA AND PRESIDENT OF UNITED SOUTH AND EASTERN TRIBES; HON. STAN JONES, CHAIRMAN, TULALIP TRIBES OF WASHINGTON, MARYSVILLE, WA; ACCOMPANIED BY DOUGLAS L. BELL, ESQ. AND PHILIP ALEXIS, EXECUTIVE DIRECTOR, CONFEDERATED HISTORIC TRIBES, INC., LANSING, MI; ACCOMPANIED BY KARL FUNKE, KARL FUNKE & ASSOCIATES

Mr. ABERCROMBIE. As you know, we are dedicated to making sure that all of the elements of your presentation are recorded for the record and given full consideration. And with that, I would like to start with Chairman Tullis for your presentation.

STATEMENT OF HON. ED TULLIS

Mr. TULLIS. Thank you, Mr. Chairman. To begin with, I would like to request that my comments or my prepared printed statement be entered into the record, and I be given permission to summarize my statement, my oral statement, so that we can have time for discussion.

Mr. ABERCROMBIE. That permission is granted with alacrity; and without objection, everything will be entered.

Mr. TULLIS. Thank you.

I am Eddie Tullis; I am Tribal Chairman of the Poarch Creek Indians of Alabama, and I also have the honor of serving as the President of the United South and Eastern Tribes.

The Poarch Creek Indians is a segment of the original Creek Nation, and despite the policy of the removal of Southeastern Indians to the State of Oklahoma or to the Territory of Oklahoma, my ancestors avoided that removal and have survived and continue to live in their original or their aboriginal homelands. Today, there are 2,100 members of the Poarch Creek Indians with about 1,400 of us living in the vicinity of Poarch, AL.

USET is an intertribal organization that consists of 21 of the federally recognized tribes in the south and eastern United States, from the State of Florida to Maine and as far west to East Texas. I am here in both of those capacities today and appreciate the opportunity to do that.

First, I would like to compliment Mr. Richardson and Mr. Thomas for their introduction of H.R. 4462; and the other colleagues for their introduction of 2549. We believe that these are excellent pieces of legislation that should be consolidated into one bill and passed into law during the 103d Congress. We strongly believe that there must be a process and an institutionalized method to which groups seeking recognition must adhere. One of the reasons that the FAP process was initially established was to create a uniform method where petitioners could be examined in a more academic setting.

The Poarch Band of Creek Indians achieved their status as a federally recognized tribe on August 11, 1984, as a result of a policy

finding by the Bureau of Indian Affairs. We petitioned through the BIA's Federal Acknowledgment Process and were successful.

In addressing the specifics of this legislation, there are a number of items that I would like to make comments on so that we can have a discussion of them before this legislation becomes final. One of those items that we have concern about is the establishment of the Commission on Indian Recognition. We believe that there is only one real reason that would justify the expenditure of funds and the time and money involved in setting up a new Federal commission. That is, if there is evidence to show that the existing FAP office has been pressured to either deliberately slow down the process of petitionings, or if they have been pressured by any agency of the Interior Department to make negative findings.

Clearly, the process that is in existence now has been slow, and I don't think anyone would defend the amount of time it has taken to process certain petitions. And I support provisions in the bill that will implement time frames and require the BIA and/or the commission, if created, to respond by dates certain.

Similarly, this process should not be continued forever. We strongly support the provisions in the bills which would create a time limit for this entire process to be completed within a 6-year time frame.

As indicated above, we are not necessarily opposed to creating a commission, if the Congress is truly convinced that the only way for petitioning groups to get a fair shake is through the establishment of such a commission. However, we would urge you to consider how long it took to create the National Indian Gaming Commission, get it up to speed and running, to begin to perform the functions for which it was created.

We agree with the provisions in both of these bills which essentially mirrors the actual criteria used by the present FAP office. These criteria have been in place since 1978, and are well accepted by most impartial archeologists, historians, genealogists—and I might add, very definitely—as well as by most tribes, as being reasonable expectations of criteria that a petitioning group should meet. We are just less convinced than certain critics that FAP is as broken as some allege. We do not believe that it is a dismal failure.

By means of example, let us examine the most used argument of the critics. They contend that there are over 100 petitions pending and that the BIA has only taken action on a very small number of them. Mr. Chairman, let me point out that 75 of those so-called petitions are nothing more than an undocumented letter of intent to petition. Some of those have been here since 1984—or 1978 when the process was started. And I certainly don't believe that any member of this committee or even the most severe critics of FAP would want the BIA to afford Federal recognition to a group based only on an undocumented letter of intent. There are groups that have filed a letter of intent and never again responded to the request from the FAP office.

I can personally—I personally know of three groups which were very correctly denied recognition. These included the Lower Muskogee Creek Tribe of Georgia, the Creeks east of the Mississippi and Florida, and the Principal Creek Nation of Alabama,

which are in fact and for all practical purposes the same group of people. The leaders of these groups continue to change the address of this group or to change their address, apply for Federal money to go through the process and continue to try to convince the FAP process that they are in fact a tribe. We know this is not the case.

The way you should judge an FAP process is in regards to how many petitions they have never responded to, how backlogged they are in relation to the petitions that are ready for active consideration.

There are other areas of both bills that we find quite positive. For instance, we concur that groups that have been previously turned down should not be eligible to participate and petition again. We agree that splinter groups or groups of existing tribes should not be allowed to petition, as well as groups which the courts have determined are not successors in interest to treaty tribes.

We also concur with the provisions of the bill that essentially treats a final determination as a final agency action and that allows the petitioner to seek judicial review in the U.S. District Court for the District of Columbia. This will help a petitioner by not requiring that they must go through an extensive agency review process before challenging a finding in court.

We also would request that one part of these bills be made a little bit clearer, and that is, we believe that when groups endeavor to secure financial assistance from the Federal Government, or those agencies that fund the efforts of groups to acquire Federal recognition, that they be required to present a list of the members of that group in its entirety. We have found in the past that groups provide one list of members and then, as they progress through the process, all of a sudden those lists of members change. We feel this would also certainly help in the point of not having a group move from one location to others to petition from a different group.

Mr. Chairman, I thank you for the opportunity to present the views of the Poarch Creek Tribe and the United South and Eastern Tribes. We applaud the committee and the sponsors for the introduction of these excellent bills and again urge enactment before time runs out on this Congress.

Thank you.

[Prepared statement of Mr. Tullis follows:]

TESTIMONY OF EDDIE TULLIS, CHAIRMAN OF THE POARCH CREEK TRIBE OF INDIANS AND PRESIDENT OF THE UNITED SOUTH AND EASTERN TRIBES, ON HR 2549 AND HR 4462, LEGISLATION TO PROVIDE FOR ADMINISTRATIVE PROCEDURES TO EXTEND FEDERAL RECOGNITION TO CERTAIN INDIAN GROUPS.

Chairman Richardson, Congressman Thomas, Congressman Faleomavaega and other distinguished members of the Native American Affairs Subcommittee, my name is Eddie Tullis. I am here today in a dual capacity as both the Chairman of the Poarch Creek Tribe of Alabama and as President of the United South and Eastern Tribes, Inc., (USET).

The Poarch Band of Creek Indians is a segment of the original Creek Nation. Despite the policy of removal of southeastern Indians to Oklahoma, my ancestors avoided and survived the disastrous removal era and have continued to live together as a tribe since that time. Today, there are 2,100 members of the Poarch Creek Tribe of which over 1,400 live in the vicinity of Poarch, Alabama.

USET is a non-profit inter-tribal organization now consisting of 21 tribes from the south and eastern United States. We represent the federally recognized tribes from Maine down to Florida and as far west as eastern Texas. Our organization was founded in 1969 by four tribes and we have grown to where we now have tribal members in 12 states. I have not had the opportunity to run this testimony by every member tribe of USET but based on previously adopted resolutions of the Board, I am confident that my words today will be generally representative of the views of the majority of our membership.

I want to start my testimony by commending Congressmen Richardson and Thomas for introducing HR 4462 and to commend Congressmen Falgeomavaega and Abercrombie for introducing HR 2549. We believe these are excellent pieces of legislation which should be consolidated as one bill and passed into law during the 103rd Congress. We strongly believe that there must be a process and an institutionalized method to which groups seeking recognition must adhere. We would hope that the establishment of such a congressionally sanctioned and established process would result in that process being the only one used by groups seeking recognition. As things presently stand, some groups go through the FAP process whereas other groups are going to Congress for legislative recognition. As a result, things have become very arbitrary. One of the reasons the FAP was initially established was to create a uniform method where petitions could be examined in a more academic setting rather than the arbitrariness of simply allowing the Congress or the Commissioner of the BIA to make the decision. Groups with powerful Congressman or Senators (or in the pre-FAP days, those with a good rapport with the Commissioner of the BIA) have/had a better chance of circumventing the FAP by congressional recognition than do those with junior Congressmen and Senators.

There are components of each bill that we prefer, and I will address the specifics of the bills shortly; but first, I want to tell you why I may bring a unique perspective to this hearing and why the Director of USET asked if I could represent the organization. The Poarch Band of Creek Indians achieved our status as a federally recognized tribe on August 11, 1984 as a result of a positive

finding by the Bureau of Indian Affairs. We petitioned through the BIA's Federal Acknowledgement Process (FAP) and were successful. I was involved in working with the BIA on our FAP petition and I was the first Chairman of the Tribal Council after we reorganized with a constitution and have been honored to be re-elected as Chairman in each election since. I therefore have a somewhat intimate and personal knowledge of the issues being discussed at today's hearing.

In addition to addressing the specifics of the legislation, I want to make a few observations on the introductory comments of both Congressman Richardson and Thomas which appeared in the Congressional Record, in conjunction with the introduction of HR 4462, on May 19 of this year. Congressman Richardson's comments, which seem intended to help justify the idea of creating the new federal Commission on Indian Recognition, indicate that the BIA presently has an "inherent disincentive to recognize new tribes...since new tribes would mean a greater strain on an already overstretched budget." In my thinking about the pros and cons of establishing this new Commission, I believe that there is only one real reason that would justify the expenditure and the time and money involved in setting up a new federal Commission. That is if there is evidence to show that the existing FAP office (or Branch of Acknowledgement and Research [BAR] to be precise) has been pressured to either deliberately slow down the processing of petitions or if they have been pressured by any agency of the Interior Department to make negative findings. Congressman Richardson's comments indicate that the disincentive is inherent but I am just not sure that is the case. In my discussions with the FAP staff, I have never gotten the impression that they are pressured, even remotely, to take actions that are injurious to petitioning groups. If the Committee has collected evidence to the contrary, I believe you should share it with Indian country. While I am not necessarily disagreeing with the idea of separate Commission, I do want to point to one positive finding made by the FAP when they were clearly being pressured to make a negative finding and that is when they recognized the San Juan Paiutes over the strong objections of the largest and most powerful tribe in the country, the Navajo Nation. In that case the integrity and independence of that office prevailed against such pressure.

Clearly, this process has been slow and I don't think anyone would defend the amount of time it has taken to process certain petitions, and I support provisions in the proposed bills that would implement time-frames and require the BIA and/or the Commission to respond by dates certain. Similarly, this process should not continue forever. We are hopefully dealing with tribal groups that have existed for hundreds or thousands of years and not groups that are created tomorrow or two years from now. To that end, we strongly support the provisions in the Faleomavaega/Abercrombie bill that this process be complete within a six year time period. We note that in the Richardson/Craig proposal, the Administration for Native Americans is authorized to give grants to help petitioning Indian groups for a 12 year period, but the bill itself does not limit the tenure of the new Commission. We think six years is sufficient time for each.

As indicated above, we are not necessarily opposed to creating a Commission if the Congress is truly convinced that the only way for petitioning groups to get a fair shake is through the establishment of such a Commission. However, we would urge you to consider how long it took to create the

National Indian Gaming Commission and get it up and running. The Indian Gaming Regulatory Act was enacted in 1988, and it took the Bush Administration three years to appoint the Commissioners, and it took another year or two to get the regulations implemented. I am not sure anyone is served if the entire FAP process were to come to screeching halt for three or four years. If you do set up this Commission, you should endeavor to get it set up quickly. Additionally, if there is going to be a new Commission created, there should be a provision added to the bill that a majority of the three Commissioners should be Indian people and that Indian preference in hiring be applied to staff for the Commission. We agree with the provisions in both bills which essentially mirror the actual criteria used by the present FAP office. Those criteria have been in place since 1978 and are well accepted by most impartial anthropologists, historians, and genealogists, as well as by most tribes, as being reasonable expectations of criteria that a petitioning tribal group should meet.

I must also respectfully express some disagreement with Mr. Richardson's introductory statement that federally recognized tribes prefer the status quo over an improved administrative process, and that we really don't want to see any more tribes recognized because it will split the federal pie even more thinly than it already is. First of all, there presently are over 500 federally recognized tribes and Alaska Native Villages. We get so little from the BIA now that if a few more, or even a few dozen more, tribes became recognized, it is unlikely to have any major impact on our budgets. Additionally, we would hope, and the pending legislation envisions, that the Congress would appropriate additional money for newly recognized tribes anyway. On the question of our preferring a broken system to an improved system, we would clearly like to see the system improved. We are just less convinced than certain critics that FAP is as broken as some allege. To that end, I do not really agree with Congressman Thomas' introductory comments wherein he describes the FAP as a "dismal failure."

By means of example, let us examine the most used argument of the critics. They contend that there are over 100 petitions pending and that the BIA has only taken action on a very small number of them even though the FAP has been in existence for a decade and a half. Mr. Chairman, let me point out that 75 of these so called petitions are basically nothing more than letters of intent. These are typically undocumented letters from groups that would like to be designated as tribes. Let me repeat because critics and members and congressional staff intent on attacking FAP have continuously overlooked this critical point. 75 OF THE PENDING FAP PETITIONS ARE IN A CATEGORY ACCURATELY ENTITLED "LETTERS OF INTENT TO PETITION". Through the FAP regulations, the BIA is required to assign such letters with a number and they get added to the list but they really should not be counted. I don't believe that any member of this Committee or even the most severe critic of FAP would want the BIA to afford federal recognition to a group that has no documentation of its claim. Any person who would want to see such a group recognized has either no respect for, nor any understanding of, the sanctity of the concept of tribal sovereignty and the nature of the fiduciary government-to-government relationship that exists between tribal governments and the United States government. Of the 75 groups in this category, 11 have not responded to written inquires of the FAP, and the FAP has literally been unable to make any contact with four (4) groups. I personally know that three groups which were correctly denied recognition,

the so called Lower Muskogee Creek Tribe-East of the Mississippi in Georgia, the Creeks East of the Mississippi in Florida, and the Principal Creek Indian Nation of Alabama, are, in fact, all one and same. The same particular individual who has moved the offices of this so called tribe to three different states and gotten money from the federal government to petition three different times. The so called leader of this group has a direct blood relative who is heading up the efforts of yet a fourth group also petitioning the BIA for recognition.

Above and beyond the 75 petitions described above, there are 27 petitioners who the FAP staff are awaiting to hear back from before they can continue to process their petitions. Of these, 24 have received have received letters and phone calls from the FAP office indicating that their petition contained a deficiency. In many of these the petitioner has not responded to the deficiency letter or has indicated that they are not ready to proceed. We assume that critics of FAP would not want to see these groups recognized without further action either. The combination of these two categories already exceeds 100 petitions. The way you should judge the FAP is in regard to how many petitions they have never responded to, how backlogged they are relative to processing petitions wherein the petitioner has indicated that they wish to be placed on "active consideration" (waiting) status, and how many are under active consideration but not yet ruled on. It is also my understanding that for the first time since it was started, the FAP office now has all of its FTE positions filled.

There are other areas of both bills that we find quite positive. For instance, we concur that groups that have been previously turned down should not be eligible to participate and petition again. We agree that splinter groups of existing tribes should not be allowed to petition as well as groups which the courts have determined are not successors in interest to treaty tribes. We do believe that preferential or expedited treatment should be given to groups who can clearly demonstrate that they are the successors in interest to treaty tribes. Such a provision is contained in the HR 4462 but not in HR 2549. HR 4462 seems to require the new Commission to notify petitioners within one year of the receipt of a petition whether it contains any obvious deficiencies; and, then within one year after notifying a petitioner that its petition is in "active consideration", the new Commission shall make its finding. If all of the 100+ pending petitions that are in the FAP now are transferred simultaneously to the new Commission, you need to determine if letters of obvious deficiency can realistically be sent to all these groups within one year and whether, a year after that, proposed findings can be made. This does not even include new groups that might petition the Commission within its first year of existence. While we do believe in time frames, we don't think anyone will be served by codifying time frames that the Commission can't meet. We also concur with the provisions of the bills that essentially treat a final determination as a final agency action and allow the petitioner to seek judicial review in the United States District Court for the District of Columbia. This will help a petitioner by not requiring that they must go through extensive agency appeal processes before challenging a finding in court.

We believe that, when groups endeavor to secure financial assistance from the Administration for Native Americans for petitions, they must be required to submit membership lists. This will

prevent the same groups from petitioning in different areas using slightly different sounding tribal names, as I described above. Petitions to the BIA should also be required to contain membership lists.

The changes recommended in my testimony are really minor in nature because we strongly support the enactment of this type of legislation. Out of fairness to non-recognized tribes and to protect the sanctity of the unique federal/tribal relationship, a process as envisioned by these bills is needed. In closing, let me quote from a section of Congressman Thomas' introductory comments that I fully agree with. These are the reasons why tribes feel strongly that an equitable system with uniform criteria is needed, not because of any selfish need to protect what little we now have.

> "Recognized" is more than a simple adjective; is a legal term of art. It means that the government acknowledges as a matter of law that a particular native American group is a tribe by conferring a specific legal status on that group, thus bringing it within Congress' legislative powers. This Federal recognition is no minor step. A formal, political act, it permanently establishes a government-to-government relationship between the United States and the recognized tribe as a "domestic dependent nation," and imposes on the Government a fiduciary trust relationship to the tribe and its members. Concomitantly, it institutionalizes the tribe's quasi-sovereign status, along with all the powers accompanying that status such as the power to tax, and to establish a separate judiciary. Finally, it imposes upon the Secretary of the Interior specific obligations to provide a panoply of benefits and services to the tribe and its members. In other words, unequivocal Federal recognition of tribal status is a prerequisite to receiving the services provided by the Department of the Interior's Bureau of Indian Affairs [BIA], and establishes tribal status for all Federal purposes.

I thank you for this opportunity to present the views of the Poarch Creek Tribe and of the United South and Eastern Tribes. We applaud the Committee and the sponsors for the introduction of these excellent bills and again urge enactment before time runs out in this Congress.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

I think if it is all right with everybody, we will go through all of the testimony before we get to the questions. I do have a couple of things I want to ask you, but others may illuminate the same points that I want to raise.

So then if that is okay, we will move to Chairman Jones as your next participant.

STATEMENT OF HON. STAN JONES

Mr. JONES. Thank you, Mr. Chairman.

My name is Stanley G. Jones, and I am Chairman of the Tulalip Tribes of Washington. I am accompanied by the tribe's general counsel, Doug Bell. We appreciate the opportunity to comment upon H.R. 2549 and H.R. 4462.

The Tulalip Tribes are the successors of the Snohomish, Snoqualmie and Skykomish Tribes, who honored the Treaty of Point Elliott, and came to the Tulalip Reservation. In 1935, we became a single reservation tribe under the IRA.

The Tulalip Tribes are adjudicated to hold entitlement to the treaty fishing rights of these treaty tribes. Our members are heavily dependent upon the exercise of those rights for their livelihood. We are also very proud of our heritage and birthright as the historical successors of these aboriginal tribes. This is our cultural identity.

We have taken very seriously and opposed the efforts of five nonreservation groups, whose members are widely scattered in western Washington, and who have no distinct geographical Indian communities, to lay claim to a share of the already scarce, and dwindling, treaty fishing as alleged treaty successors. Two of these groups, the Snohomish and Snoqualmie claims organizations, contend that they are the very treaty tribes that are included within the Tulalip Tribes.

After great efforts and expense, we won a hard-fought lawsuit brought by these five groups in *United States* v. *Washington*, establishing that they are not Indian tribal organizations, are not treaty successors, and do not have treaty fishing rights. This judgment is a treaty property rights adjudication that these five groups are not entitled to participate in the limited treaty fishery. The United States has a trust responsibility to protect the Tulalip Tribe's treaty fishing rights established by this judgment.

When the groups continued to pursue petitions for Federal acknowledgment as the treaty tribes that the judgment held them not to be, the Tulalip Tribes asked the Branch of Acknowledgment and Research to honor and give binding effect to the final Federal court judgment that they were not the tribes they claim to be, by dismissing their petitions. And BAR refused, BAR refused.

As a result, the Tulalip Tribes have directly participated in the acknowledgment proceedings in opposition to the groups' petitions and have testified in House and Senate oversight hearings to urge that the criteria for the acknowledgment not be relaxed to permit recognition of marginal claims groups of this nature, which are not bona fide Indian tribes, to urge the BAR be required to honor Federal court decisions and give binding effect to Federal court judg-

ments, and to seek protection for the treaty and reservation rights of recognized tribes.

We are hopeful that the acknowledgment regulations would continue to be interpreted and implied in a stringent fashion, denying acknowledgment to groups that have no geographically distinct community and settlements, and are not by any stretch of the imagination, within the common understanding of the meaning of the term "Indian tribe."

My detailed statement for the record describes our outrage and dismay. In May 1993, the Assistant Secretary proposed acknowledgment of the Snoqualmie group after, for nearly 2 years, refusing to consider the voluminous historical record that we submitted showing that the Snoqualmie Tribe came to the Tulalip Reservation and is now part of the Tulalip Tribes, and that the Snoqualmie petitioner was created in this century to pursue claims, and is not the successor of the Snoqualmie treaty tribe, as the executive branch, the Congress, the Indian Claims Commission, and the *United States* v. *Washington* court have recognized and acted upon.

We regard this proposed decision as a true slap in the face and insult to our tribe, our cultural identity, and the cultural identity and birthright of the approximately 2,000 Tulalip members who are of Snoqualmie descent.

Needless to say, this proposed decision has increased our concerns about BAR's relaxation of the test for acknowledgment, now codified in the new regulations that become effective March 28, 1994.

As set forth in detail in my statement for the record, the BAR proposed Snoqualmie decision expressly acknowledges the petitioning group's population is dispersed;

There are no distinct settlement areas of the group's members.

By way of comparison, Mr. Chairman, approximately 2,000 Snoqualmie descendents are members of the real Snoqualmie tribe at the Tulalip Reservation. The Tulalip Tribes of Washington and a substantial portion of these members are settled in the reservation tribal community.

Sixty percent of the petitioning group's 313 members live within a 50-mile radius, scattered over a large area of western Washington. The others are more widely scattered.

I would add that this area includes the greater Puget Sound metropolitan area, which is populated by millions of non-Indians.

The group's scattered membership interacts extensively with non-Indians, living in white neighborhoods, going to white schools, et cetera.

Yet the proposed decision would recognize this group as a sovereign Indian tribe on the basis that, despite its 313 members being widely scattered amongst millions of non-Indians over a 50-mile radius, the group is within close enough proximity to have maintained a social community and social interaction among the group's members.

We respectfully urge Congress to adopt legislation which would deny acknowledgment of mere social community groups that do not have a distinct geographical community in the form of distinct settlement areas. Acknowledgment of such groups is an affront to the sovereignty and dignity of every bona fide Indian tribe.

As set forth in my statement for the record, the law has long recognized as a requirement that Indian tribes be distinct Indian communities includes an element of geographical concentration and distinctness from other populations in the area. By the amendments we propose, we urge Congress to clearly assure that such a requirement will be a condition of the Federal acknowledgment as an Indian tribe.

The watering-down of the acknowledgment criteria to extend sovereignty to mere social community groups, with no geographical concentration and distinctness, will eventually lead to a public perception that sovereign Indian tribes are nothing more than voluntary social organizations. Ultimately, the public will lose respect for the sovereignty, dignity and authenticity of bona fide Indian tribes. The proliferation of social community tribes will also create a serious drain on scarce Federal services and benefits sorely needed by real tribal communities.

As set forth in my statement for the record, BAR has also declined to give binding effect to the *United States* v. *Washington* decision that the Snoqualmie group is not a successor of the Snoqualmie treaty tribe, despite the fact that courts require that such effect be given an acknowledgment process concerning the Samish group. The provisions of H.R. 2549, which we recommend be added to H.R. 4462, would correct this problem and require BAR to honor Federal court decisions.

We also propose amendments to improve the provisions of the bill that protect the rights of existing tribes from claims of newly recognized groups, and remove any implication that such groups have claims to the rights of existing tribes. Finally, we propose an amendment to assure that groups that have been the subject of ambiguous or erroneous determinations of eligibility to participate in the IRA, not be relieved of proving their historical existence before such determination.

This completes my statement, Mr. Chairman.

Mr. ABERCROMBIE. Excuse me.

Mr. Chairman, could you read that last sentence again, please? I didn't quite get it.

Mr. JONES. Finally, we propose an amendment to assure that groups that have been the subject of ambiguous or erroneous determination of eligibility to participate in the IRA, not be relieved of proving their historical existence before such determination.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Jones follows:]

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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliott

STATEMENT

OF THE

TULALIP TRIBES OF WASHINGTON

CONCERNING

H.R. 2549 AND H.R. 4462

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

JULY 22, 1994

The Tulalip Tribes of Washington appreciates the opportunity to present the following statement concerning H.R. 2549 and H.R. 4462.

The Tulalip Tribes support legislative reform of the federal acknowledgment process to address two underlying concerns that, in our view, were not satisfactorily resolved in the revised acknowledgment regulations that became effective on March 28, 1994. 59 Fed. Reg. 9280. The first concern arises from a recent interpretation of the original acknowledgment regulations, as codified in the revised regulations, that an Indian group may satisfy the "community" criteria for acknowledgment as an Indian tribe on the basis of maintaining a distinct "social community," even though a substantial portion of the group is not concentrated in distinct geographic settlement areas. The second concern arises from the failure of the original and the revised acknowledgment regulations to properly afford preclusive effect to prior federal court decisions that an Indian group is not an Indian tribe or the successor of an Indian tribe that was a party to a treaty with the United States. The Tulalip Tribes recommend that H.R. 2549 and H.R. 4462 be amended to address these concerns, as discussed in sections I and II below, and set forth upon Attachment "A". The Tulalip Tribes also recommend the additional technical amendments discussed in section III below, and set forth upon Attachment "A."

I. A disbursed Indian group with no distinct geographic settlement area(s) should not be acknowledged as a sovereign Indian tribe.

The Tulalip Tribes urge that the acknowledgment criteria of H.R. 2549 and H.R. 4462 be revised to clearly assure that Indian groups with no distinct geographic settlement areas may not be acknowledged.

Tribes are "distinctly Indian communities." United States v. Sandoval, 231 U.S. 28, 46 (1913). They are a "people distinct from others." The Kansas Indians, 72 U.S. (5 Wall) 737, 755-56 (1867). Such distinctness has a territorial component:

> "By a 'tribe' we understand a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular through sometimes ill-defined territory."

In United States v. Washington, 641 F. 2d 1368, 1373-74 (9th Cir. 1981), cert. den., 454 U.S. 1143 (1982), the Ninth Circuit recognized that maintenance of settlements in distinctively Indian residential areas is an element of an Indian tribe surviving as a distinct community:

> "When assimilation is complete, those of the group purporting to be the tribe cannot claim tribal rights. * * * To warrant special treatment, tribes must survive as distinct communities. [citations omitted]
>
> The appellants point to their management of interim fisheries, pursuit of individual members' treaty claims, and social activities as evidence of tribal organization. But the district court specifically found that the appellants had not functioned since treaty times as continuous separate, distinct and cohesive Indian cultural or political communit[ies]." 476 F. Supp. at 1105, 1106, 1107, 1109, 1110.
>
> After close scrutiny, we conclude that the evidence supports this finding of fact. Although the appellants now have constitutions and formal governments, the governments have not controlled the lives of the members. Nor have the appellants clearly established the informal cultural influence they concede is required.
>
> The appellants' members are descended from treaty tribes, but they have intermarried with non-Indians and many are of mixed blood. That may be true of some members of tribes whose treaty status has been established. But unlike those persons, those who comprise the groups of appellants have not settled in distinctively Indian residential areas." (emphasis added)

This analysis was in the context of a specific inquiry as to whether the appellants had historically maintained the required "organized tribal structure" in order to establish the right to exercise treaty rights. 641 F. 2d at 1372.

The requirement of a distinct geographic community was implied by the language of the original acknowledgment regulations (25 C.F.R. §54.7(b), which was recodified as 25 C.F.R. §83.7(b)):

> Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

However, on April 26, 1993, the Assistant Secretary published a Proposed Finding (58 Fed. Reg. 27162) to acknowledge the "Snoqualmie Indian Tribe," one of the groups that was specifically the subject of the above-quoted Ninth Circuit language, and a group which the proposed finding and supporting technical reports also acknowledge has no distinct Snoqualmie settlement areas. The Summary of Evidence supporting the proposed finding indicates:

> "By 1914, the population of geographically distinct off-reservation Snoqualmie settlements had largely disbursed." (p. 8)
>
> "There are no distinctly Snoqualmie settlement areas. About 70 percent lives within a 50 mile radius of Tolt/Carnation, most between Marysville and Monroe on the north and Auburn on the South, a distance of about 50 miles. This is not close enough to raise any presumption of significant social interaction, but is close enough that social interaction at a significant level is easily possible." (p. 15)

The anthropological report supporting the proposed finding describes the petitioner Snoqualmie group, as follows:

> "There are no distinct Snoqualmie settlement areas." (p. 7)
>
> "The Snoqualmie are not so concentrated, i.e., living in exclusive or nearly exclusive settlement areas, that the geographic patterns are evidence in themselves of a significant degree of interaction." (p. 64)
>
> "60 percent of the total membership list, have addresses in towns within 50 air miles of Tolt/Carnation." (p. 66)
>
> "Enrolled Snoqualmie members resided in the following western Washington towns in 1990: Arlington (11), Auburn (7), Darrington (7), Duvall (14), Everett (23), Issaguah

(9), Monroe (10), Renton (9), Seattle (26), Snohomish (10), Snoqualmie (7), Tacoma (11) and Woodinville (6)." (p. 66)

"Because of the scattered nature of the population, few live near traditional areas of settlement and it is difficult to determine the likelihood that individual Snoqualmie living elsewhere are identified by their specific tribe by non-Indians." (p. 92)

"The Snoqualmie interact extensively with non-Indians. This in part is a result of their scattered residence pattern. The [group's] petition states that:

> 'the Snoqualmie generally live in white neighborhoods, attend mostly white schools, play with white children and establish ties with many white families. Geographical distances prohibit the Snoqualmie people as a tribe from interacting with the same degree of intensity and frequency as they do with their closer relatives." (pp. 92-93)

Nevertheless, the proposed finding concludes that the group should be recognized as an Indian tribe on that basis that it has maintained a "social community:"

"Although they no longer had separate settlements, there is strong evidence that the tribe maintained a distinct social community during this period." (p. 1)

The Summary of Evidence explains:

"The regulations require that a distinct social community be maintained within which substantial social interaction and social relationships are maintained and which is distinct from other populations in the area. They do not require that the group or substantial portions of it live in a geographic area which is exclusively or almost exclusively occupied by members, e.g. a village or neighborhood." (p.8)

As explained in their preamble, the new acknowledgment regulations published on February 25, 1994 (59 Fed. Reg. 9280), effective March 28, 1994, which have been determined to apply to the Snoqualmie group's petition, revise the language of the regulations to eliminate any implied requirement under the language of the original regulations that a group live in a geographical community in order to be acknowledged:

"Criterion (b), demonstration of community, and the associated definition of community in §83.1, were substantially revised in the proposed revised rule. The revision omitted an apparently implied requirement that a group live in a geographical community in order to demonstrate that this criterion was met. * * * The omission of a geographical

> requirement reflects current practices[1] in interpreting the regulations and recognizes that tribal social relations may be maintained even though members are not in close geographical proximity." (59 Fed. Reg. 9286-87)

The preamble to the new rules also explains:

> "Several individuals pointed out that retention of the language 'distinct from other populations in the area' implied a geographical requirement * * * We agree, so this language has been eliminated." (Id.)

The new regulations define the term "community" as:

> ". . . any group of people which can demonstrate that consistent interactions and social relationships exist within its membership and that its members are differentiated from and identified as distinct from non-members." (59 Fed. Reg. 9293)

The new regulations revise the mandatory "community" criteria to read:

> "(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present." (59 Fed. Reg. 9295)

The new rules also describe a variety of "social community" evidence that may be used to satisfy such criterion. (Id.)

It is apparent that the Department has abandoned any requirement that a substantial portion of a petitioners' membership be concentrated in distinctively Indian geographic settlement areas. In the case of the Snoqualmie group, this relaxation of the common understanding of the term "Indian tribe" has resulted in a proposal to acknowledge a group of 313 Indian descendants that the Assistant Secretary and BAR concede is widely dispersed over a three county area within 50 miles of Carnation, Washington (i.e. over a 50 mile radius), and scattered through a number of non-Indian cities in the greater Puget Sound metropolitan area (which includes millions of non-Indians), occupying no distinctively Snoqulamie settlement areas. BAR notes the difficulty of determining, and does not purport to determine, "that

[1]E.g. the proposed finding concerning the Snoqualmie group.

individual Snoqualmie living elsewhere are identified by their specific tribe by non-Indians." Although there is no place where the Snoqualmie petitioner group has a distinctive geographic settlement presence, where the members live a daily tribal life together and are viewed as a geographic tribal community by other populations in the area (e.g. such as an Indian reservation), the proposed finding would acknowledge the group as an Indian tribe, "considered eligible for the services and benefits from the Federal government that are available to other federally recognized tribes," 25 C.F.R. §83.12 (59 Fed Reg. 9300), on the basis that the group has a "social community."

This result is not only contrary to the specific decision in United States v. Washington mentioned above, but is also contrary to specific legal positions taken, and decisions made, concerning the group by the Executive Branch and Congress. For example, in its Indian Claims Commission brief, the United States represented to the Commission that the petitioner was not an Indian tribe or a treaty successor. The Indian Claims Commission found that the petitioner was not the successor of the Snoqualmie tribe. The Department of the Interior reported to Congress that the petitioner was merely a claims organization, not an Indian tribe or treaty successor, and Congress concurred in this view in enacting Pub. L. 92-30 (85 Stat. 83), which funded the Indian Claims Commissions award on a descendency basis, rather than to the petitioner as a Tribe. In House Report 92-148 and Senate Report 91-1144, the legislative history of Pub. L. 92-30, Congress incorporated the Department's report. House Report 92-148 (p.22) and Senate Report 91-1144 (p. 24) indicate that the Snoqualmie petitioner "was established for the purpose of prosecuting claims against the United States and has maintained itself solely for that purpose. The group has . . . not been recognized as an organized tribe by the Federal Government, and individuals are considered descendants, rather than present-day

members of a successor tribe." The House Report (p. 9) and Senate Report (p. 3) also indicate that the Snoqualmie petitioner is "organized for claims purposes only. * * * Members are scattered throughout the State of Washington." The House Report (p. 11) and Senate Report (p. 13) describes the Snoqualmie petitioner group as: "Widely scattered in Pacific Northwest area... Indians have not retained distinctly Indian culture traits. Generally integrated into non-Indian community and appear to utilize services available to them as citizens."

The Tulalip Tribes acknowledge their opposition to the recognition of this particular Snoqualmie petitioner. As the successor of the Snoqualmie Indian tribe that was a party to the Treaty of Point Elliott, United States v. Washington, 626 F. 2d 1405, 1527 (W.D. Wash. 1985),[2] the Tulalip Tribes also wish to express their outrage and dismay at this proposed finding, issued nearly two years after BAR's refusal to even consider the voluminous evidence submitted by Tulalip in 1991 that reflects (1) the substantial historical record, from treaty-times to date, that the Snoqualmie tribe has been at (and recognized by the U.S. to be at) the Tulalip Reservation, and is now part of the Tulalip Tribes; and (2) that the Snoqualmie petitioner was established, and has existed, only as a claims group, and has been so regarded by the Executive Branch and Congress. In proposing to acknowledge this claims group petitioner as the Snoqualmie Indian tribe, the proposed finding ignores the historical record submitted by the Tulalip Tribes, and constitutes a slap in the face to the very cultural identity and birthright of approximately 2,000 Snoqualmie descendants who are members of the real Snoqualmie tribe, now part of the Tulalip Tribes, at the Tulalip Reservation.

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[2]The Tulalip Tribes of Washington is also the successor of the Snohomish and Skykomish treaty tribes. Id. The practical effect of the reorganization under the IRA in the 1930's was to combine the historical allied tribes and bands signatory to the treaty, who kept their treaty promise to remove to the Tulalip Indian Reservation, into a single reservation tribe named after Tulalip Bay.

However, the Tulalip Tribes concern with BAR's abandonment of any requirement of distinct geographical settlement areas is broader than just its opposition to, and outrage over, the particular Snoqualmie proposed finding. Acknowledgment of mere "social community" groups is an affront to the sovereignty and dignity of every bona fide Indian tribe that has achieved federal recognition.

Recognition of an Indian group as a sovereign Indian tribe is a serious matter with serious consequences. Watering-down the criteria for acknowledgment to include groups without any distinct geographical settlement areas, will serve to trivialize tribal sovereignty by opening the flood-gates to recognition of groups that do not fall within the common public understanding and legal definition of "Indian tribes," but rather have become assimilated into non-Indian society, living widely scattered among non-Indian populations. The public will come to perceive that, under this new relaxed test, groups that have survived as no more than private voluntary social organizations, are purporting to exercise "tribal sovereignty." Ultimately, the public respect for the sovereignty and dignity of genuine Indian tribes, will be diminished, and federal services and benefits sorely needed by real tribal communities will be significantly diluted.

For these reasons, the Tulalip Tribes urge Congress to soundly reject the notion that mere "social community" groups, with no distinct geographical settlement areas, constitute Indian tribes. An Indian tribe "must be something more" that a private voluntary social organization. United States v. Mazurie, 419 U.S. 544, 557 (1975). We urge that H.R. 2549 and H.R. 4462 be revised to include the amendments to the set forth in §§ 1.1 and 2.1 of Attachment "A," to clearly reinstate a requirement of geographical distinctness--i.e. distinct geographical settlement areas--as a criterion for acknowledgment. The Tulalip Tribes also urge

the prompt enactment of limited legislation to address this specific concern if general acknowledgment legislation is not adopted by Congress.

II. The acknowledgment process should afford preclusive effect to prior federal court decisions that Indian groups are not Indian tribes or treaty successors.

The Tulalip Tribes support the provisions of section 3(b)(4) of H.R. 2549, and, as set forth in §2.2 of Attachment "A," urge that similar provisions be included as a new section 5(a)(2)(E) of H.R. 4462. Groups which have been the subject of final federal court determinations that they lack either tribal, or treaty successor, status, should not be allowed to relitigate such claims in the federal acknowledgment process. The legal principles of res judicata and collateral estoppel require that judicial decisions have finality. Futher, BAR resources should not be devoted to re-examination of issues resolved by the federal courts.

In United States v. Washington, 476 F. Supp. 1101 (W.D. Wash. 1979), aff'd 641 F. 2d 1368 (9th Cir. 1981), cert. den. (1982), as referenced above, five Washington non-reservation Indian groups (Snoqualmie, Snohomish, Samish, Duwamish and Steilacoom) sought to adjudicate their status as historical successors to parties of the same names that were signatory to the treaty of Point Elliott, and their consequent entitlement to exercise the treaty fishing rights of such aboriginal tribes. The Tulalip Tribes were among the parties who opposed the claims of these groups through a full-hearing before a Master, a full district court trial de novo, an appeal and an unsuccessful effort to obtain certiorari review. The courts held that the groups were not historical successors of the aboriginal treaty tribes and, accordingly, were not entitled to exercise their treaty fishing rights. This conclusion was based, in part, upon an inquiry and determination as to whether the groups had historically maintained organized tribal structures. It was determined that they had not.

Notwithstanding the federal court decision that the groups were not historical treaty successors, each of the groups have pursued petitions for federal acknowledgment as the successors of the aboriginal treaty tribes which the final court decision holds them not to be. Their petitions assert no other basis for satisfying the historical continuity requirements for acknowledgment other than alleged successorship to the treaty tribes. BAR has declined to afford preclusive effect to the court decision, and engaged in independent inquiry as to whether the groups have the treaty successor status they allege.

In Greene v. Babbitt, No. C89-645Z (W.D. Wash), the district court determined that the same evidence underlies both the treaty successorship claims of the Samish group in United States v. Washington and the Samish group's administrative acknowledgment claims. Order, September 29, 1990 (CR 102, at 12). The court also determined that the rights sought to be enforced by the Samish in both forums "are those secured to the historic Samish tribe as a sovereign entity. This necessarily requires proof of tribal succession." (Id, 12-13) The court also held that the underlying issues pertaining to both claims was the same--whether the group had maintained an organized tribal structure, and that the Samish group "is not entitled to litigate anew this claim." (Id., at 13) In determining that the Samish group was entitled to a further hearing on its acknowledgment claim before the Department, the court ruled that the Samish were precluded by the United States v. Washington decision from relitigating its status as political successor to the Samish treaty tribe and entitlement to treaty fishing rights: "The issue of whether [Samish] plaintiffs are successors to the Treaty of Point Elliott has already been resolved . . . This Court, in an earlier order, held that plaintiffs are barred under the doctrine of res judicata from relitigating its status as the political successor to the aboriginal Samish Indian tribe." Order, February 25, 1992 (CR 169, at 4-5) Ruling that "Plaintiffs,

therefore, have no rights under the Treaty of Point Elliott" and that the case deals "solely with acknowledgment as it pertains to eligibility for Government benefits" (Id., at 4-5), the court held that the administrative law judge on the remand hearing concerning acknowledgment "should be informed that the Samish are barred from enforcing treaty rights and that the legal effect of the treaty on the Samish should not be considered." Transcript, September 18, 1992, at 45-46. In affirming the district court's denial of the Tulalip Tribes' intervention on the grounds that its treaty interests were no longer implicated in the case as a result of these res judicata rulings limiting the scope of the acknowledgment proceedings, the Ninth Circuit noted that the district court had ruled expressly that "the ALJ 'will not consider' treaty rights established by the Boldt decision," Greene v. United States, 996 F.2d 973, 977 (9th Cir. 1993), holding that "[a]ny attempt to relitigate treaty fishing rights would occur in the separate, ongoing [United States v. Washington] forum" (Id.), "where the Tulalip and all other interested parties can have their say." (Id., at 978).

Notwithstanding the fact that the rationale of the district court's holding in Greene, that the res judicata effect of the judicial decision bars the Samish group from relitigating treaty successor status and fishing rights in the acknowledgment process, is equally applicable to the other groups that were subject to the United States v. Washington decision, the Assistant Secretary proposed on April 26, 1993 to acknowledge the Snoqualmie group as the Snoqualmie Indian tribe that was a party to the Treaty of Point Elliott. In lengthy reports, BAR experts engage in lengthy reanalysis of the same treaty successor issue that was before the United States v. Washington court, as well as a discussion of perceived deficiencies in the decision. The Tulalip Tribes strongly urge Congress to intervene and require that BAR give preclusive

effect to final federal court decisions, rather than setting itself up as a "Super-Court" to review and overturn the decisions of federal courts.

III. Other recommended amendments.

The Tulalip Tribes recommend that section 6(c)(2)(A) and (B) of H.R. 2549 and section 8(e)(1) and (2) of H.R. 4462, be amended as set forth in §§ 1.2 and 2.3 respectively of Attachment "A" to strengthen the protection of the treaty, reservation, and property rights of existing tribes by clarifying that acknowledgment of an Indian group will not have the effect of diminishing such rights, both as the same exist prior to the acknowledgment determination, and as the same may exist subsequent to such determination.

Additionally, as set forth in §2.4 of Attachment "A," the Tulalip Tribes urge that subsection 8(e)(3) of H.R. 4462 be deleted to avoid an unwarranted implication that unrecognized groups have valid claims to property held in trust by the United States for existing tribes.

Finally, as set forth in §2.5 of Attachment "A," the Tulalip Tribes recommend that section 5(c)(2) of H.R. 4462 be deleted. This provision would open recognition eligibility to claims or descendency groups that are not bona fide Indian tribes and have never organized under the IRA, but which may have been the subject of ambiguous or erroneous determinations by different agencies or officials, made without serious examination of whether the group constituted an Indian tribe, and without consideration of the views of affected Indian tribes, regarding eligibility to "participate" in some fashion in the IRA, or benefits thereunder (e.g. local agency acknowledgment of eligibility of a group for land acquisition).

ATTACHMENT "A"

1.0 Tulalip Tribes' Recommended Amendments to H.R. 2549

1.1 Insert the following new provision after Section 3(c)(2)(A), and renumber existing subsections (B) and (C) accordingly:

"(B) that a substantial portion of the petitioner's members live concentrated in a specific geographic settlement area, distinct from other populations in the area, and viewed by other populations in the area as an American Indian tribal community;"

1.2 Revise §6(c)(2)(A) of H.R. 2549 by adding at the end thereof the following phrase: "or as the same may exist thereafter." Revise §6(c)(2)(B) of H.R. 2549 by changing the phrase "prior to such determination" to read "prior or subsequent to such determination."

2.0 Tulalip Tribes' Recommended Amendments to H.R. 4462

2.1 Insert the following new provision after Section 5(b)(2)(A), and renumber existing subsection (B) accordingly:

"(B) a substantial portion of the petitioner's members live concentrated in a specific geographic settlement area, distinct from other populations in the area, and viewed by other populations in the area as an American Indian tribal community;"

2.2 Insert the provisions of section 3(b)(4) of H.R. 2549 as a new section 5(a)(2)(E) of H.R. 4462.

2.3 Revise §8(e)(1) of H.R. 4462 by adding at the end thereof the following phrase: ", or as the same may exist thereafter." Revise §8(e)(2) of H.R. 4462 by revising the phrase "prior to the recognition of such Indian group" to read: "prior or subsequent to the recognition of such Indian group."

2.4 Delete section 8(e)(3) of H.R. 4462.

2.5 Delete section 5(c)(2) of H.R. 4462.

Mr. ABERCROMBIE. Mr. Alexis, you are next and the last member of this panel.

STATEMENT OF PHILIP ALEXIS

Mr. ALEXIS. Thank you, Mr. Chairman. I have asked Karl Funke to assist me in our presentation here, who is our contact here in Washington, DC.

Mr. ABERCROMBIE. How do I spell that last name please, Mr. Funke?

Mr. FUNKE. F-u-n-k-e.

Mr. ABERCROMBIE. Thank you.

Mr. ALEXIS. I would like to apologize to the committee and also the staff for not being able to submit written testimony.

Mr. ABERCROMBIE. You will have an opportunity to do that, should you desire to do so, for 2 weeks.

Mr. ALEXIS. I am aware of that. I got delayed in DC, and when I got here our computers weren't compatible, so I wasn't prepared to print out the report. We will do that shortly after the hearing.

Mr. ABERCROMBIE. Fine.

Mr. ALEXIS. I would like to begin then and address this committee.

My name is Philip Alexis. I am the executive director of the Confederated Historic Tribes. I am the former chairman of the Pokagon Band of Potawatomi Indians, and also the former chairman of Michigan's Commission on Indian Affairs.

We have been asked to come in to testify on the existing process that everyone, including this committee and also the Senate Indian Affairs Committee, agrees doesn't work—it is the Federal Acknowledgment system—because it is arbitrary, costly, unfair, and contrary to existing law.

I have given my presentation a little title, and I am going to title it, "What Is Wrong with This Picture?"

We strongly object and vehemently oppose both bills, because they do not address the concerns of Michigan's treaty tribes. They simply codify something that we know doesn't work, and Congress needs to get serious.

Confederated Historic Tribes is made up of five tribes. We are all treaty tribes. We are all State-recognized tribes, and we are also all nonfederally recognized. We have signed over 14 treaties; my tribe, the Pokagon Band of Potawatomis have signed over 12. We have given up millions of acres of land in Illinois, Indiana, Ohio, Michigan.

It all began in 1795 with the Treaty of Greenville and continued through the 1800's and into relocation treaties. We signed these treaties in exchange for promises which were never fulfilled. Our treaty reservation lands that we treatied for had shrunk in size, and eventually they were taken away from us under the guise of tax purposes or some other problems.

An example of this is the Burt Lake Band of the Ottawa Indians in the northern part of Michigan, who had over 400 acres and who were burned off their land, and their land taken away from them for tax purposes.

My tribe, the Pokagon Potawatomis, we were promised land in Labre Croche, land that we never received. We were also promised

in the Treaty of Chicago to remain in Michigan because of our religious creed. We have a lot of these things that concerned us.

My tribe also purchased land in Silver Creek and the Rush Lake area, and presently we have 1 acre of land in Silver Creek and 10 acres of land in Rush Lake.

Land was an issue in 1934; when they talked about reorganizing tribes because of lack of land ways, many tribes were denied the right to reorganize under the 1934 Indian Reorganization Act. The Confederated Historic Tribes' members were treated as tribes all the way up until 1934, and the IRA, and then they were arbitrarily denied the services. We have come before Congress many times and testified on these same issues.

Presently, two tribes of Michigan are in the acknowledgment process. We have heard the Bureau people speaking earlier about whether one of them is the Huron Potawatomis located in Athens, who have an active consideration.

In my tribe, the Pokagon Bands, who were also placed on active consideration, the Bureau of Indian Affairs came in and testified before this committee on some of the legislation that we had proposed and promised a decision by July. They have since asked the Huron Potawatomis for an extension of time under the active consideration clause.

My feeling is that they are going to presently ask the Pokagons for an extension of time on a decision on them through the BAR process. We feel that the BIA should identify when, how, and by whom our status as Indian nations has legally been terminated.

The other thing that we want to talk a little bit about is H.R. 4462, and it acknowledges treaty tribes in some of the language, and it talks about a priority and an expedited basis. We don't understand what that means, to CHTI and to my member tribes, and we would like to have some input into determining whatever this expedited and priority basis is in relation to treaty tribes.

The other concern I have is in regards to the proposed funding in both bills. The funding, we would recommend that for petitioners there be at least $3.5 million, and probably for the entity reviewing the petitions, at least $5 million annually.

I guess the last thing I would do is—in closing, is mention that CHTI is willing to work with the committee on any corrections that we can bring these situations to a successful conclusion.

Thank you, Mr. Chairman.

Mr. ABERCROMBIE. Thank you very much, Mr. Alexis.

I am going to go back and ask some questions, and then I will start in the order of appearance. But if any of the others have a statement that you think is pertinent or an observation you think is pertinent, don't hesitate to enter into the discussion. Fair enough?

And if Mr. Funke or Mr. Bell, if you think you have something to add in the process, that is fine with me, if you would like to do so, OK?

Mr. FUNKE. Thank you.

Mr. BELL. Thank you.

Mr. ABERCROMBIE. Chairman Tullis, you mentioned the time limit factor, and with regard to that, you mentioned the difficulties of starting up the Gaming Commission. But the Gaming Commis-

sion is an ongoing institution or the attempt to establish an institutional process which would be ongoing; whereas the proposed legislation really has a time limit factor—at least one of them has a time limit factor, the one that I and Mr. Faleomavaega have put forward has a time limit.

Would you see then perhaps less difficulty if there was a definite time limit?

Mr. TULLIS. Certainly if the legislation carried with it some very precise time lines, it would correct a lot of the situations that happened with the Gaming Commission.

Mr. ABERCROMBIE. Implied in that then would be, if there was a time limit, that certain things had to be done in an expeditious way; it wouldn't just be wide open and say at the end of 6 years, gosh, we have only got 6 months to go, I guess we better get started. I mean, I am being explicit rather than implicit, saying that if we put in the time limit, we also have, legislatively speaking, then some very distinct processes that had to be undertaken, time limits for application, et cetera.

Mr. TULLIS. Certainly. And I think we all ought to be conscious of the fact that you are involving a number of entities when you start creating the new commission and when you talk about the appointment of the commissioners and the clearance and everything else. So it does create a real need for there to be some very specific time lines if we go to a separate commission.

Mr. ABERCROMBIE. Part of the reasoning there is, it is hard for me to believe, at least personally, and I expect the committee that by this time, those wishing recognition aren't aware of the fact that a process, as flawed as it might be, exists, and that it would come as a great surprise to anybody within the boundaries of the country now that if they are going to get recognized, they had better get started.

Mr. TULLIS. Certainly, sir, that is one of the real concerns of an awful lot of people in Indian country, and the fact that we are talking about groups that should have existed for the last 100 years or 200 years or so. You cannot grow an Indian tribe overnight. And so those that are out there that would be participants of this program should already be there, and it is not something that 2 years down the road we ought to find a new Indian tribe somewhere with the capacity we have in this country today to communicate. So I think that there very definitely need to be some very strict time lines if we go to a new commission. And even if we don't go to a new commission, there should be some strict time lines on the Bureau to complete its work.

Mr. ABERCROMBIE. OK. That leads me to another question with respect to membership lists that you mentioned.

Mr. ALEXIS. Mr. Chairman, can I speak a little bit on this issue?

Mr. ABERCROMBIE. Yes.

Mr. ALEXIS. I think we have to understand the tribes and their positions and their opinions. Some of the Indian tribes become really confused, especially the treaty tribes who have signed treaties and have for years been denied services. There is a real hesitancy on their part to make overtures to Congress or make overtures or to become Bureau of Indian Affairs Indians. In the community, there may be communities—I am not speaking so much for Michi-

gan, but there may be some Indian tribe in the country who has a right, but doesn't want to do it yet.

Mr. ABERCROMBIE. I understand.

Mr. ALEXIS. I don't think it would be just to put a limit on that and deny them their right.

Mr. ABERCROMBIE. Well, I was going to get to that. I have some other questions that I think will get to that. There is a series of these questions; they are not distinct and separate. I have a method to what I am trying to get at, and I am trying to get at some answers; and I assure you, Mr. Alexis, I intend to get to that point.

Let me proceed with that by asking—I will ask you again, Chairman Tullis, because it came up first in your testimony, but others may wish to comment. The question of membership lists—that is to say, how people are regarded; and I might say also that Mr. Jones brought up the point—Chairman Jones, about group versus tribe.

It was mentioned, at least in passing in previous testimony the difficulties about genealogy, establishing genealogy. Now, membership list may not so easily be construed; isn't that correct? My experience on the committee has led me to believe that there was, throughout Indian country, the same kind of thing that has happened to Hawaiian, native Hawaiians in many instances; for some periods of time in their history, they tried to suppress the fact that they were native Hawaiians, or that—or ignore or obscure their ancestral heritage because of social and economic forces which were in play at that time. So I need a little bit more illumination here about the question of membership lists.

Let's leave aside for the moment the question of group versus tribe or scattered individuals. Isn't it fairly difficult in some instances to put membership lists together, particularly in the light of, say, Mr. Alexis's last comment?

Mr. TULLIS. Certainly, sir, it is a major problem to do that, if you talk about the genealogy of it. I think the point that we are concerned about is not so much that a petitioning group has to provide that genealogy along with that list, but one of the things that we see happening is a group of people put together a group, and if they don't make it through the recognition process, or in particular, that whenever they want to start a process and particularly when they go to Congress to try to get congressional people to give some credence to their efforts, they will list people or they will include people who are in fact Indians, but they are members of other tribes, or they are people who have, quote, "Indian names," so therefore, they give some credibility to it.

We have even had a situation in my part of the country where people who were actually listed on a petition from some people did not know their names were on that list. So there is a real distinction between just a list of names or a list of members and a list that includes genealogy work to it. I understand that the major problem with genealogy——

Mr. ABERCROMBIE. So would you all agree, there has to be more than just a list presented; there has to be some evidence that an active effort has been made in the process of accumulating that list of interaction and contact and discussion and an attempt to try and find out some of the historical circumstances that took place, say,

with respect to dispersement, et cetera; there has to be more than just names on a paper.

Mr. TULLIS. Absolutely.

Mr. ABERCROMBIE. That takes me to Mr. Jones to the next area.

What about those dispersements? I mean, I hope you will understand that much of my reference then comes from what happened to Hawaiian people, and by extension, some of the things I have heard in committee and read about here on the mainland with respect to native Americans.

What about those dispersed by the social and economic forces I mentioned before, social and economic forces not of their making? There are many Hawaiians—for example, we have an Office of Hawaiian Affairs under the State constitution in the State of Hawaii which has autonomy, voted into the constitution by all of the voters in Hawaii.

I think it is one of the first—I think it is unique. I think it is the only circumstance in the history of the world where a sovereign people under a constitution deliberately and with complete foreknowledge voted to limit the sovereignty which they were able to exercise, legally or not—I mean, historically, legally or not—over another people; and in recognition of the fact that they—that their status had significantly altered, this having to do with the overthrow of the queen and the Hawaiian kingdom, reestablished, if you will, in a contemporary setting, the capacity for Hawaiian people to govern themselves.

Now, that is all being worked out in the process. But only Hawaiians can vote, can exercise a franchise in that, and that is the—forgive me if I go into all of this, but I think it is pertinent—there is a parallel to be drawn here. Anyone who can trace their ancestry to the arrival of Captain Cook in 1778 to the Hawaiian kingdom is eligible to participate in the activities of the Office of Hawaiian Affairs up to and including running for trustee and to be elected as a trustee and to exercise full authority over the trustee's capacities, which include money, the income that comes in from lands, et cetera, and what to do with it.

Now, many Hawaiians don't live in Hawaii any more. If you want to talk about dispersement, try being dispersed 2,500 miles over the sea to the mainland; maybe in your communities there are Hawaiians. They vote in the Hawaii elections, despite the fact that they are maybe 2,500 or more—they may be 10,000 miles away from home, but they—because ancestry is the criterion here, they are able to do that.

Now I am not suggesting to you that you have to follow that model; I am merely suggesting that dispersement from a distinct geographic area does not necessarily mean that people have given up their self-concept, their allegiance; and very frankly, over and above the psychological and emotional parts have given up very real questions concerning what shall be done with land, what shall be done with income, what shall—what rights and responsibilities and authority may we exercise.

I am sorry to take up so much time, but it is clear to me that part of the confrontation, if you will, that might take place here has to do with more than merely historical, philosophical discus-

sions; it has to do with rights and privileges and obligations and authority that have real social and economic consequences.

So my bottom line question then is, while I understand very clearly from the testimony of all of you that there may be questions about groups versus tribes and distinct geographic residences and community that can be properly defined as a community or well understood as a community, nonetheless, there has been dispersement, there have been people literally driven out.

Mr. Alexis talks about people literally being burned out of their land, driven away. How do we deal with that consequence, assuming that there is goodwill, for the moment, and not some scam or somebody trying to get in on a gravy train?

Mr. ALEXIS. Mr. Chairman, can I speak——

Mr. ABERCROMBIE. Could I ask Mr. Jones first, Mr. Alexis, on that?

Mr. JONES. Mr. Chairman, if I could say a few words on that and then I would like to have Mr. Bell answer. But our tribes in that area—the Snoqualmie, Snohomish, Skykomish and allied bands—were ordered to come to the reservation, and we—and that was a requirement of those tribes to get to that reservation. Our tribes came to that reservation, Tulalip Reservation, and whoever—the chiefs came there, and we have documentation of the chiefs there, and there is—we have them right at Tulalip Reservation; that is where their graves are.

But one of the chiefs, one of the Snoqualmie chiefs, and that was my great-grandfather's brother. So three of us from that family are still on the Tulalip board of directors. So that line is continuous, right onto our reservation. But we were required to meet the requirements of a treaty, and our tribes met the requirement.

Mr. ABERCROMBIE. I don't dispute that. But what happened—what do you do about someone who left—say, was drafted into the Army, and left the area and perhaps settled—married someone else and settled—and now would like to reestablish his or her relationship?

Mr. Bell, do you see what I am trying to get at here? I am trying to be fair, but at the same time I don't want to get off into something where somebody clearly has not had any interest in being associated with their roots previously, but perhaps may see some advantage now and maybe just want to slip into the process.

Mr. BELL. I think you have to be able to distinguish between a person's eligibility for membership in a tribe as opposed to whether they have Indian descendency.

Mr. ABERCROMBIE. OK. That is a good point. Can you amplify on that?

Mr. BELL. And, thus, they may be eligible to be in. But then by the same token that they are free to move and travel and come back and become a member if they qualify. A group of people is likewise free to disperse and assimilate into society and lose what tribal status they may otherwise historically have had.

Mr. ABERCROMBIE. What was the basis for your determination that someone who was qualified to be in the tribe may not be now?

Mr. BELL. Well, you have to have the tribe first.

Mr. ABERCROMBIE. I understand.

Mr. BELL. And the tribe has to have been an entity that existed historically, with continuity, over time, and Federal policy is to deal with tribes, and that is what this legislation is attempting to seek to do, not to bring together people who lost tribal status or identify, yet have some quantum—and some of these groups have members who have no quantum of Indian blood—and blend them back together and make a 1994 tribe, when this tribe unfortunately, as a result of U.S. policy, ceased to exist. But that is the historical fact.

Mr. ABERCROMBIE. OK. I think I have it.

Mr. Alexis, you were going to make a point then in this regard?

Mr. ALEXIS. Yes. To respond to your question on membership, and also Mr. Jones' comment on the groups must be geographically concentrated, and again, the people from Michigan in my tribe and the member tribes of the Confederated Historic Tribes for numerous reasons have been scattered throughout the State of Michigan, whether it was economics in employment and job situations. We see a lot of them around the industrial and metropolitan areas, but that doesn't say that they have lost their right to remain members of our tribe, and they continue to be members of our group. And for those reasons, being burned out or whatever reason of losing the tribal land all added to the reasons why we were dispersed.

In relation to membership, I guess we in Michigan are kind of unique in that my ancestors, my great-great-grandfather signed treaties, my uncles and other family members have come before Congress and testified on land claims issues. We have, in our groups, all of our groups participating in land claim payments, areas and dockets, and treaty rights. We also have membership criteria for our organizations that we follow.

We work with the Bureau of Indian Affairs area office in Sault Ste. Marie. They know who we are and what our membership criteria is. We also know that we can't have members who are members of recognized tribes. I doubt if you will see many of our people listed on recognized tribal lists, but they will—they have an opportunity to make a decision whether they want to be a member of a federally recognized tribe or whether they want to be members of the Pokagon Potawatomis or one of the other historical tribes in Michigan.

Mr. ABERCROMBIE. So is it a fair statement then that what we are trying to do here is get beyond what would—for lack of another term, would be a voluntary social organization, and to get down to the nitty-gritty of what constitutes a real tribal commitment.

You are all maintaining, are you not, then, that—for example, I belong to the Caledonian association because I have Scottish ancestry, but I am not kidding myself that the Caledonian Society is more than—and I appreciate it, and I enjoy it, and it has been a great source of inspiration and comfort in some respects to me, but it is a social organization. It very clearly is a social organization to me.

I don't have the same kind of obligations. If I was back with the Abercrombie clan in a particular section of Scotland, I would be in a much different situation and under much different obligations.

It is not the entire thing, but that is what we are trying to do is get beyond the social recognition.

There are people who I know, for example, who claim Hawaiian ancestry, but having done that, it is for them principally an historical element that becomes a conversation piece as opposed to meeting obligations and exercising responsibilities with respect to that ancestry that other people have clearly undertaken in Hawaii.

Mr. BELL. Mr. Chairman, I would suggest to you that inasmuch as we are both Scots, that under the new regulations that BAR touts as being the end of this problem, they say that any group of people which can demonstrate consistent interactions and social relationships exist within its membership is enough. So I guess you and I can form a tribe.

Mr. ABERCROMBIE. Well, I would; yes.

Mr. BELL. We are not under BAR.

Mr. ABERCROMBIE. That is why we are having the hearings. You know, that could end up being people who have an interest in falconry or something like that.

Mr. BELL. Absolutely. You would have tribes of fraternity brothers.

The legal test today that BAR is running slipshod over is that a substantial portion of a petitioner's members must live in an area concentrated within a specific geographic area distinct from other populations in the area and viewed by the other population in the area as an American Indian tribal community.

With that latter definition, that is the existing state of the law today, that we in our comments, the written form, attachment A proposes you put into the bill, then you can start to determine what a historical continually existing Indian tribe is.

If you go back to where BAR is, then you are right; you are taking a look at what is your blood quantum: Are you related to whomever, where are you dispersed, and you have nothing. And when you start to recognize nothing as something, then you derogate from the dignity and the sovereignty of the existing federally recognized tribal nations.

Mr. ABERCROMBIE. On the other hand, if someone did have the blood quantum, for example, literally in Federal law now a native Hawaiian is that person who has 50 percent blood quantum? That is under a big strain now because of outmarrying. So what I am driving at is that if you did start with that, then, if you added in—then the person would have to make a decision as to whether as a result of that blood quantum they wanted to make a change in literally not only the way but perhaps even the place that they were living; right?

Mr. BELL. That is correct. That would be an individual's decision, but the issue here is the existence or not of a government-to-government relationship between the United States and an Indian tribe.

Mr. ABERCROMBIE. Got it.

One last thing, Mr. Jones. I asked you to repeat it before but I still have some difficulty. What would constitute—maybe your counsel is the best one to answer this—what precisely did you mean by an ambiguous or erroneous determination?

Mr. BELL. That it is mistaken. But what we are——

Mr. ABERCROMBIE. It could be big, would you say but not erroneous among other things?

Mr. BELL. What we are specifically referencing is section 5(c)(2) of H.R. 4462.

Mr. ABERCROMBIE. OK.

Mr. BELL. And what that states is that a petition from an Indian group that can demonstrate by a preponderance of evidence that it either is a treaty successor or it is a group acknowledged by a Federal agency, it goes into acknowledgment on a stepped-up basis. Otherwise, if they were not able to show by a preponderance some prima facie case of treaty successorship, they start at the bottom. If they make a prima facie that they were a treaty successor, they are on a stepped-up basis.

We do not think that stepped up basis should be afforded as a result of a Federal agency's determination that that person or group of persons is otherwise qualified or eligible for programs on an ethnicity test as opposed to a tribal test.

And I might say—I didn't have an opportunity to comment earlier, when you were asking about timeliness. Maybe it is not so much an issue as to whether or not there are time lines, but that BAR, if they continue in the business to devote their time to those organizations, groups or organizations that are deserving of it—and our comment specifically references the agreement of time—at least on the five groups from western Washington, the Snoqualmie, Snohomish, et cetera—and members of those groups will be testifying later—that has been devoted and the resources that have been expended, when all five of those groups have been subject to and determined not to be either tribes or successors-in-interest to existing—or, pardon me, preexisting treaty tribes by Federal court judgments, that should be the end of it. That issue should be precluded.

Anything that goes to a final nonappealable court decision, as set forth in H.R. 2549, should preclude that group. That provision should be in 4462, if that is to be the survivor of whatever consolidation occurs. But if the Federal judiciary has determined it is not a tribe, why should BAR be able to reverse that administratively? Particularly in the issue of the Snoqualmie group, where it not only has the judiciary make that determination but the executive and the Congress has similarly made that determination in the resolution of those groups before the claims commission. That ought to be it. They have had their three strikes.

There must be preclusion for those groups that are deserving of the attention of the United States for acknowledgment that they can qualify or will be put to the bottom of the pile and an administrative agency will try to second-guess some circuit court and that is not right and that is not fair.

Mr. ABERCROMBIE. That is very clearly stated. Thank you.

Mr. Alexis, I had just one other point, and, Mr. Funke, you mentioned from $3 million to $5 million and I didn't understand the basis for your citing of those figures.

Mr. ALEXIS. They are written in both pieces of legislation as funding for Health and Human Services for ANA grantees to put together in answer, in response——

Mr. ABERCROMBIE. I didn't understand your citation. It was not clear whether you were agreeing or disagreeing.

Mr. ALEXIS. I agree there should be funding but I am saying there should be additional and more moneys. I am saying $3.5 mil-

lion for petitioners where you are recommending $500,000 a year, which is, to me, a joke. And that is what my recommendation would be, is $3.5 million for the petitioning groups, and roughly $5 million for the entity that reviews the petitions. That would be my recommendation.

I base that on some of the discussions I have had with previous ANA directors on the amount of monies they are expending with tribes to document their petitions.

Mr. ABERCROMBIE. That is what I needed to get in here. In other words, you are basing your recommendation on the historic record of what it takes to make this thing work.

Mr. ALEXIS. That is right.

The other thing I would like to—I think is a concern of mine and the attorney for—the Talalip tribe brought it up, was there was opposition to a Federal agency determining certain issues. I think that is an issue that Michigan tribes keep coming in here and saying to Congress, we don't believe that the BAR, which is an administrative process, has the legal right to determine whether we are treaty tribes or federally recognized tribes. That is a responsibility of Congress and we do not want to give up our right to be able to come to Congress to seek justification for that right that we feel is the responsibility of our Congressmen and our Congress people.

We are not in a—and I don't appreciate people saying we are powerful and influential. We are a small tribe who has limited funds. We do have Congress people who we have educated. We have submitted our testimony. We have submitted our petition documentation to the Bureau. Our groups from CHTI are doing that. We are tired of sitting around and not getting answers.

The BAR said there is a fast track, and they mentioned going back to previous contact if they could agree on that. Well, we have approached BAR to try to resolve an issue from one of our bands, which is the Burnt Lake band, and trying to get BAR to tell us what it means by unambiguous contact. What does that mean? What does it mean? What is unambiguous——

Mr. ABERCROMBIE. Apparently it is a bit ambiguous.

Mr. ALEXIS. Yes, it is, and that is what bothers us and it concerns me. The Burnt Lake land band in 1905, I believe it was, the Justice Department sought in Federal Court, and I think Karl can speak to this, to represent this tribe in Federal Court to try to restore its lost land, and because of that, because of losing that court and not appealing it, what do you call that, the res judicata took place. We cannot go anyplace now to get compensation or get an unjust act corrected except to come to Congress. And here we are and here I am, again.

Mr. ABERCROMBIE. Let me put this in and then I will cede to Mr. Thomas if he would have any questions to ask. I am well familiar with that, and that of course is a right that needs to be protected. Legal action was taken in Hawaiian lands where people did not clearly understand what the implication of the imposition of western land title activity was, and what clearly ended up happening was, is lands were stolen.

You can steal with a gun or you can steal with a pen. I have discovered that stealing with a pen tends to be a lot more final than stealing with a gun. Sometimes people are able to take a gun and

get it back, but it is pretty tough to get it back when the pen has been used, particularly if it is recorded somewhere in a courthouse. So I quite understand that element and we are going to try to address it.

Mr. Thomas, I was so intent on my questioning I may have taken longer.

Mr. THOMAS. I noticed that you ignored me.

Mr. ABERCROMBIE. Yes.

Mr. THOMAS. Not at all. I am kidding. I was called away and did not hear the testimony, but Mr. Alexis, I heard your comment just now and I am not quite sure I understand. Are you saying that you think there should not be an administrative process but indeed all this should be a congressional process?

Mr. ALEXIS. I am not saying that. I am saying that part of the reason I am saying this is we started back probably in 1978. I have sat on numerous task forces. We came into Congress in the early times and the House committee people said, Phil, there is this process, it is an administrative process, you have to go through it.

The Senate Committee on Indian Affairs, used to be the Senate Select Committee, told us, Phil, legislate it. Well, there has been a flip-flop here recently and now all of a sudden we are getting from the Senate committee that there is a process, and the House Committee has said, let's legislate it.

What the hell is going on here? That is what I am saying.

The administrative process, and I think Congress made a mistake and I want to see it, I want to try and work and see that it is corrected. They let that administrative process dictate to them what you do as far as Federal recognition for Indian groups. And I hate to see you give that right up.

If I were a Congressman, I would be really concerned about that issue. They have, in my estimation, maybe I am wrong, but they have no right to determine that. But if you give them that right, which they have taken and you have understood it and have acknowledged it, they are exercising it and we are caught in a position where we cannot get justice.

I say we—I am talking about my tribes—we have alternatives. The alternatives are to go through the process, which we are doing. We do not agree with it because that is what my testimony is saying, but we are submitting petitions. We are submitting genealogists. We have submitted documentations. We have responded to obvious deficiencies. We have membership criteria. We have elections. We are tribes. We are recognized in the State of Michigan as tribes. We are recognized indirectly by the Bureau of Indian Affairs because they deal with us. Our people have received land claims payments. The Bureau has all of us listed. I am P–1215. You can go up to the Bureau and you will find who I am. They know. We cannot get this settled.

Mr. THOMAS. Well, my concern of course is whether there is a flaw or weakness, which I think there is, in the process. It is not unusual for the Congress to set forth that an administrative procedure is used. That is not an unusual process. The Congress does not decide every detail.

Mr. ALEXIS. I know, but we are trying to get Congress to take a position and make, and have some control on that agency. I think that is what we are trying to tell you.

Mr. THOMAS. Sure, and I understand that.

Mr. ALEXIS. One of the things that also concerns me now that we have brought it up and I will mention it, and Karl will know, there is this process for acknowledgment, but then in the Federal Register in October 21, 1993, there was a list printed that acknowledged the Alaskan natives in Alaska and added over 200 other tribes for Federal recognition. They did not go through the process. And that would, if I was in Congress, I would be concerned about that. I am concerned about that.

Mr. THOMAS. Well, I guess my dedication is to the proposition that there be, number one, a system which everyone is referred to and treated fairly and equally.

Mr. ALEXIS. I agree.

Mr. THOMAS. Then on top of that, you might argue there ought to be some kind of appeal process, and I have no objection to that particularly. But I do think that it is really difficult, and I am sure you would agree that here is one group who goes through the process and takes a very long time to do that, another group sort of does an end run and comes here and that is not fair.

Mr. ALEXIS. But we have not done that. We have presented our testimony. Our groups have. And we do not want you to take away our right to come to Congress for legislative recognition. We do not want Congress to even think of that. That is our right, and I think it is our Congressman's right to help us with that, whether it is the House of Representatives or whether it is the Senate. And I hope that you do not take that right away from us.

I have said this at other meetings, I have said this at the National Congress of American Indians. It is an avenue for an unrecognized group and I think it should be left there for them to exercise that opportunity should it come to that.

Mr. THOMAS. Thank you.

Mr. ABERCROMBIE. Thank you very much, this panel. We have learned a lot.

PANEL CONSISTING OF BUD SHAPARD, RETIRED, BUREAU OF INDIAN AFFAIRS, FORMER CHIEF OF THE BRANCH OF ACKNOWLEDGMENT; CHRISTINE GRABOWSKI, PH.D.; KAREN CANTRELL, PH.D., J.D.; JACK CAMPISI, PH.D., ON BEHALF OF THE UNITED HOUMA NATION OF LOUISIANA, THE MASHPEE WAMPANOAG TRIBE OF MASSACHUSETTS, THE SHINNECOCK NATION OF NEW YORK, AND THE PAMUNKEY TRIBE OF VIRGINIA; AND, JAMES RASMUSSEN, TRIBAL COUNCILMAN, DUWAMISH INDIAN TRIBE ON BEHALF OF THE CHINOOK, COWLITZ, DUWAMISH, SNOHOMISH, STEILACOOM, AND SAMISH INDIAN TRIBES, STATE OF WASHINGTON

Mr. ABERCROMBIE. We will move to our final panel, then. Mr. Bud Shapard; Christine Grabowski; Karen Cantrell; Jack Campisi, and James Rasmussen.

I know that we are going to probably be called on to be voting fairly soon. So I would appreciate it, because of the number of people that we have on the panel, five, if you could summarize your

statements, and I assure you your full statements will be entered in the record, but if you can summarize, I think perhaps we can get an exchange that will be fruitful in terms of establishing a clear record and assisting us in getting a good legislative outcome.

I will simply take people in the order in which their names appear on the panel and, as a result, I will start with Mr. Bud Shapard. Am I pronouncing that correctly?

Mr. SHAPARD. That is close enough. I answer to just about anything. It is Shapard. That is my name.

Mr. ABERCROMBIE. Mr. Shapard. All right, very good. Thank you.

STATEMENT OF BUD SHAPARD

Mr. SHAPARD. I am Bud Shapard. I am retired from the Bureau of Indian Affairs where I was employed for almost 25 years, 24½ years. The last 10 years of my career, I was the branch chief for the Branch of Acknowledgment and Research. I wrote the original regulations. I was the primary author. I retired in 1988, and I presently operate a little martial arts school in Lewisburg, WV.

I suppose that I would be redundant in saying that the regulations do not work. I think they have never worked. Even during my tenure in office, we realized that there were problems with the regulations.

I might say at this point that the Department of Interior's statement this morning may have added new dimensions to the meaning of the word "poppycock." The revised regulations are almost a mirror of the original regulations, with the exception they have added some criteria or added some elements to some of the criteria that make it more difficult for the petitioner.

If you count the months involved in the new regulations, they are 3 months longer, if you follow them, but they also have six spaces in the regulations that would allow the Bureau to unilaterally or with some negotiation essentially stop the time frame from running. And so, therefore, there is no time frame on the new regulations.

Both the bills that we are looking at today also have problems, in my opinion, although I certainly appreciate the efforts that went into drafting them. They essentially, as one witness has already said, mirror the current criteria with some changes here and there. I promise you that they will not work either. Neither of the—the proposed regulations nor the bills have resolved the core problem, which I will tell you about in a minute and then I will tell you how to solve all this mess.

The present regulations are costing the United States Government, just to evaluate cases, roughly $1 million a year, because the petitioners are generally funded by another Federal agency in the Bureau of Indian Affairs. The cost of the Bureau of Indian Affairs in the process, I believe that can be reduced, and I certainly do not believe that we need to add more money. I do believe we need to have a separate commission or a separate staff. I think a commission may be a little grandiloquent and is probably expensive.

Adding more money or more staff to the process will not help. I cite in the first 10 years of the process, before I retired, the BIA processed 21 petitions. In the next 6 years of the process, the staff has more than quadrupled. I understand they have 20 positions

now. I like to think of that as eight more than Jesus had, and they have doubled the amount of money that—does that mean I have to quit? No, OK.

Mr. ABERCROMBIE. You are on your way. I hope you can get to the solution part.

Mr. SHAPARD. I have the solution real quick here.

But they have doubled the staff, I mean doubled the amount of money and yet they have only turned out three petitions in the last 6 years. The production has dropped, not increased. Now that tells you it is not money or people. We do not need to spend more money or hire more people to do this.

You have basically, if you are going to fix these regulations, you have three separate kinds of problems to face. One is the administrative problem. And this is what everybody rushes to fix. You run to change how you do it or when you do it or add time frames or delete time frames, and this is sort of fluffing the pillow without making the bed.

In my opinion, the key problem in the regulations and in the proposed, revised regulations, and in the bills, is that there is no definition of what you want, no clear definition of what we are seeking here. And if you do not know where you are going, any road will get you there, and this is essentially what we have going here.

The petitioners do not know what BIA is asking for. The BIA is unable to tell them because everything is so vague and subjective, and so petitioners turn in what they think is an adequate petition, the BIA says, no, that is not enough, that does not answer our questions. They say, what do you want, the BIA says, we do not know but give us more, and this is a continuing, ongoing process that never seems to end.

The regulations are also—well, so the first point I need to make here is that you need to have a clear-cut, defined or definition of what the United States or who or what the United States wants to serve as an Indian tribe. Now, this is not defining an Indian tribe, it is defining who the United States will serve as an Indian tribe. If you do not have that, you will end up with the same mess you have now no matter what you do.

The second thing is you have to get objective, simpler criteria that do not reach back into premortal times. If you had simple objective criteria that went back to when Indians were unequivocally Indians, say as late as the 1930s, where did they come from? If they were Indians in 1930s, they did not invent anything then, they did not become Indians then, they had to be evolved so take it back to then. There is no need to go back to the 1700s. That is ridiculous. I admit to drafting this stuff up; it is just our lack of knowledge at the time and the lack of the problems.

If you have a definition of what you want and simple objective criteria, you can solve the entire process, handle all the petitions in 5 years, and you can do it at one-half the cost that is proposed in the bills. That is my solution.

[Prepared statement of Mr. Shapard follows:]

STATEMENT OF BUD SHAPARD, RETIRED BUREAU OF INDIAN AFFAIRS EMPLOYEE, FORMER CHIEF OF THE BRANCH OF ACKNOWLEDGMENT, AND RETIRED PRIVATE CONSULTANT TO PETITIONING GROUPS REGARDING H.R. 2549 AND H.R. 4462

JULY 23, 1994

Thank you, Mr. Chairman and members of the Committee. I appreciate this opportunity to discuss the Federal Acknowledgment Process and the possible ways to improve it. My name is Bud Shapard. I retired from the Bureau of Indian Affairs in 1978, after 24½ years of service. I was the primary author of the original acknowledgment regulations (25 CFR Part 83), and the Branch Chief of the Bureau's Acknowledgment branch during the first 10 years of its existence.

After my retirement from the Bureau, several unrecognized groups approached me with requests for help in the preparation of their petitions for federal acknowledgment. I subsequently worked with five groups in the petitioning process. I retired from consulting in 1993. I have seen the acknowledgment process from its innermost workings as an employee of the BIA and from the outside as a consultant to petitioning groups. I presently own and operate a small martial arts school in Lewisburg, West Virginia and currently I am not employed by any Indian tribe, recognized or unrecognized, nor am I employed by representatives of any Indian tribe, nor by outside concerns interested in any Indian tribe.

Regarding H.R. 2549 AND H.R. 4462, I sincerely appreciate the efforts and thought that went into the development of both bills. Both have commendable points. I especially like the filing limit in H.R. 2549 and the concept of the independent commission located outside the Department of the Interior in H.R. 4462. With all due respect however, it is my opinion that both bills are fatally flawed. These bills, if passed, would legislatively adopt essentially the same general administrative process and the specific criteria for acknowledgment that have been the source of so much bitter turmoil.

The Bureau published revised regulations on February 25, 1994, (25 CFR Part 83). By the Bureau's own admission, the revised regulations also embody the same criteria as the original regulations. These revised regulations have reduced some of the administrative problems that the Bureau had with the process. They have done nothing to resolve the substantive complaints of the petitioners. They have lengthened the time to process a petition in most cases. They have increased the amount of time and the expense to the petitioner for preparing a petition. The revision has more than doubled the number of subjective determinations that must be made by the staff. The most serious problem with the new regulations, however, is they continue to use virtually the same criteria as the original regulations.

As I have mentioned previously, these regulations do not work. I have spent almost 16 years trying to make them work from both inside the Bureau and as an outside consultant. The regulations actually present two different problems for anyone trying to revise them. The lesser and more easily corrected problem is found in the convoluted administrative process. The second and more critical problem is with the specific criteria used to evaluate a petitioning group (25 CFR Part 83.7 a-g). If you

eliminate these criteria and establish simpler, more objective ones, I believe the problems with the administrative process will be easily resolved. The present criteria cannot be revised, modified, or altered in any way that will make them work. They must be abandoned in their entirety and replaced with new, more sensible requirements if you ever intend to make this process work. What is needed at this point is some common sense and original thinking. Jiggering around with the process and ignoring the criteria will doom any effort to improve the process to failure. Clearly, in my opinion, before any of this is done, there needs to be a definitive statement of whom the criteria are intended to apply.

The present criteria (as incorporated in both the original and revised regulations) were developed using, in part, the writings of Felix Cohen, a 1930s legal guru with the Department of the Interior. He discussed his concepts of Indian tribe in his book, Federal Indian Law. Since Cohen's work was published, the concepts of Indian tribe, tribal relations, tribal community and even of who is Indian have changed. During the early 1980's the Department of Health, Education and Welfare spent roughly a half million dollars attempting to define Indian for the purposes of the Title IV education program because of the absence of a Congressional definition of the people the "Indan program" intended to serve. I believe HEW eventually gave up the effort and never published its report. When I left the Bureau, there were 39 operating definitions of Indian within that agency alone.

Because there is no clear definition of what the petitioners are attempting to prove and what the BIA is attempting to verify, the regulations require nonsensical levels of research and documentation, in some cases reaching back into the 18th century. This results in regulations full of vague phrases requiring subjective interpretations. By my count the 1978 original regulations contained 35 phrases that required a subjective determination by the evaluator and the petitioner. The 1994 revised and streamlined regulations not only doubled the length of the regulations they more than doubled the areas that required a subjective determination. Because of this subjectivity, petitioners are in a quandary as to how much information is enough to establish their case. Conversely evaluators in the BIA are unable to explain how much evidence they need to make a decision. Consequently throughout the process, the evaluators are repeatedly requesting more and more research and information from the petitioner. Some petitioners have told me that they have learned that no matter how much information they give, the BIA will request more. I am told some deliberately hold back information when submitting a petition, so they will have something to give when the BIA staff requests more. All of this kind of game playing and nonsense can be eliminated with the definition and clear, simple standards I am proposing.

It is not surprising that the subjective and complicated nature of the criteria has resulted in what appears to be decisions based on the inconsistent interpretation of the data. What seems to be used as relevant evidence for a positive decision in one case is the basis for a rejection in another. This leads to the appearance and the probability that some incorrect decisions have been and will be made. For this reason, I think it is not a good idea to unequivocally ratify the previous decisions of the BIA as suggested in H.R. 2549 and H.R. 4462.

The vague and subjective nature of the regulations has directly resulted in need for massive amounts of time and money to prepare and evaluate a petition. The current process is impossibly slow. The acknowledgment regulations have been in place for 16 years this coming October. During that period, the BIA has resolved a total of 24 cases. That works out statistically to be 1.3 cases per year.

At that rate it will take 110 years to complete the process or until the year 2078 AD. Of the 21 cases completed by the BIA, 18 were completed during the first 10 years of the existence of the acknowledgment staff. Only three cases have been completed in the last six years. Of the nine groups that are in the "active" stage of the process, one was in the process for six years before a final determination was issued; one group has been waiting for a proposed finding for three years and another for two years despite the regulatory requirement that such a decision be rendered within one year. One group, the Snohomish have been enmeshed in the process for 13½ years at this writing. Of the four groups waiting for the Bureau to start working on their petition, one has been waiting for 11 years, two for six years and one for three years. The Samish tribe of Washington State has been involved in the process and subsequent litigation for 16 years.

The times mentioned above are the time it takes to Bureau to complete a petition and do not reflect the time that it takes for the petitioner to find finances, locate and employ professional researchers, to research and prepare an adequate petition and then respond to requests for information from the BIA. All of this will take the most efficient and organized of the petitioners no less than three years. For most groups it takes from four to six years. The Bureau's estimate of eight months for a petitioner to complete a petition is a ludicrous attempt to avoid the provisions of the Paperwork Reduction Act.

The last I heard, the BIA budget for acknowledgment was $500,000. It may be more than that now. This is roughly double what it was when I retired in 1988. Over the last 16 years, it has cost the Bureau about $285,000 to take a petition through the process. Viewing the last six years separately in which only three cases have been completed, it is costing the BIA about one million dollars to evaluate a single case.

As for the petitioners, the estimated cost for producing an average petition is from 300 to 500 thousand dollars. Some acknowledgment petitioners are known to have spent more than one million dollars on a single petition. The preponderance of funds used to finance a petition in the past has been Federal money. Several private financiers have recently become involved and this may change the picture in the future.

Over the past 16 years, the Bureau has spent approximately six million dollars to evaluate acknowledgment petitions. The unrecognized tribes have spent somewhere between six and eight million dollars. Most of this expense is unnecessary and wasted. Unfortunately H.R. 2549 and H.R. 4462 would raise the amount spent annually to two million for a total of twelve years. I respectfully submit with a clear definition of "an Indian tribe eligible for acknowledgment," coupled with objective, simpler requirements could reduce this amount by ½ and I believe all petitions could be processed in five years or less.

To illustrate my point that more money and more staff are not needed and will not help resolve the problems with the acknowledgment process, just consider the last six years. After my retirement in 1988, the staff has quadrupled and the budget has doubled. Despite this, the case production has dramatically dropped from 1.3 cases a year to one case every two years. The problem is in the convoluted administrative process, the subjectivity of the criteria, and the lack of a clearly defined goal.

Finally, I like the idea in H.R. 4462 of removing the process from the Department of the Interior and establishing a separate forum to review petitions and make determinations regarding acknowledgment. There has been and continues to be within the Department of the Interior and the Bureau of Indian Affairs a low level but pervasive bias against the recognition of additional Indian tribes. I doubt the need to have something so grandiloquent as a Presidential Commission. If Congress clarifies who the United States will serve as an Indian tribe and simplifies the regulations, a small, independent staff located outside the department would do the job about as well as a high paid commission staff.

While H.R. 2549 and H.R. 4462 represent a great deal of thought and effort, I respectfully suggest that neither have dealt with the primary problems caused by the present regulations. I recommend the one or both be amended in their entirety to include the following:

1. A precise definition of the groups with which the United States intends to deal as American Indian based on modern legal and social concepts.

2. A clear set of simple, objective criteria by which it can be determined if a group meets the legislative definition of Indian tribe.

3. An independent commission to review and evaluate petitioning groups.

4. An appeal process that does not impede the work of evaluating the petitions.

The thing that will resolve the issue quickly, cut the outlandish costs, and end the controversy forever is a clear legislative definition by the Unites States Congress of what constitutes an Indian tribe for the purposes of establishing a special relationship with the United States. Without a clear legislative definition of Indian and Indian tribe for Federal purposes, bureaucrats and Indians alike will be forced to continue wallowing in the spongy morass of criteria that include such phrases as "significant social interaction," "substantially continuous external identification," and "political influence which controls the behavior of its members in significant respects." Again I reiterate, do not spend more money. It will not solve the problem. Completely abandon the old regulations, the preset process and the criteria. Please do not make them a part of any legislation. Use the experience of the last 16 years and some innovative thinking to develop an entirely new system.

Mr. ABERCROMBIE. You said three. Did I miss the last one?

Mr. SHAPARD. The first is the administrative process. The second one is the definition of Indian. And the third is simpler and more objective criteria.

Mr. ABERCROMBIE. Oh, OK. Definition of Indian. All right. I had that linked in with the first. Okay, thank you very much. We will be back.

Mr. SHAPARD. OK. I did not want to sound like Arnold Schwarzenegger when I said that.

Mr. ABERCROMBIE. Dr. Grabowski. Maybe before you start, your reputation has preceded you and the committee would like your dissertation to be a part of the record, if that is all right, your work.

Ms. GRABOWSKI. I would be happy to submit it.

Mr. ABERCROMBIE. Now, if it is extensive and expensive for you to do that.

Ms. GRABOWSKI. It is 600 pages, yes.

Mr. ABERCROMBIE. We will take care of that. Can you make arrangements with the committee staff? We would like to have your dissertation as part of the record for reference sake.

Ms. GRABOWSKI. OK.

Mr. ABERCROMBIE. Go ahead now then.

STATEMENT OF CHRISTINE GRABOWSKI

Ms. GRABOWSKI. Thank you, committee chairman. I thank you for the opportunity to present my views on Federal acknowledgment policies as they pertain to the two legislative initiatives before you.

My experience with FAP spans some 12 years of anthropological research, initially for the Gay Head Wampanoags, who successfully were accorded Federal acknowledgement in 1987, subsequently for my doctoral dissertation on the petitioning process and most recently for First Computer Concepts, which was contracted by BAR to review petitions.

Based upon this diverse experience, I have come to the conclusion that the present process administered under the Bureau of Indian Affairs does not, and indeed cannot, fulfill its original mandate; namely, that of providing an objective, consistent, and equitable procedure for definitively resolving the status of federally recognized tribes.

While I have submitted more detailed testimony for the record for FAP, inasmuch as they bear directly upon the legislation, the proposed legislation, I will outline several fundamental problems with the petitioning process.

One, while the regulations purportedly outline an impartial and fair means of determining which groups are to be federally acknowledged as tribes, in fact the objectivity of the entire petitioning process is severely compromised by the Bureau's administration of it and has been since the very beginning. In the mid 1970s, the solicitor's office successfully argued why five intervenor tribes in U.S. v. Washington were unrecognized and therefore not the political successors-in-interest of the tribes which had signed treaties in the mid 19th Century.

It was the same office with many of the same personnel which was intimately involved in drafting the FAP regulations in 1978. And it is the same office with many of the same personnel which is currently responsible for reviewing BAR decisions before they are published in the Federal Register as well as for litigating cases arising from contested final determinations.

In short, the solicitor's office first crafted the legal rationale for denying treaty rights to the five intervenor tribes in *U.S.* v. *Washington*. It then codified the rules by which the unrecognized tribes, the five intervenors, could petition the Bureau for Federal acknowledgment and now the office has a legal authority to determine which petitioners in fact make it through the process. That this environment which BAR decisions are made is less than objective is an understatement. This is not a case of the fox guarding the chickens but of devising the very recipe for cooking them and then judging the result.

I am sure that you, Mr. Chairman, and the other committee members, would not knowingly or willingly submit yourself and your family and your descendants to such a biased process.

In addition to the inherent conflict of interest which I attained from the Bureau's administration of BAR, the Federal acknowledgment process also fails to provide a sound ethnological foundation for acknowledging tribes. To begin with, the actual wording of criterion (b) stands in stark contrast to how BAR has interpreted it in its decisions to date. The branch has consistently required petitioners to provide evidence of a quote-unquote cohesive community over time even when this is not required by the regulations.

Indeed, criterion (b), petitioners need only provide evidence of group interaction and the maintenance of tribal relations among a substantial portion of the group's members during the contemporary period. We are not talking about over time. Those are issues in criteria (a) and (c) but they are not specified insofar as group interaction in (b). Nevertheless, this is the standard applied by the BIA.

In addition to applying for stringent standards that are required by the plain meaning of criterion (b), BAR's analysis of group interaction is ethnologically problematic. Typically, BAR's anthropological reports do not address how the Indians themselves conceive of their tribal identity and affiliation. Yet if one does not understand the norms, values, and symbols of group membership then how can one evaluate whether or not the group constitutes a group, never mine add cohesive community? The answer is simple, one cannot.

Methodologically, there are also serious problems. The BAR staff has said to me on numerous occasions that they evaluate the petitioner, not the petition. Not only is this contrary to the regulations, but insofar as criterion (b) is concerned, it is belied by their limited field work.

[Prepared statement of Ms. Grabowski follows:]

Oral Testimony Before the
Subcommittee on Native American Affairs
of the Committee on Natural Resources

July 22, 1994

Christine Grabowski, Ph.D.

Honorable Committee members, I thank you for the opportunity to present my views of federal acknowledgment policy as these pertain to H.R. 2549 and H.R. 4462.

My experience with FAP spans some 12 years of anthropological research, initially for the Gay Head Wampanoags, who successfully were accorded federal acknowledgment in 1987, subsequently for my doctoral dissertation on the petitioning process and most recently for First Computer Concepts, Inc., which was contracted by BAR to review petitions. Based upon this diverse experience, I have come to the conclusion that the present process, administered under the Bureau of Indian Affairs, does not, and indeed cannot, fulfill its original mandate: namely, that of providing an objective, consistent and equitable procedure for definitively resolving the status of federally unrecognized tribes. While I have submitted more detailed written testimony for the record, I would like to highlight for you two major deficiencies of FAP inasmuch as they bear directly on the legislative initiatives before you. These deficiencies have to do (1) with the inherent conflict of interest which obtains from the Bureau's administration of the process and (2) with the flawed ethnological assumptions and methodology guiding BAR's decisionmaking.

(1) Objectivity: While the regulations purportedly outline an impartial and fair means of determining which groups are to be federally acknowledged as tribes, in fact the objectivity of the entire petitioning process is severely compromised by the Bureau's administration of it and has been since the very beginning.

In the mid 1970's the Solicitor's office successfully argued why five intervenor tribes in U.S. v. Washington were unrecognized and therefore not the political successors-in-interest of the tribes which had signed treaties in the mid 19th century. It was the same office, with many of the same personnel, which was intimately involved in drafting the FAP regulations in 1978. And, it is the same office, with many of the same personnel, which is currently responsible for reviewing BAR decisions before they are published in the Federal Register as well as for litigating cases arising from contested Final Determinations.

In short, the Solicitor's office first crafted the legal rationale for denying treaty rights to the five intervenor tribes in U.S. v. Washington; it then codified the rules by which unrecognized tribes (including the five intervenors) could petition the Bureau for federal acknowledgment; and now the office has the legal authority to determine which petitioners in fact make it through the FAP process. That the environment in which BAR decisions are made is less than "objective" is an understatement. This is not a case of the fox guarding the chickens, but of devising the very recipe for cooking them and then judging the

result! I am sure that none of you gentlemen would knowingly and willingly submit your family and descendants to such a biased process.

(2) Ethnological Foundations In addition to the inherent conflict of interest which obtains from the Bureau's administration of BAR, the federal acknowledgment process also fails to provide a sound ethnological foundation for acknowledging tribes.

The actual wording of criterion 83.7(b) stands in stark contrast to how BAR has interpreted it in its decisions to date. The Branch has consistently required petitioners to provide evidence of a "cohesive community" over time even when this is not required by the regulations. Indeed, for criterion (b), petitioners need only provide evidence of group interaction and the maintenance of tribal relations among a substantial portion of the group's members during the contemporary period--that is, during the last 15 years or so.

In addition to applying more stringent standards than are required by the plain meaning of criterion (b), BAR's analysis of group interaction is ethnologically problematic. Typically, BAR's Anthropological Reports do not address how the Indians themselves conceive of their tribal identity and affiliation. Yet, if one does not understand the norms, values and symbols of group membership, then how can one evaluate whether or not the group constitutes a group, never mind a "cohesive community?" The answer is simple--one cannot.

Methodologically, there are also serious problems. The BAR staff has said to me on numerous occasions that they evaluate the petitioner, not the petition. Not only is this contrary to the regulations, but, insofar as criterion (b) is concerned, it is belied by their limited fieldwork.

When I worked for FCCI I prepared a research proposal for fieldwork which I estimated would take three weeks. BAR accepted it. It was not until I arrived on site that I was told I could only stay two weeks because this was standard for BAR staffers. What can one accomplish in such a short period of time? Not much. It is not possible to do thorough and extensive new ethnographic research. One can only corroborate that a particular informant did in fact say "x" to the petitioner's researcher. Because of very limited sample size and because one could only interview each informant once, it is virtually impossible to determine to what extent that person's views and experiences are shared by others in the group. Yet BAR repeatedly evaluates the petitioner based on such superficial and limited interview data. This necessarily undermines the ethnological foundations upon which the federal acknowledgment process purportedly rests.

I would like to conclude by noting that these deficiencies have not be rectified in the present regulations. In fact, greater subjectivity and discretionary power for the Bureau and BAR has been codified in the revised regulations precluding an objective, consistent and equitable evaluation of each petition for federal acknowledgment. This deplorable situation should not be allowed to continue. Thank you.

Mr. ABERCROMBIE. Excuse me, Doctor, as I am reading through I see many of the points that you are raising and they are valid and I can assure you they will be taken into account, but for our purposes today, if you could focus on the legislation in terms of what you recommend to help deal with these, all the points that you are raising, I will grant you that for conversation and testimony sake, every point you have raised, I will grant you. What would you do about it with respect to this legislation? If you could summarize that, it would help us today.

Ms. GRABOWSKI. Well, first, I think there has to be to address——

Mr. ABERCROMBIE. By the way, I assure you all of your points will be taken into account in detail and in total.

Ms. GRABOWSKI. OK.

First of all, the conflict of interest issue, I heartily support Mr. Richardson's bill because it does address one of the most I think egregious problems of the present process; namely the conflict of interest that arises in the process staying within the Bureau of Indians Affairs and that is quite laudable, and the time constraints are also laudable.

There are, however, I think other considerations; namely, that given BAR's historically inaccurate interpretation of the regulations, one cannot merely recodify or codify again the existing regulations and be assured that they are not going to be misinterpreted again.

Now, one of the ways to do this is to assure that there would be something like cross-examination. One of the problems that I have with the bill proposed with the commission is that it is unclear to me who is going to do the research. I certainly would support and move where there is a separation of function, that is if the people who are doing the research are not making the decisions.

One of the problems with the materials involved, as I have seen, is that the data that one collects is extremely complex. The issues are complex. This is not cut and dry. You do not go into the field and automatically see a community. This is something which is very difficult to ascertain even for the most accomplished of researchers.

The information is certainly subject to different interpretations. It has to be reliable. Unless there is a way to corroborate, verify, and open that data to corroboration, we have no idea how the BIA makes its determinations. I know, for example, in the Gay Head case they included much information in their summaries of evidence and then when the petitioner went back and said but this information is wrong and there is an alternative explanation for it, then the BIA said, well, you know that information was not really part of our decision. Well, if it is not part of the decision, then why was it in the summary of evidence? It is prejudicial.

The Gay Head case, I document in my dissertation up to 1870. They constantly talk about Indians. After 1870, on every page, they mention Indian descendants. This is prejudicial. There has to be a way of making sure that the evidence that is relied upon for decision-making is reliable. It is probative and it is, in fact, material.

The way that it is now is that the decision-making on the part of BAR is, in effect, hidden. You do not know what they use, you

do not know what they are looking for, and so this is why you also have extensive periods, you have numerous, numerous OD reports because no one knows what they are looking for and they can always pull out something and say, well, this does not fit our notion of community.

The entire—their entire standards are subjective and I would argue that the present standards are even more subjective. Go through the regulations, look at them, look how many significant——

Mr. ABERCROMBIE. I have it clear in mind what you are objecting to and at least this area of the——

Ms. GRABOWSKI. I think criterion for (b) would be more like an Indian claims commission, where you have a group of experts or an administrative judge who would sit and hear testimony from both sides. It is ludicrous to think that the Government does not have a vested interest; that the evidence that they are presenting is somehow clear and unbiased. That may have been the original intent of the regulations, but that is clearly not the case. Someone has to listen to both sides, there has to be cross-examination, and then we can come up with a decision which is, in fact, objective, consistent, and I think equitable for the tribes involved.

Mr. ABERCROMBIE. OK.

Ms. GRABOWSKI. Thank you.

Mr. ABERCROMBIE. Anything else with respect to either bill?

Ms. GRABOWSKI. The second bill, the one by Mr. Faleomavaega, I have several reservations about.

The first one is that one of the provisions that tribes must have demonstrated tribal political authority over a specific territory I think is extremely onerous. And given the ethno-history of these tribes, the Federal Government itself in many cases had a hand in preventing these tribes from exercising tribal political influence. This is merely blaming the victim, in my opinion.

The second provision I would object to in that bill is the one where you are going to restrict applicability to tribes which have been determined, which have not been determined in previous cases to be successors-in-interest.

The objection I have in that regard is that the information collected, first of all, was in different cases for different legal situations and claims cases are not necessarily recognition cases.

Mr. ABERCROMBIE. I see.

Ms. GRABOWSKI. The points of law are different and I do not think they are analogous. Again, it would preclude many of the tribes, including one that they just passed through the system, which was the Snoqualmie. I do not think that is a sound provision.

Thank you very much.

[Brief recess.]

Mr. ABERCROMBIE. I will move to Dr. Cantrell.

I appreciate your being here, Doctor. Thank you very much.

STATEMENT OF KAREN CANTRELL, Ph.D., J.D.

Ms. CANTRELL. Thank you, Mr. Chairman.

My name is Karen Cantrell, Placitas, NM. I am an anthropologist and a lawyer. I do not work for any group or entity involved in the Federal recognition process. I appear today because I have worked with the Federal acknowledgment process, and I believe the process as administered by the BIA is flawed and unfair. I would like to thank the committee for inviting me to testify. My oral complements my written testimony.

From July 1991 through September 1992, I worked as an anthropologist for first computer concepts, a company contracted by BAR to review petitions. Because one of the petitions I reviewed is awaiting final action, I cannot comment on substantive concerns I have with the process, but I can comment on two procedural concerns: the failure of BAR to determine reliability of evidence upon which decisions are based, as required by the regulations; and the standardless interpretation of the criteria, specifically the anthropological criteria.

My concerns about the reliability of evidence arose when I was with FCC. BAR delivered to me a statement of work which detailed my duties and tasks as I reviewed petitions. This implied contract required me to examine petition materials to quote, "verify reference," end quote, and, quote, "validate factual evidence," end quote, within these materials.

As I read through the petition materials, I noted that they contained factual evidence that was uncorroborated hearsay. But I had to validate that evidence.

Because I wanted to follow BAR procedures so that my work would be consistent within BAR standards for determining reliability of evidence, I sent a memorandum to BAR asking for directions on how to verify references and validate factual evidence. My memo was not answered. I waited. I called BAR and repeated my request for guidance. BAR had lost my memo.

I sent another memo, appending my original memo. I waited and waited. I called BAR. BAR had received my memo, but it was not at hand. I sent another memo and I called. I was told BAR had decided not to provide an answer. The contract deadline for my report drew near. My employer sent them out.

BAR called and asked, what did I want to know? I wanted to know how to verify references and validate factual evidence so that my work would conform to standard BAR procedures for determining reliability of evidence as required by the regulation.

Eight months after my initial memo, I received instructions, a memo detailing how to handle interview data. I was told to use my best professional judgment. But my question was about all factual evidence and the answer outlined a subjective procedure.

Two weeks later, during a meeting, a BAR staff member told me that the question of validity and reliability of facts had never come up before.

In 1992, BAR had been evaluating petitions for 14 years, but had never developed a procedure to determine the reliability of evidence upon which decisions were based. How can these decisions be consistent or fair when BAR's view of evidence is standardless?

BAR's interpretation of criteria is also standardless because BAR ignores the canons of construction and adds elements to criteria at will.

The Interior Board of Indian Appeals held in 1993 that department regulations are interpreted in accordance with traditional principles of statutory construction which means, if terms are defined in the regulation, that definition is binding, so for criterion (b), the regulation reads that people must live in a specific area or a community, and those terms are defined in the regulations as group interaction and the maintenance of tribal relations, and if words are not defined, they are given their plain and ordinary meaning. So in (b), or is or, and the present tense is the present tense; (b) does not require a social community throughout history, but BAR has clearly misinterpreted criterion (b) according to the canons of construction, and has now codified their misinterpretation in the 1994 regulation.

BAR also adds requirements to the regulations at will, requirements not in the regulations. For example, in the Miami final determination, published in the Federal Register on June 18th, 1992, BAR found that Miami failed subsection (c) because Miami failed, quote, "to meet the requirements of the regulations for a bilateral political relationship," end quote, but the words "bilateral political relationship" do not appear in the regulations. They appear in case law, not cited in the Federal Register or reports. The case is *Masayesva* v. *Zah* at 792 Fed. Supp. 1178, decided on March 13th, 1992, where the court upheld the BIA's interpretation that a tribal role under criterion 83.7(f) must demonstrate a bilateral political relationship. It is interesting to note here that the BIA applied the criteria to the Navajo Nation, a recognized tribe.

So BAR took the ruling and Masayesva, which defined a tribal role in criterion (f) as requiring a bilateral political relationship and attributed this requirement to criterion (c), requiring political influence and other authority to reflect a bilateral political relationship. This is clearly not required by the plain meaning of (c). BAR's interpretation of (c) in the Miami decision is clearly ultra vires.

For these reasons and many others, I believe the process in the BIA is fatally flawed and unfair. I urge the subcommittee to work toward removing the Federal acknowledgment process from the BIA as suggested in H.R. 4462. I also urge the committee to refine and examine the mandatory criteria, especially the anthropological criteria upon which everyone seems to rely, because this process is inconsistent, inequitable and should not be allowed to continue.

Thank you.

Mr. ABERCROMBIE. Thank you very much. I want to ask you something more about 4549 and some of the deficiencies you see there later, OK?

Ms. CANTRELL. Thank you.

Mr. ABERCROMBIE. Thank you.

[Prepared statement of Ms. Cantrell follows:]

ORAL TESTIMONY OF KAREN CANTRELL
Anthropologist, Attorney at Law
Star Route Box 349A
Placitas, New Mexico 87043

In Conjunction with H.R. 2549 and H.R. 4462

Before the Subcommittee on Native American Affairs
of the Committee on Natural Resources
July 22, 1994

Good morning Mr. Chairman. My name is Karen Cantrell. I live in Placitas, New Mexico. I am an anthropologist and a lawyer. I do not work for any group or entity involved in the federal recognition process. I appear today because I have worked within the federal acknowledgment process and I believe the process as administered by the Bureau of Indian Affairs is flawed and unfair. I would like to thank the Subcommittee for inviting me to testify and voice my concerns.

From July, 1991, through September, 1992, I worked as an anthropologist for First Computer Concepts, Inc., a company contracted by the Branch of Acknowledgment and Research, BIA, to review federal acknowledgment petitions. Because one of the petitions I reviewed is awaiting final action, I cannot comment on substantive concerns I have about the process, but I can comment on two procedural concerns, (1) the failure of BAR to determine the reliability of evidence as required by the regulations and (2) the interpretation of the mandatory anthropological criteria 83.7 (b) and (c).

My concerns over the reliability of evidence arose when I was with FCCI and BAR delivered a "Statement of Work" which detailed my duties and tasks as I reviewed petitions. This implied contract required me to examine petition materials to "verify references" and "validate factual evidence" within these materials. As I read through the petition materials I noted that they contained "factual evidence" that was uncorroborated hearsay. I had to validate this evidence.

Because I wanted to follow BAR procedures so that my work would be consistent with BAR standards for determining reliability of evidence as required by 83.10(c)(2)(1978), I sent a memorandum to BAR asking for direction on how to verify references and validate factual evidence. My memo was not answered; I waited. I called BAR and repeated my request for guidance; BAR had lost my memo.

I sent another memo, appending my original memo, and waited. I called BAR; BAR had received my memo, but it was not at hand. I sent another memo and called. I was told BAR had decided not to provide an answer. The contract deadline for my report drew near. My employer sent memos.

BAR called and asked what I wanted to know. I repeated my request for directions on the standard BAR procedures for verifying references and validating factual evidence. Eight months after my initial memo I received instructions, a memo detailing how to handle interview data. I was to use my "best professional judgment." This reply did not answer my question, which was about all factual evidence, and the answer outlined a subjective procedure and standard for determining reliability of evidence. Two weeks after receiving the memo, during a meeting, a BAR staff member told me that the question of validity/reliability of facts had "never come up" before.

In 1992, BAR had been evaluating petitions for acknowledgment for fourteen years, but had never developed a procedure to determine the reliability of evidence upon which decisions are based. How can decisions be consistent, or fair when BAR's review of evidence is standardless?

BAR's interpretation of the criteria is also standardless because BAR ignores the canons of construction and adds elements to the criteria at will.

The Interior Board of Indian Appeals held in 1993 that "regulations are interpreted in accordance with traditional principles of statutory construction." If terms are defined in regulations, that definition is binding, so, in 83.7(b)(1978), "specific area" or "community" are defined in the regulations as group interaction and a maintenance of tribal relations. Words not defined are given their plain and ordinary meaning, so in 83.7(b)(1978), "or" means or, and the present tense is the present tense. The BAR interpretation of 83.7(b)(1978) as requiring groups to exhibit a "social community" throughout history is clearly erroneous. BAR has now codified this misinterpretation in the 1994 regulations.

BAR also adds requirements to the regulations. For example, in the Miami final determination, published in the Federal Register June 18, 1992, BAR found that the Miami had failed mandatory criterion 83.7(c) because the Miami failed to "meet the requirements of the regulations for a bilateral political relationship." The term "bilateral political relationship" does not appear in the regulations. The term appears in a case not cited in the Federal Register, the Summary Under the Criteria, or the accompanying technical reports. The case, Masayesva v. Zah 792 F.Supp. 1178 (D. Az. 1992), upheld the BIA's interpretation that a tribal roll required evidence of a bilateral political relationship and in so doing applied 83.7(f)(1978) to a recognized tribe, the Navajo Nation, and found that tribe's membership list to not meet the criterion.

BAR then took the ruling in Masayesva, which defined a tribal role and tribal membership under criterion 83.7(f)(1978) as requiring a bilateral political relationship and attributed this requirement to criterion 83.7(c)(1978), requiring political activity to reflect a bilateral

political relationship. This is clearly not required by the plain meaning of 83.7(c)(1978) and BAR's interpretation of this subsection is clearly erroneous. The Miami petition failed to meet the requirements of this mandatory criterion based on an erroneous interpretation of the criterion by BAR.

For these reasons, and many others, I believe the FAP process as administered by BAR/BIA to be fatally flawed and unfair. I urge the Subcommittee to work toward removing FAP from the BIA as is done in H.R. 4462. I also urge the Subcommittee to examine and refine the mandatory criteria, especially the "anthropological" criteria. This inconsistent, inequitable process, as administered by the BIA, should not be allowed to continue. Thank you.

Mr. ABERCROMBIE. Let's move to Dr. Campisi now. Thank you very much for your patience.

STATEMENT OF JACK CAMPISI, Ph.D.

Mr. CAMPISI. Thank you. I will attempt to be brief.

The present legislation or proposed legislation will not solve the problem of this process. It has been made eminently clear through a series of hearings, both in the House and in the Senate, and from today's testimony, that the problem is the process; it is the criteria that are weak, the definitions that are faulty. If you imbed these in law, you will sustain the problem.

My suggestion is that the criteria must recognize the history of Indian colonial and U.S. relations over the course of up to 500 years. You must understand, the criteria must fit the evidence, not the other way around. We must look at what the history of relations have been, not just for tribes who have—who were contacted or had sustained contact in the late 19th century, but for tribes that had sustained contact in the 16th century. And if the rules don't fit them, then they are imperfect rules.

It must take into account the impact of that contact, the destruction of tribal groups, the mislabeling of tribal peoples, the misunderstanding of tribal relationships. It must take into account the impact of racism on tribes.

Why is it that so few tribes, nonrecognized tribes, have records of their existence? One has to look to the keeper of the records, the maker of the records; and there you find it is a function, very often, of racism.

We must take into account what native people believe, not just what non-native people write down. These regulations lean so heavily upon the written document that groups that were illiterate, or maintained—or were kept illiterate for hundreds of years have virtually no records, and having the absence of records works against them.

I believe that your idea of a separate agency is a good idea. I think you need to get it out of the Bureau, just to give it some semblance of fairness. I don't think that can happen any longer with regard to the Bureau.

I think you have to scrap some of these criteria. I think Bud Shapard's suggestion that you begin in the 1930s is a reasonable suggestion. The Branch has accepted 1900 as proof of the existence of an Indian entity, from 1900 on. But at the same time, the Branch requires the same group to prove a tribal identity from the time of sustained contact.

Well, what is the sense of proving from 1900 if you are going to have to go back to 1600 to prove tribal identity?

It is those kinds of inconsistencies that I think you need to get out, need to get away from. You need to define the terms carefully.

Under the new regulations, under criterion (b), the word significant is used seven times. I asked the people at the Branch, how do you define that word? What constitutes a significant relationship? They refused to answer.

Mr. ABERCROMBIE. Now you know how I feel about legislation that talks about lobby reform. Thank you.

Mr. CAMPISI. Well, I don't know how you feel, but I guess I am getting a sense of it.

But these are the problems we have with the regulations, and by putting them in whole hog, as you have, I think you would just continue the damage.

I would urge the committee to revise the regulations, keep in the separate agency, but look more carefully at the data about these nonrecognized groups to make sure that you will not exclude people who have been excluded all their time from the historical record.

Thank you.

Mr. ABERCROMBIE. Thank you.

[Prepared statements of Mr. Campisi and Native American Rights Fund follow:]

Hearing on H.R. 2549 and H.R. 4462
Before the Subcommittee on Native American Affairs
of the Committee on Natural Resources
July 22, 1994

Statement Submitted By
Dr. Jack Campisi
Department of Anthropology
Wellesley College, Wellesley, Massachusetts

Mr. Chairman, Members of the Committee:

Thank you for affording me this opportunity to submit this statement.

Since 1978, I have worked with nearly two dozen non-recognized tribes on petitions for recognition or legislation to achieve the same end. The United Houma Nation's petition is now on active status, the Mashpee Wampanoag tribe is responding to its obvious deficiency letter, and the petitions for the Shinnecock and Pamunkey tribes are in preparation. These efforts have afforded me an excellent opportunity to evaluate the system of recognition.

The two proposed pieces of legislation take the language of the 1978 regulations (25 C.F.R. Part 83) and make them law, despite the fact that these regulations were replaced by the Department of the Interior, a tacit, if belated, acknowledgment by the Department of the inadequacies of its regulations. The replacement regulations are but small improvement because they, like the former regulations, fail to define key terms, are loaded with subjective phrases and do not take into account the experiences faced by non-recognized tribes.

The same criticisms apply to the bills, the subjects of this hearing. Adopting either set of regulations as law does not cure the inequities in the present situation; if anything, it would exacerbate the problems. The burdens set by the regulations and the proposed legislation are simply too exhausting for most non-recognized tribes to meet. The legislation does not take into account the mass destruction of American Indian societies in the early days of our colonial history or the pernicious impact of racism on the identity of the tribes in question. If applied to presently recognized tribes, I fear that many would have difficulty in satisfying the criteria.

I believe that the regulations and bill start with a false premise. I do not understand why the criteria for federal recognition today should be more stringent than it was before the promulgation of the acknowledgment regulations in 1978. Why should the petitioners today be required to meet standards that are much more stringent than those outlined by Felix Cohen? How can we expect populations that were deliberately kept illiterate and whose existence was denied by the federal, state, and local

governments over the course of two hundred or more years to present documentation of their existence, viability and ancestry?

The establishment of the regulations in 1978 has done little to clear up the status of the vast majority of the non-recognized tribes. It has increased the bureaucracy in the Bureau of Indian Affairs and resulted in a cottage industry for social scientists. It would be to the benefit of all if both could be reduced, and that can occur only if the regulations embodied in both bills are discarded and a more rational approach to determining which groups have a government-to-government relationship with the United States.

The idea of an independent commission as provided for in H.R. 4462 is a good start, but only if the criteria are more carefully and realistically crafted. That commission should have limited life; it should furnish its work by some date certain. H.R. 4462 allows for the appointment to the commission of government employees. I do not think that this is wise, since it could result in a domination by the bureaucracy the legislation seeks to remove from control. I would also suggest five commissioners appointed for five year staggered terms.

I applaud the Committee's efforts to unravel this Gordian knot and solve a problem that has consumed more time and energy than anyone would have imagined fifteen years ago. Unfortunately, I do not believe that enacting a solution that has not worked is the answer. I urge the Subcommittee to focus on the criteria for federal recognition, for there is where the problem, frustration and costs lie.

Thank you

The foregoing statement was submitted by:

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Hearing on H.R. 2549 and H.R. 4462

Statement Submitted on Behalf of the Mashpee Wampanoag Indian Tribal Council, the United Houma Nation, the Shinnecock Nation, and the Pamunkey Tribe by the Native American Rights Fund

Mr. Chairman, Members of the Committee;

Thank you for the opportunity to submit this statement.

The Native American Rights Fund is representing the Mashpee Wampanoag Tribe, the United Houma Nation, the Shinnecock Nation, and the Pamunkey Tribe in recognition matters. NARF also represents the Miami Nation of Indiana in litigation challenging an adverse decision under the 1978 acknowledgment regulations. Miami Nation of Indiana et al. v. Babbitt, No. S92-586M (Filed September 1992). This statement is, in large part, based on the our experience representing the Miami Nation in seeking recognition through the administrative process and then challenging the Department of the Interior's decision against recognition.

H.R. 2549 and H.R. 4462 are both similar to the Department's acknowledgment regulations (originally promulgated in 1978 and amended in February 1994). The recognition criteria in the bills track the criteria in the regulations. The process for submission and review of petitions for recognition is also comparable to the present administrative practice.

1. H.R. 4462 does make a significant change in the identity of the decision-maker. The use of a Commission that is independent of the Bureau of Indian Affairs is a needed change in present practice. There is a widespread concern that the Branch of Acknowledgment and Research and the Bureau of Indian Affairs are subject to inappropriate political influence in making recognition decisions. E.g. the Statement of Raymond D. Fogelson, Dept. of Anthropology, University of Chicago on S.611 a Bill to Establish Administrative Procedures to Determine the Status of Certain Indian Groups Before the Senate Select Committee on Indian Affairs, 101st Cong., 1st Sess. 177 (May 5, 1989) ("While I respect the individual conscientiousness, competence, and integrity of members of B.A.R., I believe that an office separate from B.I.A. will be more immune to possible allegations of conflicts of interests or to the potential influence of Bureau policy and attitudes. . . . It seems to me that the B.I.A. has enough to do in administering Federal Indian programs and serving the needs of the Indian clientele without also assuming the additional role of gatekeeper."); Deposition of John A. Shapard, Jr., former chief of the Federal Acknowledgment Project which is now the Branch of Acknowledgment and Research, in Greene et al. v. Babbitt at 33 ("there's a general, all persuasive attitude throughout the bureau that they don't want anymore tribes"); see also the Statement of Allogan Slagle in

Oversight Hearing on Federal Acknowledgment Process Before the Senate Select Committee on Indian Affairs, 100th Cong., 2nd Sess. 198 (May 26, 1988) ("No matter how fair the BIA/BAR staff attempt to be, and no matter how they try to see that their decisions reflect a common standard, the perception of many tribes is that there are inequities in the way that the requirements are enforced.") Indeed, even before the present acknowledgment process was established in 1978, concern was expressed about the ability of the Department to deal fairly with the recognition of tribes.

> The second reason for Interior's reluctance to recognize tribes is largely political. In some areas, recognition might remove land from State taxation, bringing reverberations on Capitol Hill. There also is the problem of funding programs for these tribes.
>
> Interior has denied services to some tribes solely on the grounds that there was only enough money for already-recognized tribes. . . . Already-recognized tribes have accepted this 'small pie' theory and have presented Interior with another political problem: The recognized tribes do not want additions to the list if it means they will have difficulty getting the funds they need.

Final Report American Indian Policy Review Commission 476 (May 17, 1977).

2. As to the recognition criteria, the information generated in the Miami litigation indicates that there have been three "eras" in administrative recognition practice. The first is the pre-1954 time period which is roughly summarized in Felix S. Cohen's original treatise on Indian law.

> The considerations which, singly or jointly, have been particularly relied upon in reaching the conclusion that a group constitutes a "tribe" or "band" have been:
>
> (1) That the group has had treaty relations with the United States.
> (2) That the group has been denominated a tribe by act of Congress or executive order.
> (3) That the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe.
> (4) That the group has been treated as a tribe or band by other Indian tribes.
> (5) That the group has exercised political authority over its members, through tribal council or other governmental forms.

> Other factors considered, though not conclusive, are the existence of special appropriation items for the group and the social solidarity of the group.

Felix S. Cohen's Handbook of Federal Indian Law, (Reprinted University of New Mexico Press) at 271 (footnotes omitted). The second is the 1954-1978 time period which is summarized in a letter from Commissioner of Indian Affairs LaFollette Butler to Senator Henry Jackson. Commissioner Butler cites the passage from Cohen set out above, lists the recognition decisions from 1954 to 1974, and concedes that "[c]onsistency in practice in giving "Federal recognition" is difficult to discern". And, the third "era" is the practice under the acknowledgment regulations published in 1978 (and amended this year). The criteria in the regulations are set out at 25 C.F.R. §83.7. We believe that there have been about 20 decisions under the regulations.

Whatever the criteria decided upon, we feel it is important to explain how and why the criteria were chosen and how the criteria should be applied. In particular, petitioners should know whether past practice and decisions will be relevant to decisions under the new criteria. It is also important to explain in more detail the terms used in the criteria. All of this will help petitioners understand what is expected of them and will provide guidance to the decision-maker in reviewing petitions.

3. Under the present administrative practice, final determinations are made by the Assistant Secretary for Indian Affairs. However, the actual review of petitions and the preparation of the extensive reports justifying proposed decisions are carried out by the Branch of Acknowledgment and Research (BAR). The BAR staff includes historians, anthropologists, and genealogists. The review of petitions and the preparation of proposed decisions done by BAR involves years of work and results in extensive written reports. Because of that, we believe that the decisions that have been made under the acknowledgment regulations are essentially those of the BAR staff. A recognition bill should strictly demarcate the role of the staff that will provide technical support to the Commission or Assistant Secretary.

4. The funding level for the Commission (or the Department of the Interior in H.R. 2549) is much too low given the number of petitions presently under consideration and the number expected to be filed. In addition, the funding level for the provision of grants to petitioners is much too low given the number of groups expected to petition and the cost of going through the process.

The foregoing statement was submitted on behalf of the Mashpee Wampanoag Indian Tribal Council, the United Houma Nation, the Shinnecock Nation, and the Pamunkey Tribe by the Native American Rights Fund.

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Mr. ABERCROMBIE. And now our final testifier, before we get to the questions and observations, will be Councilman Rasmussen.

STATEMENT OF JAMES RASMUSSEN

Mr. RASMUSSEN. My name is James Rasmussen. I have been a councilman for the Duwamish Indian Tribe for the past 6 years. Before me, my mother served on that council for 17 years. Before her, my grandfather served on that council for about 20 years. In his time, we were dealing with court of claims issues, and in those days we worked closely with all of the tribes within Puget Sound to try to get at least some justice from the Federal Government as far as the land that was taken from all of our people.

During my mother's time, it was a time of treaty rights. In the 1960's and in the 1970's, all of a sudden, people started realizing that we had more rights than we had ever been offered by the Federal Government. One of her jobs, that she took upon herself, was to hold the dignity of the tribe and the individual, individuality of the tribe.

Many times the tribe was tried to be taken over by other organizations, to make it part of their organization so they might be able to enjoy our treaty rights. They all failed.

During my tenure in the last 6 years, one of the things that I have been trying to do is to work on the culture of my own people. We have negotiated with the port of Seattle, we have negotiated with the county, we have negotiated with lots of government agencies. All of them are very, very sorry and in most cases, even though we still are ongoing in negotiation with some of those, to say that because the tribe is not recognized, and they have a political protocol that they have to follow within the State, that they can't do anything right now and, hopefully, that things will change.

My people have not had a longhouse for over, probably over 100 years. One of the things that we are trying to do, working with the community and working with the port, is to try to build one of those again on the Duwamish River in the home of my people. All the tribes that I represent from Stowe have been in this process for the last 20 years. If you know anything about what BAR has been about and how complicated the criteria are, we would not be as far as we are, had we not been very seriously considered. We would have been dumped out a long time ago, especially when the same people who were involved in the court cases that Mr. Jones talks about were involved in recognizing—not recognizing officially at this time, but at least passing through the Bureau of Acknowledgment and Review, the Snoqualmie Tribe.

The Duwamish were supposed to have a final determination by January by BAR, by its own regulations, and month to month to month, again, we do not have any word from them. In the last 2 weeks we have not been able to get a phone call returned by our attorney. I am not sure why or what, because they won't talk to us.

One of the things that we also would like to mention is that the delays coming to being an active consideration have been large also. Actually, we had our documents ready in 1989, and we have been involved in this process in the hearings from the beginning, in the 1970's. We received an OD letter in 1990. We responded to

that in 1990. And in 1992 we were put under active consideration and had site visits.

I don't know if you can realize how scary this whole thing is. Talking about my three generations in my family, I am the first one to ever testify in front of Congress, so this is not an easy thing for me right now, although I have spoken in front of the National Congress of American Indians and had support from there to have a fair process.

We have also had support in the Governor's office to have a fair process. We have also had support from the mayor's office of the city of Seattle to have a fair process.

Time is deadly and time is very important. It is like my people have been in a war for the past 20 years, and we have had lots of casualties, lots of elders have died, and not one shot has been fired.

Originally, BAR was created, as far as we know, to be a cooperative process in a fair and pure environment dealing with the facts, not dealing with politics, not dealing with economic issues. We were to try to find the facts. Now, recognizing tribes have been involved, spending hundreds of thousands of dollars to eliminate the tribes that I represent, spreading false and alarming rumors through Indian country.

I don't know how to finish this as far as the tribes that I am here to represent and Stowe is concerned. But this issue is a political issue, and if we do not take it out of that arena, we are going to be back here in another 6 years, in another 20 years, and it is never going to be resolved, because people do have a tendency to like power, and that is what has been created here.

Thank you.

[Prepared statement of Mr. Rasmussen and attachment follow:]

TESTIMONY of JAMES RASMUSSEN
DUWAMISH INDIAN TRIBE
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(206) 226-5185

In Conjunction with H.R.4462 and H.R.2549
Before the Committee on Interior and Insular Affairs
July 22, 1994

I am James Rasmussen of the Duwamish Tribal Council. I am a resident of Seattle, Washington. My tribal Chairman has appeared before the Senate Committee on Indian Affairs on this issue. Al Cooper of the Snohomish Tribe and John Barnett Chairman of the Cowlitz Tribe, and Dr. Ken Tollefson, Anthropologist at Seattle Pacific University have all appeared before the House Interior Committee on the same issues.

My appearance here today is on behalf of several of the Western Washington tribes currently seeking recognition through the Federal Acknowledgment Process.

SUMMARY STATEMENT

The Federal Acknowledgment Process has failed to clarify the status of petitioning Western Washington tribes during its 15 years of operation.

Tribes throughout the United States have been victimized and held in administrative limbo by the current BIA administrative process, with its systematic delays, inadequate staffing, and political agenda.

Since 1988, several national hearings and bills have been drafted to solve this problem. The latest being H.R.4462 & H.R.2549. Rather than improving the process for currently petitioning Western Washington tribes, **H.R. 2549 would effectively exclude them from the process--thereby necessitating individual tribal recognition bills**. The predecessors including H.R.3430, S.1315, and S.192 were rejected for this very reason. It is our understanding that these current bills are not introduced as a final solution, but to stimulate debate to lead to a reasoned solution.

The Chinook, Cowlitz, Duwamish, Snohomish, and Steilacoom Tribes offer the attached draft bill to facilitate the redrafting of this legislation. It offers some constructive suggestions regarding improved language. **We request that this draft bill (Attachment A) be entered into the record.**

COMMENTS ON PROPOSED LEGISLATION H.R. 4462 and H.R. 2549

H.R. 2549 as written would **eliminate 5 petitioning Western Washington tribes from the entire acknowledgment process. Language in both bills would guarantee that the tribes could never enjoy the full benefits of tribal recognition. Bill language would guarantee the statutory termination of treaty rights.** Unfortunately, the failure of the bills to consider all currently petitioning tribes, treat all tribes equally, and protect treaty rights makes these termination bills rather than recognition or restoration acts for Western Washington tribes.

ISSUES

1. Purpose.

The Final Report of the American Indian Policy Review Commission (1977) recommended that Congress take action to insure that application of Federal Indian laws and the delivery of government benefits and services to all Indian tribes uniformly.

2. Uniform treatment of all tribes.

Any legislation must uphold the **premise** that **all tribes should be accorded equal treatment.** The bills are based on the premise that a tribe should not be fully recognized if it might impact a tribe that is currently recognized. The old BIA process did not contain such language.

> There is no legal merit in the position that **currently recognized tribes are** somehow more equal than the petitioning tribes. Every party is equal.
>
> In 1975, the **Commissioner of Indian Affairs found no merit** in the Tulalip Tribe's opposition to the acknowledgment of the...Stillaguamish Tribe. "You [Tulalip]...state that recognition would make Judge Boldt's decision [regarding treaty fishing rights] impossible to administer, and that such recognition would reduce Federal services...In our opinion, it would not be equitable or legal to establish a policy of not recognizing deserving Tribes...on the basis that it would reduce benefits and services for other more fortunate Tribes who have enjoyed that recognition and the attendant benefits for a number of years.
>
> It is **not legal to deny a legitimate claim** for acknowledgment based on whether or not a currently Federally-recognized tribe, state, county, or municipality is impacted by the acknowledgment of a petitioning tribe.

This **position** was **supported by the State of Washington** (Letter from the Office of the Governor to petitioning Washington Tribes, November 22, 1988). "It is our belief that you have a **right to a clear, unbiased, timely, and non-capricious or arbitrary system for acknowledgment based entirely on historical fact and not on the support or non-support of any state or tribe.** This is your right and we support it in full."

ANALYSIS OF SELECTED SECTIONS

H.R. 4462 Section 3 (12) & (13). The **definitions of a "member"** of a petitioning group and tribe are not equivalent. While members of petitioning groups **must consent to membership**, consent is not required of members of currently recognized tribes.

H.R. 4462 Section 5 (a) (2) (C). The bills **exclude tribes rejected by the BIA's Branch of Acknowledgment and Research**, the very body whose arbitrary and unacceptable performance has lead to the legislation's being proposed. This provision would **legitimate the flawed decision making being reformed**, instead of, for example, negating the prior decisions or establishing a special review process to evaluate the integrity of prior administrative decisions.

U.S. District Court Judge Thomas Zilly, in a sharply worded decision in a lawsuit in February of 1992, accused the BIA of depriving the Samish Tribe of its basic constitutional right of due process by summarily declaring the tribe extinct without a fair hearing. He **ordered the BIA to reconsider the Samish petition.**

"The informal administrative hearing held by the BIA did not meet the due-process requirement," he said. "Plaintiffs were not given an opportunity to cross-examine the BIA's experts, research materials relied on by the decision-makers were withheld from the plaintiffs, and **there is evidence** that would lead an objective bystander to believe that some of the decision-makers prejudged the case."

H.R.2549 Section 3 (b)(4). The act would not apply to any Indian group that was determined by court not to be a tribe. **This is more restrictive than the current BAR process which has held that "...acknowledgment cases are decided independently, on a significantly broader base of evidence than was before the courts, and thus may support a different conclusion as to the tribal character of the petitioners."**

Unfortunately, this provision is an example of the problem that has plagued the BAR reform hearings and bills. Lobbyists that oppose the recognition of any Washington Tribes for political and economic reasons have been proposing legislative provisions that further restrict rather streamline the acknowledgment process.

This section appears to be designed to purposely exclude the 5 petitioning Washington tribes which unsuccessfully intervened in the "Boldt decision." On June 11, 1992, a stunning article in the Seattle Post-Intelligencer reported that Judge Boldt was suffering from Alzheimer's disease when he issued the 1979 ruling that consigned five NW Indian Tribes to official extinction. A motion has been filed to set aside the decision based on the Judge's incompetence.

H.R. 4462 Section 8 (e) & H.R. 2549 Section 6 (c) (2) (A) (B)

This is a "Quinault" provision which would deprive tribes of a major element attaching to Recognition, which is the right to govern trust lands as to which they should have rights. The words "freeze out" are applicable.

The provision would legitimize improperly exercised jurisdiction over Indian reservations . The legality of such jurisdiction must be established on a case-by-case basis and to legislate an end to the matter would probably constitute a **violation of the Due Process clause of the United States Constitution.**

This is a "Tulalip" provision which would eliminate such tribal rights as hunting and fishing if the tribe's rights are exercised by another. Federal acknowledgment is an admission that a tribe has continuously existed as a tribe since aboriginal times; yet these provisions would **strip away as a matter of law** some of the most **basic tribal rights**. Acknowledgment is intended to right a "wrong" -- that is, previous BIA failure to recognize the tribe; this language would perpetuate essential ingredients of the wrongs being addressed by acknowledgment. Moreover, the statutory termination of such tribal rights easily could be cited in opposition to the affected tribe's petition seeking acknowledgment! The result is "Catch 22": the tribe has no tribal rights, so how can it be a tribe?

H.R. 4462 ESTABLISHES A COMMISSION. The Commission does respond to the need to have an office independent of the Bureau of Indian Affairs. However, Commissions are slow to be implemented and a fair transition policy needs to be developed. It would not be fair to expect tribes to start over again under the Commission.

COMMUNITY CRITERIA. -- The "Indian community requirement" needs to be written in a way which can be met by tribes in a modern society. The historical facts are that (i) the nonrecognized tribes have been forced to assimilate into the non-Indian world and (ii) the "global village" of 1994 leaves few places in the contiguous 48 that might be distinctly "Indian."

OTHER INTERESTED PARTIES. The only issue to be determined is whether a group can establish its own entitlement to recognition as a matter of fact and

without having to respond to attacks mounted by wealthy tribes seeking to block recognition of tribes for political reasons.

H.R. 2549 NOTICE TO RECOGNIZED TRIBES. In motions regarding the anticipated Samish Administrative Hearing to reconsider it tribal status, the court has found that its neighboring recognized tribes (Swinomish and Tulalip) did not have a right to intervene just because of their status as recognized tribes. The court further rejected the Swinomish intervention as unnecessarily delaying the process.

PROPOSED AUTHORIZATIONS. The authorization for petition development and review is not adequate. It is less than that currently being provided to petitioners. By resolution the National Congress of American Indians supports $3.5 million for the review of petitions; and $1.5 million for petitioners. There are currently almost 20 active cases, including the tribes in litigation and backlogged for review. In 2 to 3 years, there may be 20 more cases ready for active consideration. We need to be prepared to review process these cases, not create another under funded process that drags on for years and years.

Overall Conclusions

The **provisions of the bills do not protect the basic tribal rights of the petitioning Washington tribes.** These tribes have all submitted petitions under the current federal acknowledgment process. These tribes would all be done with process if it was fair and efficient. I appears that **some other tribes have benefited from the delays** while these petitions sit in administrative limbo. **To now try to legislatively deprive these petitioning Western Washington Tribes of their right to petition and/ or major elements attaching to Recognition is simply unacceptable.**

If the purpose of the bills is to avoid the problem of individual tribes seeking direct legislative recognition, this language defeats the purpose. This language which has consistently appeared in proposed bills is one of the reasons these reform bills can not be supported and passed.

All-in-all, the need for reform is dramatized by H.R. 4462 and H.R. 2549 -- but there still is work to do.

103d CONGRESS
2d Session

S. _____

IN THE SENATE OF THE UNITED STATES

April ___, 1994

MR. INOUYE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To establish administrative procedures and guidelines to be followed in extending formal recognition to American Indian tribes acknowledging their existence as, and status of, Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States Congress assembled:

SEC. 2. PURPOSES.

The purposes of this Act are –

(a) to establish an objective procedure for the recognition of Indian tribes not currently federally recognized by the United States;

(b) to extend to Indian groups which should be federally recognized as Indian tribes full federal recognition as Indian tribes and the immunities and privileges now enjoyed by Indian tribes;

(c) to establish within the United States Department of the Interior the position of Assistant Secretary of the Interior for Federal Acknowledgment and Recognition and to create the Office of Federal Acknowledgment and Recognition as an agency within the Department separate from the Bureau of Indian Affairs;

(d) to restore the administrative process of determining whether nonrecognized Indian groups should be recognized as Indian tribes to one of cooperative fact-finding, involving the petitioning Indian groups and the United States Department of the Interior, and to eliminate any notion that the process is adversary between them; and

(e) to impose standards of honesty to the administrative process by providing criminal penalties for individuals or entities which furnish false information to the Office of Federal Acknowledgment and Recognition in conjunction with any pending petition for recognition, and to provide the same penalties upon the staff and consultants of the Office of Federal Acknowledgment and Recognition.

SEC. 3. DEFINITIONS.

For the purposes of this Act –

(1) The term "acknowledgment" means a determination by the Office of Federal Acknowledgment and Recognition that an Indian group constitutes an Indian tribe with formal federal recognition and entitled to participate in a government-to-government relationship with the United States on an equal basis with all other Indian tribes recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and as members of federally recognized Indian tribes.

(2) The term "Assistant Secretary" means the Assistant Secretary of the Interior for Federal Acknowledgement and Recognition.

(3) The term "Bureau" means the Bureau of Indian Affairs of the United States Department of the Interior.

(4) The term "community" means a group of people sharing descent from an aboriginal Indian tribe or band of a specific geographical area who have maintained tribal relations through any of several means, including -- but not limited to -- meetings, proximity of residency, participation in family and community events (funerals, weddings, elections, judgment hearings and other events), shared work (including fishing, clam digging, berry picking, food-processing and other activities), differentiating members from nonmembers and visiting.

(5) The term "continuous" means on a regular and sustained basis, notwithstanding gaps in documentary materials because of fire, natural disasters or other loss of records. One measure of "continuous" shall be the consistent appearance, or identification, of Indian group members and/or dealings with the petitioning Indian group in eight or more decades in any consecutive ten decades in historical and/or anthropological records. A second measure of "continuous" shall be evidence of tribal existence as of a specific date and also as of a later date, but not more than 50 years later, in which case continuous tribal existence shall be presumed for the intervening period absent proof to the contrary. There may be other measures of continuous, so long as they satisfy the definition in the first sentence of this subparagraph (5).

(6) The term "Department" means the United States Department of the Interior.

(7) The term "Indian group" means an American Indian group, community, band or tribe located within the United States of America and not formally recognized as an Indian tribe by the Secretary, Department or Bureau. Any Indian group is eligible to petition under this Act. The eligibility of an Indian group to petition under this Act shall be unaffected by any previous negative decisions, either legislative, administrative or judicial, as to the group's status as an Indian tribe.

(8) The term "Indian tribe" means an American Indian group, community, band or tribe located within the United States of America and formally recognized as an Indian tribe by the Secretary, Department or Bureau.

(9) The term "Office" means the Office of Federal Acknowledgment and Recognition created by Section 101 of this Act.

(10) The term "recognition" means the decision by the Secretary, Department or the Office that an Indian tribe is recognized as an Indian tribe by the United States and is entitled to participate in a government-to-government relationship with the United States.

(11) The term "Secretary" means the United States Secretary of the Interior or his lawfully designated representative.

(12) The term "treaty" means any treaty or agreement --

(A) negotiated and ratified by the United States with, or on behalf of, any Indian group or Indian tribe;

(B) negotiated by the United States on or before March 3, 1871, with, or on behalf of, any Indian group or Indian tribe, whether or not ratified by the United States Senate;

(C) negotiated by any sovereign with, or on behalf of, any Indian group or Indian tribe, whereby the sovereign acquired territory which was subsequently acquired by the United States, either by purchase or cession;

(D) negotiated by the United States subsequent to March 3, 1871, with, or on behalf of, any Indian group or Indian tribe whereby the United States acquired territory.

TITLE I - ACKNOWLEDGEMENT AND RECOGNITION OF INDIAN TRIBES

SEC. 101. OFFICE OF FEDERAL ACKNOWLEDGMENT AND RECOGNITION.

(a) ESTABLISHMENT OF OFFICE. (1) There is hereby established within the Department, and not within the Bureau, the Office of Federal Acknowledgment and Recognition.

(2) The Office shall be headed by the Assistant Secretary of the Interior for Federal Acknowledgment and Recognition, who shall be appointed by and serve at the pleasure of, the President of the United States, subject to confirmation by the United States Senate, and who shall be a person familiar with the historical, anthropological and political issues pertaining to Indian groups and Indian tribes.

(3) The Assistant Secretary is authorized to appoint employees for the Office and fix their compensation in accordance with federal law, and subject to review and approval of the Secretary, but no more than a total of three employees or contractors

of the Office or personnel detailed to the Office may previously have been employed, either directly or as contract personnel, by either the Federal Acknowledgment Project or the Branch of Acknowledgment and Research, both of which are offices within the Department.

(4) The Office shall carry out the duties assigned to it under the provisions of this Act.

(5) The Assistant Secretary shall be responsible for the day-to-day administration of the Office, including the development of such and regulations as may be necessary to implement the requirements of this Act.

(b) AUTHORITY OF ASSISTANT SECRETARY. (1) The Assistant Secretary and the staff of the Office are authorized to –

(A) enter into contracts and other agreements as may be necessary to carry out its responsibilities under this Act;

(B) conduct hearings;

(C) take testimony and receive other evidence;

(D) have such printing and binding done;

(E) make expenditures; and

(F) take such other actions

as may be necessary to fulfill its duties and responsibilities under this Act.

(2) The Assistant Secretary shall have the right to designate employees of the Office to administer oaths or affirmations to witnesses appearing before the Office to present testimony or other evidence in conjunction with petitions for recognition submitted in accordance with Section 103 of this Act.

(3) (A) The Office is authorized to secure directly from any officer, department, agency, establishment or instrumentality of the federal government such information as the Office may require for the purposes of this Act, and each such officer, department, agency, establishment or instrumentality is authorized and directed to furnish, to the extent permitted by law, such information, suggestions, estimates and statistics directly to the Office.

(B) All requests for information shall be signed by the Assistant Secretary or persons authorized by the Administrator to make such requests.

(C) Upon request of the Assistant Secretary, the head of any federal department, agency or instrumentality is authorized to make any of the facilities and services of such department, agency or instrumentality available to the Office and assign any personnel of such department, agency or instrumentality to the Office, on a nonreimbursable basis, to assist the Office in carrying out its duties and responsibilities under this Act.

(D) The Office may use the United States mails in the same manner and under the same conditions as the Department.

SEC. 102. STANDARDS OF REVIEW.

(a) BASE CRITERIA FOR FEDERAL RECOGNITION. (1) In reviewing and evaluating petitions for recognition submitted in accordance with Section 103 of this Act, the Office shall use as base criteria those standards articulated by Felix Cohen in the Handbook of Federal Indian Law (1942), which the Department relied upon in

determining which Indian groups and Indian tribes would be permitted to organize pursuant to the Act of June 18, 1934 (48 Stat. 987).

(2) The base criteria to follow in determining whether an Indian group should be recognized as an Indian tribe are –

(A) that the Indian group has had treaty relations with the United States,

(B) that the Indian group has been denominated a tribe by Act of Congress or Executive Order,

(C) that the Indian group has been treated as a tribe or band by other Indian tribes,

(D) that the Indian group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe,

(E) that the Indian group has exercised political authority over its members, through a tribal council or other governmental forms,

(F) that the Indian group would have been permitted to organize pursuant to the provisions of Act of June 18, 1934 (48 Stat. 984).

(b) SECONDARY CRITERIA FOR FEDERAL RECOGNITION. (1) In reviewing and evaluating petitions for recognition submitted pursuant to Section 103 of this Act, the Office shall utilize the base criteria and the following standards as secondary criteria –

(A) that the Indian group has received special appropriations,

(B) that the Indian group and/or its members have ever received federal services, including but not limited to services from the Bureau and the Indian Health Service,

(C) that the Indian group is recognized by the Indian Claims Commission or the United States Claims Court,

(D) that the Bureau has had regular contacts with the Indian group or its representatives,

(E) that the Indian group has had frequent contacts with the Bureau,

(F) that the Bureau has assisted the Indian group with special projects of any kind,

(G) that the Indian group has an organization which meets regularly,

(H) that the Indian group is an ethnic group in which the members of the group acknowledge a common identity among themselves and differentiate themselves from other groups around them,

(I) that the Indian group has elected officials and governing body,

(J) that the Indian group has a Constitution and bylaws,

(K) that the Indian group has an official tribal roll it has adopted,

(L) that the Indian group's governing body meets regularly to conduct tribal business,

(M) that any federal agency or department has issued identification cards to members of the Indian group in conjunction with activities exercised by members of the Indian group as an Indian group, such as fishing,

(N) that the Indian group has been active in exercising communal rights, evidencing community.

(c) APPLICATION OF BASE CRITERIA. --The base criteria described at Section 102(a) of this Act first shall be applied to the facts which existed during the time

period commencing June 18, 1934, and running through December 31, 1949, in accordance with Sections 103(c) and 104(b) of this Act as to any Indian group petitioning for federal acknowledgment and recognition. The base criteria are to be used as guidelines in evaluating petitions for recognition, and it is not necessary that a petitioning Indian group satisfy all of the base criteria in order to be recognized under Section 104(b). If a petitioning Indian group is determined to have satisfied the base criteria for the period of time identified in this subsection, then the Office shall enter a final determination that the Indian group is entitled to federal recognition, and that finding shall be final for the Department and for the United States. An affirmative determination under this section shall not be subject to any review, either administrative or judicial, unless the determination was the product of felonious activity by staff or consultants of the Office.

(d) APPLICATION OF SECONDARY CRITERIA. If any petitioning Indian group does not receive an affirmative determination by the Office through Section 102(c) of this Act, then the Office shall utilize the secondary criteria described at Section 102(b) of this Act in reviewing and evaluating petitions for recognition in accordance with Sections 103(d) and 104(c) of this Act. The secondary criteria are to be used as guidelines in evaluating petitions for recognition, and it is not necessary that a petitioning party satisfy all of the secondary criteria in order to be recognized under Section 104(c).

(e) COOPERATIVE REVIEW REQUIRED. The staff of the Office shall work in a cooperative manner with the petitioning Indian group in reviewing and analyzing any petition, and they shall work together in a nonadversary manner to determine the facts underlying the petition. Failure of any staff member to comply with

the requirements of this subsection shall constitute cause for immediate dismissal, with due process, from his or her employment with the Office and the federal government.

SEC. 103. PETITIONS FOR RECOGNITION.

(a) PETITIONS FOR RECOGNITION OR ACKNOWLEDGMENT. (1) Any Indian group which is indigenous and satisfies the criteria set out at Section 102 of this Act, including any Indian group which was previously federally recognized and was subject to litigation terminating its status as a federally recognized Indian tribe, may submit a petition to the Office seeking acknowledgment and recognition that such Indian group is an Indian tribe. At the election of the petitioning Indian group, the petition may be submitted under the base criteria set forth at Section 102(a), or under the secondary criteria set forth at Section 102(b), or both.

(2) The provisions of this Act do not apply to the following groups or entities, which shall not be eligible for recognition under this Act –

(A) Indian tribes, organized bands, pueblos, communities and Alaska Native entities which are already recognized by the Secretary as Indian tribes and are receiving services from the Bureau, and

(B) splinter groups, political factions, communities or groups of any character which separate from the main body of an Indian group or tribe, unless it can be established that the group has functioned from historical times until the present as an autonomous tribal entity.

(b) FORM OF PETITION. (1) A petition for acknowledgment and recognition under this section may be in any readable form which clearly indicates that it is a petition under subsections (c) or (d) or both.

(2) A petition under this section shall be accompanied by a copy of the petitioning Indian group's current governing documents or, in the absence of written governing documents, a statement explaining the membership criteria and the procedures by which the petitioner currently governs its affairs and determines its membership. The petition shall also be accompanied by a list of all known members, based on the petitioner's own membership criteria and procedures, and must identify the state or states in which the petitioning Indian group is located.

(c) BASE CRITERIA PETITIONS. (1) If an Indian group believes that it can satisfy the base criteria set forth at Section 102(a) of this Act, then the petition should state on its face that the petition is be considered a base criteria petition.

(2) Designation of a petition under this subsection shall not preclude simultaneous designation of the same petition as a secondary criteria petition to be processed in accordance with Section 104(c) of this Act.

(3) Base criteria petitions shall be processed in accordance with the provisions of Section 104(b) of this Act.

(d) SECONDARY CRITERIA PETITIONS. (1) If an Indian group believes that it can satisfy the secondary criteria set forth at Section 102(b) of this Act, then the petition should state on its face that the petition is to be considered a secondary criteria petition.

(2) Secondary criteria petitions shall be processed in accordance with the provisions of Section 104(c) of this Act.

SEC. 104. PETITION PROCESS.

(a) DOCKET AND NOTICE. (1) Within 30 days of the date on which a petition for recognition is received by the Office in accordance with the requirements of Section 103 of this Act, the Office shall send a written receipt to the petitioning Indian group and shall have published in the Federal Register a notice stating --

(A) that the petition has been filed;

(B) the date on which petition was filed;

(C) the name, location and mailing address of the petitioning Indian group and such other information as is reasonably calculated to identify the petitioning Indian group; and

(D) the location(s) where petition may be examined.

(2) Within 45 days of the date on which a petition for recognition is received by the Office, the Office shall send a written notification of such filing to the Governor and Attorney General of, and all Indian tribes and petitioning Indian groups located within, the state or states in which the petitioning Indian group is located.

(3) Within 60 days of the date on which a petition for recognition is received by the Office, the Office shall cause to be published in a newspaper of general circulation in the location of the petitioning Indian group a notice of the petition. In addition to the information described at Section 104(a)(1), the notice shall state --

(A) that public comment on the petition may be submitted to the Office at a specified address for a period of 45 days commencing on the date of publication;

(B) all comments will be forwarded to the petitioning Indian group by the Office upon receipt;

(C) the petitioning Indian group will be entitled to respond to all such comment prior to any consideration of the comment by the Office;

(D) no comments will be accepted by the Office unless they are signed by an individual, whose identity is verified by the Office; and

(E) all comments, including comments made by staff or contractors of the Office, will be subject to the provisions of Section 1001 of Title 18, United States Code, providing criminal penalties for making false statements to the government, and that in the case of an individual submitting statements on behalf of an entity or office, the individual signing the comments will be subject to the provisions of law identified in this subsection, notwithstanding that the individual purports to act on behalf of an Indian tribe and claims sovereign immunity of that Indian tribe.

(b) REVIEW PROCEDURES FOR SECTION 103(c) PETITIONS. (1) The review procedures set forth in this subsection shall apply to review of base criteria petitions designated in accordance with the provisions of Section 103(c).

(2) Within 90 days of the date on which a petition designated in accordance with Section 103(c) is received by the Office, active consideration of the petition under the base criteria shall begin.

(3) Within 90 days after the date on which active consideration begins as to a base criteria petition, the Office shall --

(A) make a preliminary determination on the petition which either acknowledges and recognizes the petitioner as an Indian tribe or rebuts the evidence submitted by the petitioner as to the base criteria, and

(B) publish such preliminary determination in the Federal Register.

(4) If the Office makes a preliminary determination to deny the petition on the base criteria petition, the Office shall provide to the petitioner with the denial decision a detailed written explanation of the grounds on which the decision was based, together with copies of all documents delivered to and/or considered by the Office during the petition's evaluation.

(5) For a period of 45 days following delivery to the petitioner of a denial decision on a base criteria petition, the petitioner may submit to the Office written comments on the preliminary ruling, including comments concerning false statements made to the Office in conjunction with the petition. All reports of false statements made to the Office in conjunction with a base criteria petition shall be referred by the Office to the Department's Office of Inspector General for investigation, and that investigation shall be undertaken immediately by the Office of Inspector General.

(6) A preliminary denial decision on a base criteria petition shall have no impact upon consideration of the same petition as a secondary petition designated in accordance with Section 103(d), nor shall such denial be an element of importance or evidence during active consideration of a secondary criteria petition.

(c) REVIEW PROCEDURES FOR SECTION 103(d) PETITIONS. (1) The procedures set forth in this subsection shall apply to the review of petitions designated in accordance with the provisions of Section 103(d).

(2) Within 120 days of the date on which a petition designated in accordance with Section 103(d) is received by the Office, active consideration shall begin.

(3) Within 120 days of the date on which active consideration begins on a secondary criteria petition, the Office shall make a preliminary determination on the petition, publish the preliminary determination in the Federal Register and provide the petitioning Indian group with a detailed written explanation of the grounds on which the determination was based.

(4) A preliminary determination to deny a secondary criteria petition shall include specific findings as to each of the Section 102(b) secondary criteria, along with references to all materials delivered to and/or considered by the Office during the petition's evaluation.

(5) For a period of 60 days following delivery to the petitioner of a denial decision on a secondary criteria petition, the petitioner may submit to the Office written comments on the preliminary ruling, including comments concerning false statements made to the Office in conjunction with the petition. All reports of false statements made to the Office in conjunction with a secondary criteria petition shall be referred by the Office to the Department's Office of Inspector General for investigation, and that investigation shall be undertaken immediately by the Office of Inspector General.

(6) After publication in the Federal Register of a preliminary ruling that denies acknowledgment and recognition, the petitioner may request arbitration on disagreements

of fact or law, and the Office shall retain the services of a professional arbitrator or mediator who shall conduct the arbitration on disputed issues and submit a report to the Office within 60 days of the date on which said arbitrator or mediator is designated. The arbitration report shall be taken in consideration by the Office in a further evaluation of its preliminary determination on the petition. Referral of the petition to arbitration shall stay all other matters under this Act until 120 days after receipt of the arbitration report by the Office.

(7) Reversal of a determination by the Office on the basis of an arbitration report shall constitute a final decision by the Office.

(d) PROPOSED FINDINGS AND DETERMINATIONS. (1) A preliminary determination on a petition shall be published in the Federal Register by the Office in accordance with subsections 104(b) and (c).

(2) The Office may delay making proposed findings on a petition under subsection (d)(1) for up to 120 days upon a showing of due cause to the petitioner or with written consent of the petitioner.

(3) In addition to the proposed findings, the Office shall prepare a report on each petition which summarizes the evidence for the proposed findings. Copies of such report shall be available to the petitioner and the general public upon request.

(4) Upon publication of the proposed determination under subsection (d)(1), members of the general public may submit comments and relevant evidence to the proposed findings, and all submissions shall be subject to the provisions of subsection 104(a)(3)(E).

(5) After consideration of any written comments and evidence submitted in response to the proposed findings, the Office shall make a final determination of whether the petitioning Indian group is recognized and acknowledged as an Indian tribe and the following shall apply –

(A) such determination shall be a determination of the United States,

(B) the determination shall be published, in summary form, in the Federal Register and a copy of the determination and summary delivered to the petitioner by no later than 60 days after the close of the comment period described at subsection (d)(1)-(2),

(C) such determination shall become effective 60 days after the date on which the summary of the determination is published in the Federal Register, and

(D) if the Office determines that the petitioner should not be recognized and acknowledged as an Indian tribe, the Office shall analyze and forward to the petitioner all options under which application for services and other benefits of the Bureau may be made by the petitioner.

SEC. 105. APPELLATE REVIEW.

(a) APPELLATE JURISDICTION. (1) By no later than 60 days from the date on which the Office delivers to the petitioning Indian group a final determination denying federal recognition, the petitioning Indian group may appeal the determination to the United States Court of Appeals for the Federal Circuit or the circuit in which the petitioning Indian group is located.

(2) No appeal may be taken from a determination of the Office on any petition for recognition by a party other than the petitioning Indian group.

(b) ATTORNEY FEES PROVISION. --The prevailing parties in any appeal under this Section shall be eligible for an award of attorney fees and costs pursuant to the provisions of Section 504 of Title 5, United States Code, or Section 2412 of Title 28, United States Code.

SEC. 106. IMPLEMENTATION OF DECISIONS. Upon recognition by the Office that the petitioner is an Indian tribe, the Indian tribe immediately shall be eligible for services and benefits from the federal government that are available to other federally recognized Indian tribes and entitled to the privileges and immunities available to other federally recognized Indian tribes by virtue of their status as Indian tribes with government-to-government relationship with the United States, as well as having the responsibilities and obligations of such Indian tribes.

SEC. 107. REGULATIONS. The Assistant Secretary is authorized to develop and propound such regulations as may be necessary to carry out the provisions and purposes of this Act. All such regulations shall be published in accordance with the provisions of Title 5, United States Code.

SEC. 108. ASSISTANCE TO PETITIONERS.

(a) IN GENERAL. (1) The Commissioner of the Administration for Native Americans of the United States Department of Health and Human Services shall make

grants to enable Indian groups seeking federal recognition and acknowledgment pursuant to the provisions of this Act to –

(A) conduct the research necessary to substantiate petitions under this Act,

(B) prepare documentation necessary for the submission of a petition under this Act,

(C) conduct any appeals as provided for by this Act, and

(C) maintain essential tribal government functions while a petition is under consideration pursuant to the provisions of this Act.

(2) The grants made under this subsection shall be in addition to any other grants the Commissioner of the Administration for Native Americans is authorized to award under any other provision of law.

(b) COMPETITIVE AWARD OF GRANTS. (1) Grants awarded in accordance with the provisions of subsection 108(a) shall be awarded competitively on the basis of objective criteria.

(2) Notwithstanding the provisions of subsection 108(b)(1) , in the awarding of grants in accordance with the provisions of subsection 108(a), preference shall be given to applicants who have petitions pending before the Office.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated for the Department for the purpose of carrying out the provisions of this Act, the following sums –

(1) $3,000,000 for each of the fiscal years 1995, 1996 and 1997, and

(2) $2,000,000 for each of the fiscal years 1998, 1999 and 2 000.

(b) There are authorized to be appropriated for the Administration for Native Americans of the United States Department of Health and Human Services for the purpose of carrying out the provisions of this Act, the sum of $3,500,000 for the fiscal years 1995, 1996, 1997, 1998, 1999 and 2 000.

TITLE II - TRIBAL GOVERNMENT OPERATIONS

SEC. 201. APPLICABILITY OF OTHER LAWS. Except as otherwise provided by this Act, without regard to the existence of reservations for any Indian tribe existing now or in the future, all federal laws of general application to Indian tribes and their members not inconsistent with the provisions of this Act, including Section 7871 of the Internal Revenue Code of 1986, shall apply to all Indian tribes gaining federal recognition pursuant to the provisions of this Act.

SEC. 202. TRIBAL MEMBERSHIP ROLLS.

(a) PREPARATION OF ROLL. Within one year after an Indian tribe is recognized in accordance with the provisions of this Act or the date of enactment of this Act, whichever is later, each Indian tribe recognized under this Act shall submit to the Secretary a current tribal membership roll adopted according to the tribe's own enrollment and membership criteria and procedures, duly certified by the tribe. The Secretary shall maintain a record of each such roll.

(b) QUALIFICATIONS FOR MEMBERSHIP. The qualifications for inclusion on a membership roll submitted to the Secretary in accordance with the provisions of Section 202(a) shall be determined by the Indian tribe submitting the roll.

SEC. 203. LAND HELD IN TRUST. The Secretary shall accept and place into trust status for the benefit any Indian tribe recognized under this Act such real property as such property is conveyed or otherwise transferred to the Secretary. Such property shall be subject to all valid existing rights, including liens, outstanding local and state taxes and mortgages. Upon being placed into trust status, such property shall be exempt from all local, state and federal taxation.

National Congress of American Indians

Est. 1944

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RESOLUTION NO. NV-93-172

RESOLUTION URGING THAT FEDERAL ACKNOWLEDGEMENT PROCESS REFORM LEGISLATION

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI), on May 26, 1993 nominated tribal leaders to participate in a meeting with the White House including securing an Executive Order/Proclamation implementing a government-to-government policy statement. To be followed up with sessions with Cabinet members and the coordination of implementing the policy in each Federal department and agency; and

WHEREAS, tribes from the Northwest need to identify which are the most important regional problems and assist in the coordination of special briefing packages to be presented to specific agencies and departments including the division of the workload in presenting the briefing packages; and

WHEREAS, at the 1990 and 1992 Annual ATNI Conferences resolutions were passed stating ATNI's policy/position on the Federal Acknowledgement Process; and

WHEREAS, at the 1991 and 1992 Annual NCAI Conference resolutions were passed stating NCAI's policy/position on the Federal Acknowledgement Process; and

WHEREAS, no presentation on Tribal Sovereignty issues would be complete without dealing with the Federal Acknowledgment Issue;

NOW THEREFORE BE IT RESOLVED, that NCAI recommends that the position presented to President Clinton should include NCAI's and ATNI's current position on Federal Acknowledgment. That is that Federal Acknowledgement Process reform legislation be

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a high priority item on the Indian Agenda for the Clinton Administration and be addressed in any Presidential Proclamation;

BE IT FURTHER RESOLVED, that NCAI recommends that the implementation of any "Government-to-Government" Policy Enquired include as conditions:

* Recognition that a lack of federal acknowledgement for all tribes is the major obstacle to the full implementation of any Indian Affairs Policy within the Federal system.

* Commitment to promote and implement the legislative authorization and appropriations supportive of the creation of an office entrusted with the responsibility of affirming tribes' relationships with the Federal Government and empowered to direct Federal Indian programs to these Tribes; and

BE IT FURTHER RESOLVED, that NCAI recommends that as the issue of lack of federal tribal acknowledgement for all tribes continues to be one of the most critical unresolved tribal sovereignty and rights issues, this issue needs to be identified as a specific agenda item for the White House meeting; and

BE IT FURTHER RESOLVED, that NCAI recommends that the Northwest delegates must include a person who is committed to presenting the issue of the non-recognized tribes to the White House Conference, at least one delegate should be from a non-recognized tribe. This presentation should include promoting NCAI's current position on Federal Acknowledgement--that is supporting the general legislative reform of the Process; and

BE IT FURTHER RESOLVED, that NCAI recommends that in the spirit of the U.N. Declaration on the Rights of Indigenous Peoples, that Tribal leadership speak out the continuing unjust violations of the rights of un-recognized tribes and provide a forum for representatives from tribes who are currently petitioning for a clarification of their status to address the President, Cabinet and agencies directly; and

BE IT FURTHER RESOLVED, that NCAI recommends that the draft bill promoting the legislative reform of the federal acknowledgment process be taken to the White House Conference; and

BE IT FINALLY RESOLVED, that NCAI recommends the following language for any briefing and issue papers:

Federal Acknowledgement Process

Congressional oversight hearings have determined that serious problems in the Federal Acknowledgement Process have unreasonably delayed the processing of petitions. Affected tribes have not received their rightful status as tribal governments. To provide direction and support the right of non-federally recognized tribes to petition under a clear, unbiased, and timely administrative procedure Congressional legislation is needed. Statutory reform should include: 1) the creation of an office or commission independent of the BIA to process petition; 2) the authorization of a minimum of $3.5 million per fiscal year for

petitioners; 3) at least $2.5 million per fiscal year for the review of petitions; 4) definitive and reasonable time lines for reviewing petitions; 5) an independent appeal process; 6) language opposing the review of any tribe recognized as of 1988; and, 7) criteria that gives due regard to the sanctity of the trust relationship by treating differently those tribes that can show previous recognition by the United States.

In 1977, the American Indian Policy Review Commission recommended the proposed legislative strategy. The Commission suggested that "...refusal...to accord Federal recognition...is not premised on grounds of equity and justice but premised on the lack of adequate appropriation of funds to properly serve those tribes and people who are already federally recognized..." At a 1988 Congressional Hearing, the BIA offered this justification for the inadequate staffing of its current administration process that review petitions of tribes seeking a clarification of federal status.

Established 1978, the BIA's Federal Acknowledgement Process has operated with only 2 review teams during most of its term. The BIA's current expansion to 4 review teams is inadequate to meet its current and rapidly escalating backlog on petitions. The Bureau has repeatedly fought replacing its administrative process with one created by Congress. Congressional legislation is needed to solve the continuing problem.

CERTIFICATION

The foregoing resolution was adopted at the 1993 Annual Convention of the National Congress of American Indians, held at the Nugget Hotel, in Reno/Sparks, Nevada, on the 3rd day of December 1993, with a quorum present.

Gaiash Kubos
gaiashkibos, President

ATTEST:

Recording Secretary

Adopted by the General Assembly during the 1993 Annual Convention, November 28-December 3, 1993, Reno/Sparks, Nevada.

Mr. ABERCROMBIE. Thank you, Mr. Rasmussen. It may have been your first time testifying here, but you did an excellent job of making your point. In fact, I have a couple of questions I want to try and elaborate on as a result of what you had to say. You did a terrific job. It didn't explicate all of the objections and observations in your summary, but I am going to refer to that probably in my questioning.

Let me go back first to Mr. Shapard and also Dr. Grabowski, if I can.

Mr. Shapard, Dr. Grabowski, in a sense, echoed what you were saying with her commentary that I summarized here as inherent conflict of interest. Would that relate to your first two problems where you talked about the lack of a clear definition, that which is sought with respect to what the tribes are entitled to, and then a definite definition of Indian tribe?

Mr. SHAPARD. I am not sure that they relate to——

Mr. ABERCROMBIE. Or rather, then another point you made was, standards are not consistent.

Mr. SHAPARD. That is true, but—well, the interpretations of the standards are not consistent.

Mr. ABERCROMBIE. That is what I meant.

Mr. SHAPARD. That is absolutely true. And what you find in one petition that seems to make the case for them, for positive decision, is used in the next case to turn a group down; and there is just no precedent. And when you ask them about that, they say, well, we take each case on its individual merits, and that we don't use precedent. Which means again, it does relate.

I see what you are getting at. It does relate to the subjectivity of the regulations, and you have just simply got to——

Mr. ABERCROMBIE. It is not, though—by no means is it inconsistent, however, to make such a statement, right, that obviously, those who fish on a great river in the northwest might have objectively totally different criteria upon which they have conducted their lives historically and otherwise from those who were on a great land—a great plain and hunted buffalo as opposed to say the Algonquins or the Senecas up in the Iroquois Nation in upstate—well, upstate New York or the New England area.

Mr. SHAPARD. Well, there certainly are differences in the cultures of the groups that we look at—or that the BIA looks at; I am not a "we" anymore—the thing that bothers so many is that they don't apply the same standards to measure that culture.

I mean, you just don't—I mean, if you have a group of fishermen, you certainly can't apply their fishing techniques to a group of plains Indians. But you can certainly look and see if they are a community or if they are a group of Indians who have resided in the same area for years and years and years, which has absolutely nothing to do with whether they fish or rode horses.

Mr. ABERCROMBIE. But whether they fish or rode horses might have to do with the self-definition. Another thing that the anthropological testimony is directing itself to, as I understand it, is that self-definition is important with respect to what constitutes a tribe of people—a belief system, a commitment, an acknowledgment, a self-acknowledgment.

Mr. GRABOWSKI. Mr. Abercrombie, if I may interrupt at this point, that is precisely the point—and I think that Dr. Campisi has made this point as well—that, yes, certainly one of the hallmarks of anthropology is cultural relativism and holism, and that you have to investigate what the tribe identity is from their point of view.

However, the way that the BIA has conducted these investigations is that they don't examine that. If you look at their summaries of evidence, they don't examine what the people's own concept of identity is. So that, how can you evaluate whether or not this group constitutes a group or even a cohesive community? How can you make a judgment on them when you haven't even looked at the most basic issues? Because, as Dr. Campisi said, what they are doing is receiving the views of non-Indians which are apt to appear in documentary sources. This is biased.

Mr. ABERCROMBIE. I see, for purposes of our discussion and to advance the cause of the legislation, I am accepting that as not only legitimate criticism, but something which has to be addressed in the legislation. That is what I am looking to try and find out: How can we write—what should we write into legislation that will take into account precisely this question, if it is possible to do?

Mr. SHAPARD. I think it is possible to do, and I think you can answer the same questions that now require this convoluted, nonsensical, scholastic, gymnastic kind of process very simply.

No. 1, go back to 1934 or 1930 or 1940, whenever we are sure we have got a clear-cut picture of Indians and when it was not real positive to be an Indian—anybody that comes around saying, I am an Indian, in 1934, was clearly an Indian—see if that same genealogical line is in place now, and then you have got a group that has remained in place.

If you have got a group, there is bound to have been some sort of political interaction or social interaction. If the same descendents of the same people are in place 50 years later or 60 years later, then why do you need to go back to prehistoric times to prove you have Indians?

Mr. ABERCROMBIE. Well, the reason I am—I don't think you do, and I don't care to pursue that further today.

My interest at this stage is being able to redraft or rework legislation that doesn't get down to the point where the Congress is, in fact, writing a series of protocols actually into the legislation, because we are bound to leave something out that should be in and put something in that should be out; and then you are in a fix of having to say, well, this is what the law says.

Mr. SHAPARD. Well, in all due respect, sir, I think if you don't establish the protocols, if you don't define what you are after, then you are allowing a Federal agency with a near-perfect record of failure——

Mr. ABERCROMBIE. Excuse me, Mr. Shapard. Defining what you are after and establishing protocols are two different things legislatively. One could amount to an administrative rule-making or a process that—and the other is saying the intent and where you want to go.

Mr. SHAPARD. We are talking about what you are looking at, No. 1, and what standards you are using to judge that, OK? If you

don't put that in some sort of legislative concrete, then you are allowing a Federal agency with a near-perfect record of failure in Indian programs——

Mr. ABERCROMBIE. OK. You know what we need then is for you to examine each other's testimony; and I don't mean to complicate it, but I mean this sincerely, because there are specific suggestions, legislatively speaking, in each of the testimonies that would accomplish what you are saying right now. But what I need and what the committee needs is for you to examine each other and see if we can get some—if it is possible in the best of all possible worlds, there would be a consensus as to what that language should read legislatively. If there isn't, we at least need the benefit of you having examined not only your own suggestions, but others, to see whether or not that can become clearer.

I hope you will take the time to do that. It is such an important thing.

Mr. Rasmussen wanted to make a point.

Mr. RASMUSSEN. Very quick, going back to Senate bill 611, Mr. INOUYE's attempt to clean up this process——

Mr. ABERCROMBIE. Yes.

Mr. RASMUSSEN. Once again, we start dealing with issues of community and an ambiguous statement. My tribe as happens—our aboriginal area is the greater Seattle area. Since the turn of the century, that land was too valuable for a reservation. Our treaty was done in 1855; the reservations were not created until 1935. There is a lot of time between there.

My family lives in their home. It was a homestead homesteaded in 1870. I still live in that house. Yet I have a telephone and I have a television set. I can talk to people and we have meetings all the time. Yet what is a community, sometimes to the BIA, is a reservation; to get a reservation, you have to be a recognized tribe. There are catch-22 situations all the time.

What we would like to do is just to be judged fairly, not in tricky ways.

Mr. ABERCROMBIE. I understand. Well, it is clear to me that we are going to have to rework the language to try to accomplish this. Dr. Cantrell, you used the word, to "validate" them, and then recited a—in Mr. Rasmussen's terms, a series of catch-22's. When you are out, you are in, and when you are in, you are out; and pretty much the judgment on that is what you say, in your instance, if I understood it correctly, is what didn't get said inasmuch as you weren't able to get any response to anything.

You probably should have taken Mr. Thomas Moore's approach and said, "silence is assent," and then gone out from there; and whatever you were doing must have been right, because nobody ever called you and said, don't.

Ms. CANTRELL. I was just concerned because the regulations and especially the criteria in the two bills that we are discussing today seemed to assume that the facts and evidence at hand are not in dispute. And clearly in a situation in which there are intervening parties who are going to argue that, no, these people are not a tribe, they have never been a tribe, you end up with facts that are in dispute, especially with the anthropological material.

Mr. ABERCROMBIE. I got the sense from your testimony that you found yourself having to transpose yourself into being a legal scholar, as opposed to being an anthropologist.

Ms. CANTRELL. Well, this is a legal proceeding, despite the fact that I was told that it was not a legal proceeding, it is an administrative process.

It seems to me that there are standards here, as Mr. Shapard has said, that I had to meet as an anthropologist. What evidence can I use to show what elements of what criteria? That was all I was asking, and they couldn't answer the question.

Mr. ABERCROMBIE. I see.

Ms. CANTRELL. So if I, in my best professional judgment, can pick out of the great universe of facts out there any fact I want and put it in a report, is that fact reliable? How does anybody know where that fact is from?

Mr. ABERCROMBIE. So all of you are saying we have got to establish a benchmark or a demarcation line of tribal definition, right?

Ms. CANTRELL. Well, I am, I think, really looking at how evidence and information are used. It seems to me that when you read the Bureau reports, you have no idea what they are talking about. There has to be a way to determine reliability of evidence. Experts have to be cross-examined; documents have to be——

Mr. ABERCROMBIE. I understand all of that, but I am also worried that the human dimension is going to get lost in all of this. Some of this is going to require people to be good to one another.

You know, there is a system—throughout Polynesia, really, but among the Samoans and the Hawaiians in particular—called Ho'oponopono, where there is a recognition that not everything is clear and not everything is precise; and what happens is, there is a kind of Polynesian version of a couple of old political laws—there are only two things that you do: Nobody leaves the room and nobody punches anybody. And you don't leave, literally, until it gets resolved, and you keep talking until it gets resolved. And the only criterion—the criterion is, it gets resolved; you are not allowed not to resolve it.

Ms. CANTRELL. Congressman, I will say that I wrote a report that I was very satisfied with. I don't know if the Bureau was satisfied with the report.

I think that what I am saying is that when you get a set of information about a particular group, instead of trying to pigeonhole that group into preconceived ideas about what an Indian is or is not, that you should look at the data and listen to the data and let the data tell you.

Mr. ABERCROMBIE. OK. But data is also human beings. One of the things that is being discussed—not so here today—is like fishing rights is one. There are a set of people who are a tribe and another set of people who aren't a tribe. And I hate to say it, but I detect the old western imperialistic activity, which is to say, let them all beat each other up.

The second you get into a situation where you can say, well, we managed to be able to stay a tribe, and you got screwed long enough that we can say you are not really a tribe according to what some judge in a western imperialistic context says, why, then to hell with you. As opposed to, well, look, we all took the shaft one

way or another; why don't we try and figure out how we can all help each other and be good to each other?

That may sound hopelessly naive to you, but I hate to get into a situation where I am drafting legislation that either permeates or accentuates to me what has been a version of divide and conquer for a hell of a long time. I mean, I have seen it out where we are as well. Well, let's put something out there and watch the Hawaiians beat the living daylights out of one another, trying to determine who is in charge and who isn't, and what is right, and what is mine and what is yours and all the rest of it, which is a real shambles of what history really meant it to be.

Ms. CANTRELL. Congressman, I think I understand what you are saying, and I think I agree with you. I would argue that the current criteria, as they are used, prevent the best evidence from being used.

Mr. ABERCROMBIE. OK. Thank you.

Mr. Campisi and then Mr. Rasmussen.

Mr. CAMPISI. The point you make about the relationship between the parties, I think is an important one and should be—it should be looked at in your legislation. As it stands now, the tribes come in as inferior parties to the debate.

The Branch has sole power to make a determination, and basically, it has sole power to review its determination and find its determination correct. That doesn't stimulate debate. And I can tell you from personal experience, members of the tribe sometimes get unhappy when you approach them as though you were equal.

I have worked on 22 petitions over the course of these 16 years, and I have had a number of run-ins when I have raised questions which I thought were reasonable questions on the part of the petitioner. We are always asking the same thing: What is sufficient evidence to prove this point and what do you consider to be evidence? And very often we get the answer, well, give us what you have got and we will determine if it is enough.

Now, if you can set a system up that gives the petitioner some equality in the debate, if you can set a system up that makes it more collegial, or if I can set a system up that gets both the bureaucrat and the anthropologist out of the debate, which may be the best solution, you may be able to move these things.

Mr. ABERCROMBIE. But won't you find yourself then in a parallel difficulty? That was the next point I was going to raise. You suggested and used the phrase "separate agency," but might not a separate agency find itself in the same position: Give us the evidence that you have, and then we will decide what it is—excuse me, then we will decide whether it is sufficient?

Mr. CAMPISI. It would if you don't limit that agency and if you don't put some controls on that agency. There needs to be some appeal system without—hopefully, without going to court, but to a group of peers. I mean, the histories of native populations in the different parts of this country are very different, the specific histories. And it is hard to believe that four or five people at the Branch of Acknowledgment and Research have such a ubiquitous knowledge that they can handle all of those histories.

Now, there are experts outside of the experts for the petitioning group and the experts for the Government who understand, who

know, the histories of various groups; and there ought to be some mechanism by which those people can be pulled in as they kind of——

Mr. ABERCROMBIE. Can I suggest something? Again, I hope you will forgive me making reference all the time to the—to our circumstances, but it might be instructive by virtue of being parallel, not necessarily analogous at all. But we have the Puna, elders who tend to take a long view and be a little kinder to those who think they know more because they are younger; and I have come over time to realize that there is good reason to have elders and to refer to elders, because they tend to have seen most of it already and not be so quick to judge other people.

Why couldn't we have as part of this process, particularly when there is some argument, or maybe a good degree of disagreement and argument among those who are claiming to be tribes, where you give the people involved, that is to say, the Native Americans, the chance to sit down without the interference or moderation—moderating element of a Government agency and let them talk things out, and then see if they can come up with something and the separate agency would have to accept it?

In other words, if some Indians were not a tribe and others who were already recognized as a tribe can work something out by themselves—I was going to say in private—really, the Native Americans have been shafted from time immemorial. I can't see we can't set up some circumstance whereby the Native Americans work things out with one another as Native Americans and then tell the rest of us what they have concluded and we say, all right, particularly if they are able to work out their differences.

Now, it may not be entirely classically, legally clean at that stage, but it could be affirmed at that point, if that is sufficient unto the day as far as the Native Americans are concerned.

Mr. CAMPISI. Well, that might work in some cases, but I think you have gotten a sense already that there are strong economic interests that operate in these cases and other kinds of interests that would make it, I think—it might make it as difficult for recognized Native American groups, Native American Indian groups to participate on a basis where they would be in effect bringing in more people to share in the same available resources.

I mean, that is always—that is an argument we often hear, you know, about recognition, because——

Mr. ABERCROMBIE. Yes.

Mr. CAMPISI. And I wonder——

Mr. ABERCROMBIE. A lot of that economic conflict, if you will, has been imposed upon the Native Americans where it might otherwise have been settled in a kind of manner, again—again, for a Hawaiian, if you come to the table, you come to the feast, everybody eats. Everybody eats, not some people who said we got more taro than you, or we had a better fishing day than you did. You know, the people who grew the taro didn't necessarily catch the fish, because they lived on a different part of the island, but everybody had the fish and the poi and the taro.

And if you came and you didn't have as much, well, maybe you had bad luck, maybe your circumstances were unfortunate. Maybe the hurricane hit Kauai, but it didn't hit Oahu. But you can't say

to the people on Kauai, tough luck to you, the hurricane hit you, because particularly if you are island people, you have to live together and cooperate, because otherwise everybody gets hurt.

But all I am saying is, everybody eats, and it is shared. You don't put all of the food at one end of the table and say, we have got it all over here and you don't have any, or we will dole it out to you. Everybody eats.

I hope I don't sound too naive to you, but I think that that is a basic—did you want to say something, Mr. Shapard, and then I will get to you, Mr. Rasmussen. I am afraid I am getting off into—the next thing I will be saying is Mr. Robert's Neighborhood or something, so I had better stop.

Mr. SHAPARD. Just briefly, the problem you are facing here is not only is there a major bias within the Bureau of Indian Affairs towards recognized tribes, there is a bias of recognized tribes against unrecognized tribes, generally speaking, not——

Mr. ABERCROMBIE. Yes, I understand that.

Mr. SHAPARD. And that if you are not recognized now, then there is a real reluctance for them to believe that you are, in fact, Indian; and that permeates virtually every recognized tribe that I have talked to.

Mr. ABERCROMBIE. But isn't that because there is something genuine to lose at this stage, or at least it is portrayed that way, that if there are more recognized tribes, the pie will be smaller, it will be more difficult?

Mr. SHAPARD. That certainly has a——

Mr. ABERCROMBIE. Sure. I mean, again, it is a human thing, and I understand it. But there are not all that many anymore. People have been dispersed, they have been killed, they have been diminished. We can't all—I cannot accept, if you want to talk about someone objective in that sense, because I have nothing to gain from any of this. I don't—I am not married to a Hawaiian, I have no aspirations towards taking Hawaiian land. I get in trouble out there because I am looked upon as someone that is too pro–Hawaiian, which I find outrageous. It is a badge of honor as far as I am concerned.

But I also understand that there are things to be lost, because some people have gained from things as they are. Or maybe that is an incorrect way of putting—not gained from things as they are, but what little there is available, at least they have had a shot at getting. And they have consolidated and worked hard and seen to it that what was there was protected and taken care of, and then suddenly there is a group of people knocking on the door saying, us too. And that is pretty tough to swallow, because you have had to give up so much already, or so much has been taken already; and then all of a sudden, there is another group of people saying, we should be included as well. But I don't think that that should automatically preclude you from having at least the opportunity to say, us too.

Mr. SHAPARD. Well, that is true. And I think most recognized tribes would honestly say that if they are genuinely Indian, then we would welcome them into the fold. The problem is, what is genuinely Indian? And that varies from tribe to tribe.

Mr. ABERCROMBIE. OK. I am going to conclude then this section. I understand completely, Mr. Rasmussen, because clearly, you are the surviving element on the panel with respect to the Native Americans.

Mr. RASMUSSEN. Mr. Abercrombie, you talked about native Hawaiians a lot and about their cultures. Native Hawaiians have not had to deal with BIA for the last 100 years.

Mr. ABERCROMBIE. I know. We are trying to get—I hope we can keep it separate.

Mr. RASMUSSEN. As you look at a lot of the people that are involved in this whole game, you will find BIA people—current and ex–BIA people through this whole thing. And if it was just left up to native people without the influences, that is almost like INOUYE used to say, and still does say, Indians have to figure this one out for themselves, because nobody else can do it for them. The BIA is still there, and until we take it out of the BIA, you are going to have that same problem.

Mr. ABERCROMBIE. OK. I think I have it clearly in mind in that regard.

I have one last point that anybody can answer, and particularly for you, Mr. Shapard. Mr. Thomas would like to have, for the record, your view; and I will put the question directly as he put it: Setting aside for the moment your views on the existing process, could you tell us what you think about the concept of legislative recognition?

Mr. SHAPARD. I think it should be preserved as a lifesaver, perhaps. I think——

Mr. ABERCROMBIE. Did you hear Mr. Alexis' testimony?

Mr. SHAPARD. Yes, sir.

Mr. ABERCROMBIE. I did. I think he expressed a somewhat similar view.

Mr. SHAPARD. I think there needs to be—the bulk of the questions, the bulk of the petitioners, I think, can be sorted through a fairly drawn administrative process. There are going to be some that really probably need to be looked at congressionally; that is my opinion. I think there should be some saving grace in that.

And along that line, I don't think it is probably a good idea to unequivocally ratify the previous decisions of the Branch, because I don't think necessarily that they are all very accurate. I think there are one or two cases that bear looking at again. I think if you are going to leave the standards pretty much as they are, the criteria pretty much as they are, as you have got in the present bills, there is no need to do that. If you are going to change the criteria and get something that is a little more reasonable and objectively drawn, then it may be worthwhile to go back and look at at least some of the cases.

Mr. ABERCROMBIE. But you would reserve the legislative recognition as kind of a court of last resort, or not first resort, but——

Mr. SHAPARD. Yes, sir.

Mr. ABERCROMBIE. OK. Thank you. Unless there is any—are there any other comments at this stage?

Mr. CAMPISI. Well, just a very short one. I don't understand why there has developed this distinction about nonrecognized treaty tribes. If they were recognized by the United States in a treaty,

who terminated them? Congress didn't. Why did it come about that the executive branch ended up terminating tribes? I mean, it seems that something is wrong with that concept.

I mean, if a tribe was recognized and had a treaty relationship with the United States, whether it acted on it or not doesn't seem to me to be determinative. My understanding was that only Congress terminated tribes. And yet we have a whole host of groups, some who were terminated and one, at least, who has been denied recognition following the act of the recognition that it was illegally terminated. Now, I think, you know, I think your committee needs to look at that and take back that power and control.

Mr. ABERCROMBIE. That has been made abundantly clear to me, at least as one member of it, and I recognize—no pun intended—the thrust of your remark; and it registers with me, I can assure you.

With that, I will say mahalo nui loa. Thank you very much to all of you. This has been highly informative to us. I assure you, we will go over this entire verbal record, all of which is being kept, all of which is being put together, and we will go over it in detail and try to come up with a product that is worthy of the time and attention and commitment and passion that all of you have put in, not only into your lives, but into this testimony today.

Thank you very much.

[Whereupon, at 1:30 p.m., the subcommittee was adjourned.]

APPENDIX

July 22, 1994

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

STATEMENT OF MR. WILLIAMS FROM MONTANA REGARDING H.R. 4709, SECTION 10 NORTHERN CHEYENNE LAND TRANSFER

MR. CHAIRMAN: I want to offer my support for H.R. 4709. Section 10 of this bill is of great importance for the Northern Cheyenne Tribe of Southeastern Montana. The Cheyenne are the only tribe in Montana that do not have a public high school on their reservation forcing students to travel between 32 and 108 miles (round trip) per day to attend high school. The trip is especially difficult and dangerous during bad weather.

The long distances make it all but impossible for Cheyenne students to participate in extracurricular activities and the lack of Cheyenne cultural concerns in the public schools have taken a toll on Cheyenne students. Student drop out rates range from a low of 33% to 53% which is significantly higher than the average high school dropout rate in Montana.

In November 1993, the Montana Superintendent of Public Instruction issued an order creating a high school district that will serve the entire Cheyenne reservation as well as some adjacent areas. The Superintendent's order was the culmination of tribal efforts spanning over 25 years and countless hours of hard work. The Superintendent granted the

Tribe's petition creating the new high school contingent on the land where the permanent high will be built being deeded to the high school, which is what Section 10 of H.R. 4709 provides for.

Historically, the Northern Cheyenne have been very protective of their lands, ninety-nine percent of the surface lands of the reservation is trust land, most of which is owned by the tribe. The remaining one percent is owned almost exclusively by tribal members. After careful consideration the Northern Cheyenne Tribal Council crafted Section 10, which provides for the land being transferred out of trust if the following conditions are met: the entire subsurface will be retained in tribal ownership, the land may

only be used for construction and operation of the high school and the land will revert to the tribe if a permanent high school has not been constructed on the site within eight years from the date the patent is issued.

Section 10 represents the unique concerns of the Northern Cheyenne People, it provides that upon the approval of the Superintendent of Public Instruction the Tribe may in the future tender a long-term rent-free lease of the site to the school district. Upon such tender ownership of the 40 acres would revert to the tribe.

While this process may seem unwieldy it meets both the needs of the tribe as well as satisfying the Superintendent's order.
The Superintendent of Public Instruction

has stated, unequivocally, that she no longer has jurisdiction over the matter (see attached letter) since establishment of the school district has been appealed to state district court by off-reservation opponents.

Personnel at the Department of Interior fail to understand that the only way to satisfy the legal requirements of the Superintendent's Order is for the Secretary to transfer the land out of trust to the school district. The Department has been unwilling and/or unable to reach a satisfactory conclusion to this matter even though Section 10 encompasses less than 6 pages, Department personnel have had the necessary materials for at least two weeks and the government is aware of the grave importance of this amendment to the

Cheyenne people.

It is time that the Northern Cheyenne realize the promise of a school on their reservation. I urge your support of Section 10 as written, it means the realization of that dream while at the same time protecting the historical land base of the Cheyenne people.

Thank you.

ENI F. H. FALEOMAVAEGA
Member of Congress

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to testify on H.R. 2549, and H.R. 4462, both designed to establish administrative procedures to extend Federal recognition to certain Indian groups. For many Indian tribes, the current process of recognition has been and continues to be an agonizing bureaucratic nightmare designed to please no one --- particularly our Native American community for whom this process is supposed to help.

Under the current system, it not only takes too long to compile the petitions, it takes just as long, if not longer, to process them. Senator McCain of Arizona reported that some petitioners have waited ten years or more for even a cursory review by the Bureau of Indian Affairs (BIA). For example, an application for recognition by the Chinook Tribe of Washington State has sat in the BIA for fifteen years without being processed. A few years ago, Congressman George Miller, Chairman of the House Committee on Natural Resources, described today's process as "an abomination." I could not agree more.

The current process is flawed and unrealistic. By now, Native Americans probably see our government as a big

monster that keeps growing a new head every year. John Rivers, a counsel for the Mowa Tribe has said, "if you could meet the criteria set by the BIA, then you were probably not Indian, because that means that you have stayed in one spot, could read and write, kept a journal of everything you have done for the past few hundred years, and were economically stable. Heck, if we had all that -- we would all be middle-class white people."

Mr. Chairman, today, when we tell Indian Tribes they must go through the "process" to obtain federal recognition, it is understandable when they say they have had enough of the "process."

The evolution of this process can be divided into four separate parts:

The **FIRST** process has been referred to by some historians as one of extermination. The official record provides us with an accurate picture of the federal government's policies toward American Indians. Who can forget the blunt statement from General Philip Sheridan who said, "the only good Indian I ever saw is a dead Indian," or how about "attack and kill every male Indian over twelve years of age," -- General Patrick Connor, before his troops slaughtered 262 Paiutes at Fort Reno in 1864.

The **SECOND** process imposed by the federal government and the Congress on Native Americans was removal. This was the forced removal of American Indians to lands west of the

Mississippi then termed as "Indian Territories." Today, we call this exile. In 1838, United States President Martin Van Buren put it this way, "no state can achieve proper culture, civilization, and progress in safety as long as Indians are permitted to remain." Thousands of Cherokees died of exposure on the infamous "Trail of Tears" when they were forced off their Georgia homelands to travel west. Today, we call this an outrage. In the past, our national leaders called it "manifest destiny."

The **THIRD** process was "assimilation." Never mind that their centuries-old culture and religious heritage were more advanced in terms of civilized behavior than anything existing in Europe at that time. This period's rationale was assimilate and westernize the so-called "savage" into more "civilized" Europeans.

The **FOURTH** process was termination. It was an extension in the 1950's of the assimilation policy. The relationship between the Federal Government and Tribal Governments were terminated during the 1950's in an effort to eradicate past fiscal inefficiencies and to reserve a trend of dependency on federal aid in Indian communities. For Indian reservations, "Termination" meant the loss of needed health care benefits from the Indian health service and lost eligibility for grants, loans and scholarships from the Bureau of Indian Affairs.

H.R. 2549 and H.R. 4462 are honest efforts, to improve

the Administrative process through which Indian Tribes can receive Federal Recognition.

Under the current system there is no timeline required for the BIA to respond to the initial request for Federal Recognition. My bill requires the BIA's branch of acknowledgement and research (BAR) to respond to the initial request within 30 days.

..The tribe is then asked to justify its petition and meet a certain set of criteria.

..This second petition is again reviewed by the Bar --- my bill requires the government to respond a second time within 60 days.

..Under the current-process, the Government conducts two additional review periods. A full review is then conducted by a three-man team consisting of an anthropologist, an ethno-historian, and a genealogist. Their decision is then published in the federal register with no deadline set to receive comments from either the tribes or the public. My bill will place a limit on this time to 120 days.

.....Finally, the board's decision is then sent to the Secretary of Interior for a final decision. My bill requires the Secretary to act on the board's decision within 60 days.

If a tribe disagrees with the Secretary's decision, the tribe can then sue in federal court.

Needless to say, the current process is quite

cumbersome and does not require the government to respond within a given time-frame, that is if they respond at all. The bill I have introduced mandates the BIA to meet a specific time-frame throughout the recognition process. Additionally my bill also authorizes the petitioning tribe to recover costs, whereas the federal government cannot.

A classic example of a tribe that has to deal with the present outrageous process is the plight of the Lumbee Indians of Robeson County, North Carolina. This tribe has been seeking federal recognition for approximately 110 years.

The Lumbees have filed petitions for recognition six times and have submitted themselves to demeaning studies, including a blood test to see how "Indian" they were. One test result showed one man as a "half blood or greater," while his own brothers and sisters were listed as "less than half." Another test included measurements of one's head, his teeth, and shape of your toe and finger nails.

Where are the Lumbees today? Their petition is back in Congress where it has been debated since the early part of this Century. This is an issue of right and wrong. It is heartbreaking for me to sit in Congress and listen to the Lumbees plead the same cause they have been pleading for over 100 years and then hear that other tribes are against Lumbee recognition because of a misplaced fear that this will mean a smaller division of federal assistance for the

rest of the tribes.

I would like to commend Chairman Richardson who has offered a companion bill which, along with mine, would improve a process which even the BIA has described as being "unrealistic in today's world." It is my hope that we will be able to incorporate H.R. 4462 and H.R. 2549 into a single bill and finally address the long-standing problems associated with the federal recognition process. I would also like to commend Congressman Abercrombie and Congressman Thomas, and other members of this Subcommittee for their strong support of this important issue. Finally, I would like to recognize Ada Deer, who in the short time she has headed the BIA, has made major and substantive changes in the way the federal government addresses the overall needs of our Native American community.

Thank you Mr. Chairman. I look forward to hearing the testimony of today's witnesses.

Samish Indian Tribe
OF WASHINGTON

August 3, 1994

Hon. Bill Richardson
Chairman, Subcommittee on Native Americans Affairs
House Committee on Natural Resources
Washington, D.C. 20515-6201

Attn: Tadd Johnson

Dear Congressman Richardson:

We wish to thank the Subcommittee for making time available for us to participate in its July 22 hearing on H.R. 4462 and H.R. 2549, of which we were only aware a few days ago. We mean no disrespect by not attending, but felt that we lacked sufficient time to prepare an adequately-documented statement on such a complex issue. You should also understand that, as a nation that has been struggling to regain its treaty rights and Federal recognition--mostly at our own expense--for 20 years, and which is facing a trial on this question next month, we have not a penny to spare, even in matters that may affect us very directly.

We will try to explain briefly, in this letter, why we feel that some of the provisions in H.R. 2549 may have truly unjust consequences which the Subcommittee may have overlooked.

We are one of five landless Indian tribes in Puget Sound that had tried, unsuccessfully, to intervene as parties in the Northwest Indian treaty fishing-rights litigation, United States v. Washington ("Boldt decision"). All of us signed treaties with the United States in 1855, but were never given the reservations

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promised to us. All of us lived as best as we could, receiving occasional Indian services from the BIA up to the 1950s. All of us were issued "blue cards" (or Indian treaty fishing identification cards) by the BIA in the 1950s, and each of our five tribes won an Indian Claims Commission breach-of-treaty judgment against the United States in the 1960s. Our Samish claims money is in a Treasury Department account to this day, because we have refused to take it until our sovereign status is clarified.

Lawyers for the Indian treaty tribes of Puget Sound decided that landless tribes should only move to intervene in the Boldt litigation, after all of the reservation tribes had joined. The initial judgment in favor of the reservation tribes was in 1974. Shortly afterwards, the BIA itself offered to help us intervene in the ongoing litigation and even obtained a supplemental FY 75 appropriation for that purpose. When the five landless tribes moved to intervene in 1975, however, the Portland Regional Solicitor that represented the United States, George Dysart, objected. He argued that we had all ceased to exist as Indian tribes.

We have since learned, through these persons' sworn depositions that Dysart, Assistant Solicitor Scott Keep, and BIA Central Office enrollment officer Pat Simmons had among themselves decided--without any research, notice, or hearings--that the Samish and other landless tribes should no longer be Federally recognized. We were actually on internal BIA lists as a recognized Indian tribe until 1966, and were considered recognized by the Indian Health Service in 1972.

Judge Boldt initially ruled that only Federally-recognized[3] Indian tribes can exercise treaty fishing rights. The Ninth Circuit Court of Appeals overturned this, saying that the descendants of treaty Indians need only be "organized". At hearings in 1975, we showed that we were still organized with a constitution, council, office, and employees. However, four years after this hearing, Judge Boldt suddenly issued an order holding that the Samish and four other tribes were not entitled to fish because we were not recognized. Furthermore--without a shred of relevant evidence in the hearing records whatsoever to support it--Judge Boldt added that we were not "successors-in-interest" to treaty tribes, were not their descendants, were not communities, and were not culturally Indian.

What Judge Boldt had done, in actuality, was to sign the proposed findings of fact submitted by George Dysart for the United States. He did not change a single word. On appeal, a divided Ninth Circuit took note of this irregularity, indicating that it would ordinarily require a reversal and remand. The Ninth Circuit also noted that Judge Boldt had based his judgment, at least in part, on whether we were Federally recognized--the same argument the Circuit had already overturned once before. The majority nonetheless affirmed the judgment against us, on the basis of Boldt's unsubstantiated socio-cultural findings of fact. Judge Canby, an authority on Indian law, dissented.

We have since discovered that Judge Boldt had been suffereing from Alzheimers disease for at least a year before he made this decision--and it was listed as a cause of his death shortly afterwards. On this basis, three of the five tribes that

lost their treaty rights because of his decision have joined in a[4] Rule 60(b) action in Federal court to reopen the case, which is currently pending before Judge Rothstein. We simply cannot afford to join them at this time.

That is the court decision which sec. 3(b)(4) of H.R. 2549 would entrench legislatively as a bar not only to our treaty rights, but our right to regain Federal recognition.

The Samish Indian Tribe initially responded to the Boldt order by pressing its petition for Federal recognition under the original rules promulgated in 1978. During the eight-year administrative process, we repeatedly challenged the BIA's reliance on field research which they claimed to have done, since we were denied access to the data and were unable to question the BIA's researchers under oath. We also objected to the fact that Scott Keep, who had advised George Dysart in opposing us before Judge Boldt, was participating in the review of our Federal acknowledgment petition.

Not surprisingly, our petition was denied, and we appealed to the Federal District Court in Seattle. Judge Zilly reversed and remanded, ordering the BIA to give us a Fifth Amendment hearing. He also stated that there an appearance of prejudgment by the BIA. Although the United States appealed this decision, the Interior Department's Office of Hearings and Appeals is going ahead with our hearing on August 22.

Judge Zilly ruled that petitioners have a right to a Due Process hearing, at least in a case such as Samish where there was evidence of some previous Federal dealings and services. He also firmly rejected the arguments of the United States and the

Tulalip Tribes that Boldt's contested 1979 order on treaty[5] fishing rights has any res judicata or preclusive effects on our eligibility for Federal acknowledgment. The issues are separate and independent, he ruled.

This is the Federal court judgment which sec. 3(b)(4) of H.R. 2549 would legislatively overturn.

We feel it is particularly inappropriate for Congress to preempt the judicial branch by legislatively overturning a judgment that is on appeal. It is unseemly even to consider this bill at this time, since it suggests to them that upholding the Zilly judgment will be futile; Congress will overturn it anyway.

The Subcommittee could well have overlooked these effects of this innocent-looking section, which appears to have been carefully drafted to avoid any clue as to its highly selective and discriminatory effect on the Samish and four other Indian tribes.

Subsection 3(b)(4)(B) uses the term "successor-in-interest to an Indian tribe". This terminology comes from Indian Claims Commission practice. The Samish Indian Tribe was determined to be the successor-in-interest to the treaty-signing or aboriginal Samish with respect to breach-of-treaty and land claims in ICC Docket 261.* Judge Boldt subsequently held that the Samish were not the successor-in-interest to the treaty-signing Samish with respect to fishing rights, ignoring the previous ICC judgment. The United States argued to Judge Zilly that the Boldt hearing was not only proper, but conclusive of issues that were not even

* Incidentally, the Tulalip Tribes were found, in Docket 262, not to be the successors-in-interest to any aboriginal or treaty tribe.

before either the ICC or Boldt--that is, Federal recognition.[6] Apart from the five tribes included in the Boldt order, we are not aware of any other Indian groups that would be barred from Federal acknowledgment by this subsection.

Subsection 3(b)(4)(C) refers to findings of fact made in previous litigation. In legal terms this is an argument of "issue preclusion." that is, issues of fact canot be relitigated by the same parties, in relation to the same or related legal claims. Judge Zilly repeatedly rejected arguments that issue preclusion applies to this case, noting that the Supreme Court has consistently held that Indian treaty rights and Federal recognition of Indian tribes are independent legal issues. Indians may have treaty rights without recognition (as for example the Menominees during the period they were terminated) or, of course, they may be recognized but have to treation or treaty rights.

In his brief in opposition to certiorari when we appealed Boldt's ruling, the Solicitor General of the United States assured the Supreme Court expressly that Boldt's findings and conclusions would not affect the five tribes' eligibility to seek Federal recognition. This is in the United States' brief. However, in the proceedings before Judge Zilly, Associate Solicitor Keep reversed this position, and insisted that the Boldt Order had resolved finally all issues of fact and law relating to the right of the Samish Tribe to be Federally recognized. By enacting subsection 3(b)(4) of H.R. 2549, Congress would be helping Mr. Keep make a liar out of the former Solicitor General.

We have limited our comments on H.R. 4462 and H.R. 2549 [7] to those parts which have a selective, discriminatory effect of the Samish and four other similarly-situated Puget Sound landless tribes. You might also consider, however, that neither bill provides for a hearing, at a minimum in cases where the petitioner meets the threshold test of some past Federal dealings and services a test we believe could be met by dozens of petitioners. If Judge Zilly;s rulings in our case stand, it follows that both bills are unconstitutional in part.

In summary, sec. 3(b)(4) of H.R. 2549 would, if enacted, have the effect of legislatively entrenching the contested 1979 Boldt order and legislatively overturning Judge Zilly's 1992 ruling on non-preclusion. It also has the effect of ratifying a Government misrepresentation to the Supreme Court of the United States, and interfering with ongoing litigation in the Federal courts.

We might add the Tulalip Tribes Inc., who we believe to be the real authors of Section 3(b)(4), have three times tried and failed to convenience the Ninth Circuit that they have standing to intervene in the Samish Federal acknowledgment litigation. They are no trying to deceive Congress into unwittingly legislating what the Federal courts have refused to hear.

Our office has documentation to support all that we have said and will gladly make it available to the Subcommittee upon request, or, if you wish, make our legal counsel available to consult with your staff.

We would appreciate it greatly if this letter could be made[8] part of the record of the July 22 hearing on H.R. 4462 and H.R. 2549.

Sincerely,

SAMISH INDIAN TRIBE

Margaret Greene

SNOHOMISH TRIBE OF INDIANS
18933 59th Avenue N.E.
Suite 115
Arlington, WA 98223

July 20, 1994

Honorable Bill Richardson, Chairman
Subcommittee on Native American Affairs
1522 Longworth House Office Building.
Washington, D.C. 20515-6201

Dear Chairman Richardson:

We are writing this letter to serve as testimony for the Subcommittee on Native American Affairs hearing to be held on Friday, July 22, 1994 to express our deep concerns regarding H.R.2549, to establish administrative procedures to extend federal recognition to certain Indian groups, and H.R. 4462, the Indian Federal Recognition Administrative Procedures Act of 1994.

H.R.2549 as written would eliminate the Snohomish Tribe of Indians from the entire acknowledgment process. Language in both bills would guarantee that the Snohomish who had a previous relationship with the federal government would never enjoy the full benefits of tribal recognition.

H.R.2549 Section 3 (b)(4) will unwittingly tamper with federal court decisions and current federal litigation. It would overturn the decision in the Samish case (Greene v. Babbitt) that the Boldt decision does not have a bearing on federal acknowledgment and upheld 5th Amendment Due Process for the Samish. It would preclude the 5 Washington Tribes (Samish, Snoqualmie, Duwamish, Steilacoom and Snohomish) from overturning Boldt in current litigation. This section appears to be designed to purposely exclude the 5 petitioning Washington Tribes by the use of wording that Assistant Solicitor, Scott Keep and the Tulalip Tribes, Incorporated, argued in U.S. District Court in the Samish case before Judge Thomas Zilly; an argument which was explicitly refused.

You may not realize that this is an implicit attempt to circumvent the Zilly decision; that it would have Congress override Treaty litigation. We feel that it is inappropriate to interfere with the judicial and constitutional integrity of the Zilly decision. Such decisions make clear that federal recognition and treaty issues are 2 separate issues. We must add that Judge Zilly, a Reagan appointee, is by no means a radical.

Further, last year the Snohomish Tribe of Indians served as grantee for an Administration for Native Americans funded project for the Samish Tribe for the development of a Due Process Approach to Federal Recognition before an Administrative Law Judge as remanded by Judge Zilly to the Department of Interior. This project included the taking of sworn depositions from federal government avowed "decision-makers" who made many incriminating statements. We strongly urge your Committee to review these depositions before any action is taken on any bill addressing federal acknowledgment.

Lastly, we urge the Committee to include the provision of a hearings that preserve 5th Amendment Due Process for petitioners in any federal acknowledgment process legislation.

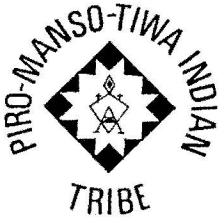
We, the Snohomish Tribe of Indians who have been in the federal acknowledgment process for the past 19 years, truly understand the need for improvement. Kathleen. L Bishop, a Snohomish Tribal member, served as a consultant to the American Indian Policy Review Commission Task Force #10 on Terminated and Non-Federally Recognized Tribes in a Report on the Landless Tribes of Washington State to get this process started. We have spent approximately $750,000.00 on this process. We have testified before Congress in 1988, 1989 and 1991. We have attended at least 4 hearings and numerous intertribal meetings throughout the Nation. We have supported the Affiliated Tribes of Northwest Indians and the National Congress of American Indians in their recommendations for a fair and equitable process for recognition. We will continue to provide guidance in any effort to create a fair, equitable, and efficient federal acknowledgment process.

Respectfully,

Alfred B. Cooper
Project Director

Respectfully,

William E. Matheson
Tribal Chairman



JUN 2 8 1994

PUEBLO OF SAN JUAN DE GUADALUPE, NEW MEXICO

June 8, 1994

Honorable Bill Richardson
United States House of Representatives
2349 Rayburn House Office Building
Washington, D.C. 20515-3103

Dear Representative Richardson,

It is my understanding that you have introduced legislation to reform the 25 C.F.R. 83 federal recognition process. If so, I would be in support of such legislation. I have enclosed information about our Tribe for your review.

Honorable Representative Richardson, something must be done to remedy the injustices and undue burden the 25 C.F.R. 83 process places on Indian tribes. I have personally been actively involved in the federal recognition efforts of my tribe for over ten years. I have witnessed and shared the effects of what it means to be non-federally recognized to the Tribe itself, and more importantly, to the people of the Tribe.

Although my opinion is subjective, the entire notion of "non-federally" recognized and the process to "become" federally recognized is unjust and inhumane. It is not proper or just to deny someone of their identity. Many of the 25 CFR 83 requirements show a lack of common sense about Indian culture and tribal life, apart from being culturally biased. The ultimate paradox is in the fact that non-Indians (staff of the Bureau of Acknowledgment and Research) decide who is and who is not an Indian.

This issue has human costs and has a demeaning spiritual, economic and emotional effect on the everyday lives of the people. Our Tribe is now and has always been a recognized sovereign in this region. The position of the spiritual and governmental leader of our tribe has been recognized by the Spanish and Mexican governments (See enclosed attachment). At the turn of the century, children of the tribe were taken to government boarding schools.

Recently, the tribe is notified by state and federal agencies in accordance with the Indian Child Welfare Act and Native American Graves and Repatriation Act (NAGPRA). Our Tribal Council governs the spiritual and administrative activities of the tribe and tribal members.

The re-establishment of the government to government federal trust relationship between the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe and the United States of America must be secured to ensure the protection of the Tribe's sovereignty and traditions.

Members of our tribe are willing to testify at any hearings that may be initiating in regard to this matter. This letter can also be read into the congressional record expressing my support of any legislation reforming the current federal recognition process.

Thank you for your time and consideration in this matter.

Sincerely,

Andrew J. Roybal
Project Coordinator
Piro/Manso/Tiwa Indian Tribe
Pueblo of San Juan de Guadalupe
P.O. Box 16243
Las Cruces, New Mexico 88004
(505) 527-1699

PUEBLO OF SAN JUAN DE GUADALUPE, NEW MEXICO

COMMUNITY PROFILE

The Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, is located in the Mesilla Valley in southern New Mexico.

The pueblos of the Piro Indians were referred to as early as 1540 during the Coronado expedition. At that time, the Piro Indians inhabited the area from just south of Belen to the vicinity of San Antonio along the Rio Grande and from the Rio Grande valley to as far east as Gran Quivira.

The pueblos of the Tiwa Indians were also referred to as early as 1540 during the Coronado expedition. At that time, the Tiwa Indians inhabited the area from just south of Isleta pueblo to the vicinity of Bernalillo and the area surrounding Taos and Picuris pueblos simultaneously with the Piro Indian inhabitation of central New Mexico.

Historically, the Manso Indians occupied the area of what is present-day southern New Mexico, far west Texas and northern Mexico.

As a result of Apache Indian incursions between 1670 and 1680, the Piro Indians first consolidated themselves in the area around Socorro, and then at the time of the Pueblo Indian Revolt of 1680 they removed to what was then southern New Mexico near present day El Paso, Texas.

At the time of the Pueblo Indian Revolt of 1680, many Tiwa Indians inhabiting the Isleta Pueblo and in vicinity also removed to what was then southern New Mexico near present day El Paso, Texas.

Following the signing of the Treaty of Guadalupe Hidalgo in 1848, the Cacique of the Piro and Manso Pueblo Indians relocated twenty-two families and established the Piro/Manso/Tiwa Indian Tribe of the Pueblo of San Juan de Guadalupe. Descendants of these Indians collectively comprise the membership of the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, and continue to live in Las Cruces, New Mexico. They continue to carry on the traditional and spiritual activities of the pueblo today.

Since the late 1960's, the tribe has been seeking federal recognition. The tribe had filed a formal petition with the Bureau of Indian Affairs (B.I.A.) in 1973. This petition, however, was inadequate due to a lack of funding for further research, and not actively reviewed by the B.I.A..

In 1976, the Honorable Senator Pete Domenici introduced legislation, Senate Bill 3352, granting federal recognition to the tribe to the United States Senate. In July of the same year, then New Mexico Governor Jerry Apodaca officially endorsed Senate Bill 3352. However, the bill died in committee.

In 1992, with the aid of a 1990 research grant from the Administration for Native Americans (ANA), the tribe once again submitted a completed petition for federal recognition to the B.I.A.'s Bureau of Acknowledgment and Research. In August of 1993, the Bureau of Acknowledgment responded, commenting that certain points of the petition were unclear and more research was needed.

The following year, the tribe received another research grant from ANA for the purpose of providing historical and contemporary data requested by the Bureau of Acknowledgment. Partial funding was also granted for the purpose of social and community development planning. Present tribal plans include the establishment of a community center designed to provide social services to tribal members.

Despite previous set backs, the Piro/Manso/Tiwa Indian Tribe is moving forward with community, social, and cultural development. However, a successful outcome of the federal acknowledgment process will improve the tribe's ability to continue its culture for future and present generations.

A BRIEF HISTORY OF THE PIRO/MANSO/TIWA INDIAN TRIBE PUEBLO OF SAN JUAN DE GUADALUPE

INTRODUCTION

The Piro/Manso/Tiwa Tribe, Pueblo of San Juan de Guadalupe, constitutes the only organized Piro Indian group remaining either in the United States or Mexico. Their immediate predecessors came to Las Cruces, New Mexico primarily from Juarez and Senecu, Chihuahua, though their original homeland was in central New Mexico, where they had occupied various villages and had enjoyed a well differentiated culture by the time of Spanish conquest.

Some Piros survived epidemics, famine, raids, rebellion, geographical displacement and the like, and some intermarried with the conquerors or other tribes. Before 1681, most of them had migrated into the El Paso Valley, and within a few years, most of the remaining Piro population in Mexico was gone, while all their central New Mexico villages had been abandoned.

TRIBAL LEADERSHIP

The Tribe has been under the spiritual and secular leadership of hereditary Chiefs called Caciques since time immemorial. From the time of earliest records, this has proved to be true. Cacique Caetano Roybal, in El Paso del Norte by 1794, was listed on the 1803 and 1806 census lists with his family in Chamisal, and his wife was Anastacia Benavides. Their son, Jose Francisco Roybal, married a widow, Leogarda Anaya (AACJ 1847: Reel 8), who was listed on the 1803 and 1806 list of Indians at Our Lady of Guadalupe Mission (AAD 1803, 1806). By the 1810s, recording of tribal affiliations in parish records and census reports had waned, and ended when Mexico's 1820 Constitution abolished Indio racial status (Spicer 1962:334). "Indigene replaced Yndio in Paso del Norte records. Pueblo Indians were not listed tribally, while Apaches were referred to as indio Apache or yndio barbaro ("wild Indians").

Jose Francisco's son, Agapito, married Albina Jemente (then later, Maria Jostea Enriques, and then Josefa Manrique). He was Cacique in Chamisal in 1836, according to the El Paso, Juarez Archives lists, and on the 1844 list of Indigenes Native family heads from Chamisal and Barreal districts (JA 1884: Reel 13). Agapito's and Albina's son, Jose Roybal, born in Chamisal in 1832 (married to Isadore Lopez, then Isabel Salado), became Cacique in 1862 (ACCJ 1862: Reel 8), and was listed as one of the Indigenes de la Cabezera, Natives of the Regional Capital, Paso del Norte, as eligible for the Mexican Army's military draft in 1862 (JA 1862a: Reel 24), with other descendants of Indians on the 1844 census.

Jose's son by Isadore, Felipe, was Cacique of the Piro/ Manso/ Tiwa Tribe about 1865, and remained Cacique until 1906. Felipe Roybal's widow, Francisca Avalos, acted as Caciqua Regenta after his murder, with her Assistant, her brother Senovio Avalos, as Cacique Regent. Felipe's son, Vicente, succeed as Cacique in 1935. His wife, Isidra, was Caciqua Regenta after his death in 1978 until her own death in 1982. His son, Felipe, has been Cacique since, and his Assistant Cacique since 1991 has been Edward Richard Roybal.

EL PASO DEL NORTE

Following the original enforced Spanish resettlement of Piros at El Paso del Norte in the late 1650s, they lived within European dominated El Paso Valley communities for over two centuries. Residing beside Indians from other tribes, they lived as an ethnic group within El Paso, Senecu or Socorro. Each of these Indian villages had Indian military and civil officials who acted as part of the governing structure of the community, under a Cacique, who carried the core Pueblo beliefs and customs. The Piros never lost their identity or customs as Pueblo Indians, despite acculturative Spanish and Mexican, and later, Anglo influences.

In the Mesilla Valley, the primarily El Paso Piro immigrants and Senecu emigrants, along with a very few Ysleta del Sur Indians, lived in the presence of Hispanics and Americans as they had in El Paso, and took part in the settlement of the new Mesilla Valley towns along with non-Indian emigrants from the El Paso area.

SETTLEMENT OF THE MESILLA VALLEY

The St. Genevieve's Church at the core community site in Las Cruces, and the mission church of Nuestra Senora de Guadalupe (at Tortugas), were the focal points for ethnic identity and customs. Indian dancing in the plazas of their churches and at Picacho, the lighting of bonfires on their sacred mountains on feast days, characterized the group's Indian life. Governmental restrictions on the public display of religious devotion in conjunction with considerations of economic survival fueled the migration to the Las Cruces area in the mid1800's.

It appears probable that some Piro emigrants were present in the Mesilla Valley on the Dona Ana Bend Colony by 1843, prior to the establishment of any other permanent settlement. Lt. Sackett of the U. S. Army garrison, coming to the Las Cruces area from Dona Ana in 1849 to lay out the tracts for the future city, reported that he found about 120 people already living there in brush reinforced clay-shelled shelters (jacales) on what came to be the plaza near Church Street and Las Cruces Avenue (Staff, "Mesilla Valley's history: Rich, vibrant, and not that long ago," Las Cruces Bulletin, 13 Sept. 1989, C2). These individuals apparently moved into assigned lots in the new 84-block area of Las Cruces when it was laid out by Sackett's survey team. There is only a vague

description of this group housed in a small pueblo or village community at the site of what became the Las Cruces civic center at the time of Sackett's arrival. The group, however, was situated at what eventually became the civic center plaza area.

These former El Paso Piros, now in Las Cruces, appear to have been organized under the leadership of a local Cacique by 1849. Some elder Piros claim the Tribe used the private home of a tribal elder as a meeting house, a trading center and social hall, dating from about that time (late 1840s). They danced in their Las Cruces Plaza and used a kiva and a makeshift meeting hall only a few blocks from the site of the present core community. After 1859, the Tribe used the plaza of the local church of St. Genevieve's for their fiestas and dances until the priest barred their doing so in the early 1900s. That building stood at the edge of the present civic center plaza area.

The location of the Cacique's compound in the near vicinity, only a block away, suggests the probability that at least some of the Piros were already making homes in this early pueblo at what came to be Las Cruces, and further, that the Pueblo Sackett encountered indeed was the early Piro pueblo. What is not clear is whether some or all of these people at the little pueblo already were permanent residents, though it appears that at least 5some participated in the drawing of lots for parcels of land in the 84-block Las Cruces area, or later acquired such lots.

TRIBAL CULTURAL LIFE

The Piro/Manso/Tiwas built fires on the nearby mountains and otherwise venerated their patron saint in an amalgamation of Indian and western Christian rites, by the1880s. They conducted ceremonies within the kiva at the family compound of the Caciques in the Las Cruces core community, periodically throughout each year, until that block of buildings was partially razed during urban renewal during the early 1960s. The Tribe's spiritual leaders conducted private rituals each December 10,11 to support the public ceremonies which eventually became an annual devotional event in the Las Cruces area each December 12.

The Tribe's ceramics and other crafts, Piro ceremonies, Indian olla and other dances and rabbit hunts were activities which they conducted differently than their non-Indian neighbors, and their Piro language, songs, drumming and smoke ceremonies were peculiar to themselves in the area.

BOARDING SCHOOL PERIOD

The Piro/Manso/Tiwas were treated as American citizens and voted in elections, but continued to be identified as Pueblo Indian in the local community after 1900. Prior to 1900, public school education was not available for all Las Cruces area Indians. Having never abandoned tribal relations, they were persuaded or coerced into sending their children to boarding school from the 1890s through the first two decades of this century.

Though scores of the Tribe's youth attended boarding school, this opportunity appears to have contributed surprisingly little to their educational status or general wellbeing. After 1900, as local public education became more widely available, fewer of these children were sent to Federal boarding schools.

TRIBAL CORPORATION

On the eve of World War I, the Tribe preempted a tract of land through the normal processes available in the area, and built their church to Nuestra Senora de Guadalupe, as well as a community center and dining hall in Tortugas, just west of University Park near Las Cruces. In 1914, working with Eugene van Patten and other friendly non-Indians, the Tribe founded a daughter corporation under state law as a religious-besot service and business organization, to further certain limited development purposes of the Tribe and its leaders, without allowing the corporation to the traditional tribal organization itself. Ysleta del Sur formed a similar corporation for the same purposes at about the same time.

Throughout its association with the daughter corporation, the Tribe always held its own annual elections on New Year's Eve to elect its own officers separate from corporation Board election, at the home of the Caciques, in Las Cruces. The corporation became a vehicle for maintaining customs the Tribes' ancestors had brought to Las Cruces, including the celebration of their Holy Days, and through which they dealt with the Catholic Church regarding their activities. The corporation also carried on building and maintenance programs for the Pueblo. The Tribe's Cacique and other spiritual leaders still conducted private rituals.

Perhaps in part due to the rigors of boarding school experiences, and the sharp recollection of the loss of their lands and rights to publicly carry on their religious activities in Mexico, the Tribe did not pursue their rights or entitlements as Indians aggressively. The Tribe was not, however, otherwise treated as a group needing special services from any particular external government agency, though the condition of poverty in Tortugas (with which they were still then identified) was found to be extreme during the 1930s in federally-funded sociological studies.

DEINDIANIZATION OF TRIBAL CORPORATION AND PUEBLO LANDS

During the mid-1940s, while many adult male tribal leaders were in the armed forces or working to support the war effort, the Tribe began to lose control over the daughter business corporation. In the late 1940's and early 1950's, there was a hostile take-over by non-Indian members of the corporation. This take-over resulted in the permanent separation of the Las Cruces-based tribal core community from the enterprise at Tortugas. The takeover group at Tortugas continued to conduct activities including the Guadalupe Day dances and A Mountain pilgrimage, which always had been associated with the Tribe.

The Cacique Vicente Roybal's attempts to accommodate the takeover group while preserving the rights and well being of the Tribe were mostly unproductive. Though his presence was demanded at Corporation-sponsored public ceremonies, he retreated from direct participation as the hope waned that there could be a reconciliation which would result in the resumption of leadership roles in the organization on the part of Piro/Manso/Tiwa tribal leaders, such as Vicente Roybal's sons. By the mid-1950's, most Piros, as well as their Cacique, no longer were active in corporation affairs, and no longer participated in religious activities directly associated with Tortugas.

REUNIFICATION AND CONTINUATION

Tribal meetings and annual New Year's Eve elections continued in Las Cruces, at the home of the Cacique or at the home of other tribal officers and members from the 1950's through the 1980's. Only a small number of the Tribe's members belonged to the corporation at by the 1970's, and none do today. Most corporation members are of non-Piro descent, yet they carry on customs based on Piro models, and bar the majority of Piro descendants from participation in the activities and property which were part of their heritage and which helped to identify them as Indians.

The Tribe continued to pursue its common welfare under the leadership of a hereditary succession of the Cacique, with occasional help from sympathetic non-Indian Hispanics and Anglos. In the 1960's, with Termination policy on the wane, the Tribe attempted to obtain Federal acknowledgment by means then available. They pursued legislative acknowledgment without success, and are now making a submission of a Federal acknowledgment petition under 25 C. F. R. 83.

STRENGTH AND RICHNESS FOR THE FUTURE

This Tribe is distinct in that they represent the sole functional, organized remnant of the old Piro population and culture. This Tribe is unusual in that they have had to tolerate the reinterpretation of widely-known aspects of their culture by non-Indians, who carried on versions of Piro ceremonies as if the Piros themselves no longer existed.

Still, the Tribe has found ways to preserve and continue with aspects of their ceremonial life until the present largely out of the public eye, and are conducting their own political activities entirely apart from their former colony at Tortugas. The peculiar aspects of their situation and condition require the evaluation of their character as an Indian Tribe in light of the historical events that make them different from any non-Indian group, and from most Indian groups.

Documentation available from Tribal Office

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