TESTIMONY
OF
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U.S. DEPARTMENT OF THE INTERIOR
AT THE HEARING
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON FIXING THE FEDERAL ACKNOWLEDGMENT PROCESS

November 4, 2009

Mr. Chairman and members of the Committee, my name is George T. Skibine and I am the Acting Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. I am pleased to be here today to present the views of the Department of the Interior on Fixing the Federal Acknowledgment Process. We recognize Congress has plenary authority over this issue and look forward to working with this Committee to devise solutions on how to improve and streamline the Department's Federal acknowledgment process. Appearing with me before you today is Mr. Lee Fleming, the Director of the Office of Federal Acknowledgment.

Assistant Secretary Larry Echo Hawk is committed to reforming the acknowledgment process, and we are currently exploring ways to improve the process. One of the problems that we are aware of is the significant amount of time it takes for some, if not all, petitions, to be processed from beginning to end. We have undertaken a process to revise the current regulations in 25 CFR Part 83 to eliminate any steps in the process that we find to be unnecessary as well as to implement deadlines so that a timeframe for considering petitions can be determined with certainty.

The acknowledgment of the continued existence of another sovereign entity is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables that sovereign entity to participate in federal programs for Indian tribes and acknowledges a government-to-government relationship between an Indian tribe and the United States.

These decisions have significant impacts on the petitioning groups, the surrounding communities, and federal, state, and local governments. Acknowledgment carries with it certain immunities and privileges, including partial exemptions from state and local criminal and civil jurisdictions, and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

The federal acknowledgment process set forth in 25 CFR Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision on whether to acknowledge a group. When the Department acknowledges an Indian tribe, it is

acknowledging that an inherently sovereign Indian tribe has continued to exist socially and politically since the beginning of European settlement. The Department is not "granting" sovereign status or powers to the group, nor creating a tribe made up only of Indian descendants.

Under the Department's regulations, in order to meet this standard, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

(1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;

(2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;

(3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(4) provide a copy of the group's present governing document, including its membership criteria;

(5) demonstrate that its membership consists of individuals who descend from the historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity, and provide a current membership list;

(6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and

(7) demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship.

A criterion is considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the continued tribal existence of a group as an Indian tribe.

OFA consists of anthropologists, genealogists, and historians who review, verify, and evaluate petitions from groups seeking federal acknowledgment. Since the process began in 1978, 67 petitions have been resolved, 45 through the Department's acknowledgment process (16 acknowledged, 29 denied acknowledgment – representing 105 decisions composed of 51 proposed findings, 47 final determinations, and 7 reconsidered final determinations) and 22 by Congress or other means.

The last hearing on this topic was on April 4, 2008 and in that testimony the Department's witness testified the Department would consider various ideas for improving the OFA process. In the *Federal Register* on May 23, 2008, the Department

published guidance and direction to the Office of Federal Acknowledgment for managing recurring administrative and technical problems in processing petitions for federal acknowledgment. This guidance and direction has or will produce results in dealing with the following problems:

- splintering petitioning groups,
- handling petition documentation when disputes between factions of a petitioner arise,
- providing technical assistance,
- processing expedited decisions,
- reducing the time period for which petitioners must submit evidence,
- processing expedited findings against acknowledgment,
- processing decisions against acknowledgment based on failure to meet fewer than seven criteria,
- maintaining integrity of the process, and
- establishing inactive status for petitioners that are no longer in contact with the Department or who have not provided adequate documentation.

Our goal is to continue to improve the process so that all groups seeking acknowledgment can be processed fairly, systematically and completed within a set time frame. This goal is in line with other goals:

- to ensure that when the United States acknowledges a group as an Indian tribe, it does so with a consistent legal, factual, and historical basis, with uniform evidentiary standards;
- to provide clear and consistent standards for the review of documented petitions for acknowledgment; to expedite an administrative review process for petitions through establishing "sunset" deadlines for decisions; and
- most importantly, to provide adequate resources to process petitions meeting the expectations of Congress and the people affected by federal acknowledgment decisions.

We welcome the interest of Congress in the acknowledgment process, and are willing to work with the Congress on legislative approaches to the Federal acknowledgment process. Thank you for the opportunity to testify. I will be happy to answer any questions you may have.