S. HRG. 112–32

S. 546, THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS RESTORATION ACT OF 2011; S. 636, A BILL TO PROVIDE THE QUILEUTE INDIAN TRIBE TSUNAMI AND FLOOD PROTECTION, AND FOR OTHER PURPOSES; AND S. 703, THE HELPING EXPEDITE AND ADVANCE RESPONSIBLE TRIBAL HOMEOWNERSHIP ACT OF 2011

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

APRIL 14, 2011

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THURSDAY, APRIL 14, 2011

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:20 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. The Committee will come to order.

This afternoon, the Committee will hold a legislative hearing on three bills that will have, without question, a significant impact on the lives of individual Indians and will improve how tribes are able to use their own resources.

The first bill, S. 546, the Little Shell Tribe of Chippewa Indians Restoration Act of 2011, was introduced by Senator Tester. In fact, if I recall correctly, this is the first bill that Senator Tester introduced when he became a United States Senator. This bill would extend recognition to the Little Shell Tribe of Chippewa Indians and make them eligible for all the rights and privileges afforded to federally-recognized tribes.

Senator Tester has been a great champion of this bill, and I am sure he will have more to say about the importance of the bill in his opening statement.

The second bill we will discuss today is S. 636, the Quileute Indian Tribe Tsunami and Flood Protection Act. Senator Cantwell introduced this bill, that will allow the Quileute Tribe to settle longstanding boundary issues and move their people to safer ground outside a tsunami and flood zone.

And the third bill we will discuss is S. 703, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011. This legislation is known as the HEARTH Act. I was pleased to be an original co-sponsor of this bill with my partner, Vice Chair and good friend, Senator Barrasso. The HEARTH Act will streamline the leasing process for tribes and individuals. This will help tribes use their resources in a more efficient way, and to provide economic development, education, housing and other opportunities for their members.

Today we will hear from the Administration, the affected tribes and Indian organizations on these bills. I encourage any other interested parties to submit written comments to the Committee. The hearing record will remain open for two weeks from today.

Senator Barrasso, I would like to ask you for your opening statement.

STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman. I thank you for holding the hearing today, and I greatly appreciate your willingness to direct the Committee's attention to my bill, S. 703, commonly referred to as the HEARTH Act.

I want to thank you and Senators Tester and Johnson and Thune and Udall for agreeing to co-sponsor this piece of legislation. As you know, this Act has been a priority of the Committee for a number of years now. During the 111th Congress, the Committee approved by voice vote a virtually identical bill. This Act provides Indian tribes with an alternative process for long-term leases of lands, a process that would not require the Secretary of the Interior to approve leases of surface lands. I think that would eliminate a lot of red tape.

I must say, Mr. Chairman, with regard to S. 546, the bill which would recognize the Little Shell Tribe, I understand and appreciate how important this measure is to Senator Tester, and I know it is important to the Little Shell members who support it. I do feel compelled to reiterate the comments that I made at the Committee's business meeting last week with regard to the Chairman's Native Hawaiian bill. In my view, the significance of recognizing a tribal group is far-reaching for the tribe, for its members and for the United States.

That is why we have an exacting administrative recognition process to determine which native groups should be recognized by the Federal Government and which native groups should not. The Executive Branch is better suited, in my opinion, than the Congress to perform the factual and historical analysis necessary to reach the right decision in these cases. That has been and continues to be my position on the tribal recognition bills that have been referred to the Committee.

In this particular case, I understand that Little Shell has pursued the recognition process and is now appealing a negative decision by the Department. I don't know if it is good policy for Congress to second-guess the Department in these difficult decisions, and for those reasons I cannot support this bill.

Finally, Mr. Chairman, I want to thank our witnesses for traveling long distances to be here today, and I look forward to hearing their testimony. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Now I would like to call on Senator Tester.

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Mr. Chairman, and I want to thank Ranking Member Barrasso for his honest thoughts about the recognition bill. I do want to get into a little bit of the history to refresh and maybe give some additional information. But most importantly, I want to thank you, Mr. Chairman, for holding this hearing not only on the Little Shell bill, but also on the HEARTH Act. I think the HEARTH Act is critically important to folks in Indian Country, particularly in the west.

As we have discussed in past years, Federal recognition of the Little Shell Tribe of Montana is long overdue. They have been a part of Montana's history and culture for generations. The tribe is recognized by the people of Montana, our State government, all of our tribal governments, in fact, the Montana-Wyoming Tribal Leaders Council just faxed me a letter of support yesterday. I would ask, Mr. Chairman, that we could include that in today's Committee record.

The CHAIRMAN. Without objection, so ordered.

Senator TESTER. Thank you.

[The information referred to follows:]

Montana Wyoming Tribal Leaders Council
175 North 27th St., Suite 1003 Billings, MT 59101
Website: www.mtwytlc.org Email: belcourt@mtwytlc.com

RESOLUTION # 2011-04-11-05

A RESOLUTION TO SUPPORT THE FEDERAL RECOGNITION OF THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA

WHEREAS, the Montana-Wyoming Tribal Leaders Council (Tribal Leaders Council) has been created for the express purpose of providing a unified voice for Tribal governments and a collective organization to address issues of concern to member Tribes and their peoples; and

WHEREAS, duly elected Tribal Chairs, Presidents and Council Members of the Tribal Governments make up the membership of the MT WY Tribal Leaders Council and as such are fully authorized to represent their respective Tribes; and

WHEREAS, by acting in unison to direct the formation of national, regional and local policy elected Tribal Leaders succeed in providing leadership on all issues that may affect the Tribes and reservation communities; and

WHEREAS, the Tribal Leaders Council strives to advance and to safeguard the sovereign authority and cultural integrity of each member Tribe; and

WHEREAS, Tribal Leaders have considered the matter of federal recognition for the Little Shell Tribe of Chippewa Indians of Montana and the Little Shell Tribe of Chippewa Indians Restoration Act of 2011; and

NOW, THERFORE BE IT RESOLVED that the Tribal Leaders Council does hereby express full support for the Little Shell Tribe of Chippewa Indians Restoration Act of 2011 or enacting legislation which will extend federal recognition to the Little Shell Tribe of Chippewa Indians of Montana thereby making the Tribe eligible for all services and benefits provided by the United States to federally recognized American Indian Tribes.

CERTIFICATION

We, the undersigned, as the Chair and the Secretary of the Montana Wyoming Tribal Leaders Council, do hereby certify that the foregoing Resolution was duly presented and unanimously approved with a full quorum present, at the Quarterly Board Meeting of the Montana Wyoming Tribal Leaders Council, which was held on the 11TH and 12th of April 2011 in Billings, Montana.

Chairman **Jay St. Goddard**
MT WY Tribal Leaders Council

Secretary **Donna Buckles-Whitmer**
MT WY Tribal Leaders Council

Senator TESTER. The Native American Rights Fund and other national Indian advocacy groups also recognize them as an American Indian tribe. Apparently, the only group who doesn't recognize the Little Shell of Montana is the U.S. Department of the Interior. And actually, in 2000 they did recognize them. That was the year they issued a positive decision stating that in its petition for Federal recognition, the tribe met all seven of the mandatory criteria. Let me repeat that. In the year 2000, the Department of the Interior found the Little Shell Tribe of Montana had met all seven of the mandatory criteria.

But the Department wanted more paperwork, so the tribe submitted 10,000 pages of additional documents and the agency reversed their decision. That is why we are here today.

So Mr. Chairman, I understand the Department of the Interior is doing a lot of important things. I have friends all over that Department, some of them here today. For the most part, we work very, very well together. But on this issue, I think we can do better.

So let me be clear about one thing. I would much rather have the tribes get recognition through the administrative process, as the Ranking Member indicated. These critical decisions should be based on history and science and culture, rather than the politics of today.

However, we do have alternative ways for recognition of tribes, because the administrative process isn't always perfect. It doesn't always work the way it was intended, and the Little Shell Tribe is a good example of one of the few times Congress should override the administrative process. We have held hearings on past versions of this bill, and the broken recognition process in general.

People familiar with the Little Shell are well aware of their efforts to gain recognition. Early in the late 1800s, early 1900s, Congress appropriated money to purchase a land base for the tribe, but the BIA didn't do it. In 1934, after Congress passed the Indian Reorganization Act, the BIA told Little Shell it couldn't recognize them because the tribe had no land base.

In 1940, the BIA told them that although they deserved recognition, the agency didn't have the money any more. And if you fast forward to 1978, six months before BIA even issued its final regulations that created the Federal acknowledgment process, the Little Shell Tribe submitted its application. For 14 years, this homeless, impoverished Indian tribe in rural Montana collected documents and other evidence to prove their historical evidence. Despite their persistence, and a lot of help from good advocates, the administrative process failed them once again.

In 2009, nine years after the announcement of a preliminary positive decision, and collecting even more evidence of them as a tribe, the BIA changed its mind and wrongly denied their petition for recognition. My bill simply seeks to right that wrong. Mr. Chairman, the bill simply requires the Department of the Interior to treat the members of the Little Shell Tribe the same way they treat every other American Indian Tribe in our State and in our Nation. Recognizing the Little Shell Tribe of Montana is the right thing to do, and from my perspective, it is long overdue.

So I want to thank you again for holding this hearing, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tester, for your opening statement.

Senator Cantwell, I recognize you for an opening statement.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman, and I want to thank you and Vice Chairman Barrasso for holding this important

hearing, particularly on the Quileute Tribe Tsunami Protection bill, and for doing so so quickly.

I also want to thank all the witnesses for coming here today, especially Chairwoman Bonita Cleveland for coming all the way from La Push, in my home State of Washington, to testify on the second panel. She not only had to fly 2,000 mile but also had to drive four hours and take a ferry ride to get here from the Quileute Reservation.

The Quileute reside on a one square mile reservation surrounded by the Olympic National Park, and bluffs. And the Quileute have one of the most beautiful beaches in the world. While the setting may be very picturesque, the tribe faces danger every day. Because of the small size of the tribe's reservation, most of their tribal facilities, including their day care center, elder center, tribal office and home sites sit directly in the path of a potential tsunami.

Just a few weeks ago, in the early morning, the Quileute tribe evacuated several hundred people to higher ground because of the potential tsunami caused by the large quake in Japan hours earlier. Fortunately, the tribe had hours of advance warning to start the evacuation and the tsunami that eventually arrived was small.

However, a tsunami caused by an earthquake on the Cascadia Subduction Zone Fault, just off Washington coast, would arrive much more quickly and without warning. So the tribe would only have minutes to evacuate hundreds of people.

In an effort to help itself, the tribe has moved as many people to higher ground as possible. But there is very little usable space left within the reservation that is not within a tsunami flood zone. So there is no safe, buildable land on the reservation.

The goal of this legislation is to help the tribe move all of its tribal facilities out of the tsunami zone and away from the threat of flooding from the river. And this sensible legislation would increase economic opportunity and safeguard the Quileute families and their property from the devastating tsunami and floods. This legislation is the product of government-to-government negotiations between the Quileute and the National Park Service, with the goals of helping the tribe and moving forward in the region.

Included in this legislation, through negotiations with the tribe and the Park, is an agreement that fixes the northern border of the reservation, and ensures Park visitors access to some of the most beautiful beaches on the Washington coast. Helping the Quileute Tribe move their facilities 800 feet up and out of the tsunami zone is the primary purpose of this legislation. However, it will ensure visitors access to Second Beach, Rialto Beach, and preserve thousands of acres of Olympic National Park as wilderness.

Again, I thank the Chairman and the Vice Chairman for holding this hearing. I look forward to hearing from the Department of the Interior on this legislation.

The CHAIRMAN. Thank you very much, Senator Cantwell, for your opening statement.

With that, I welcome the witnesses. I know that many of you have traveled far to be with us today, and we greatly appreciate your willingness to testify in this hearing. We will have three panels to hear from today, so I ask that you limit your oral testimony

to five minutes. Your full written testimony will be included in the record.

I welcome our first panel of witnesses to the Committee today. Mr. Donald Laverdure, the Principal Deputy Assistant Secretary of Indian Affairs at the Department of the Interior. And Mr. George Skibine, the Deputy Assistant Secretary of Management, at the Department of the Interior.

I understand that Mr. Laverdure will testify on the HEARTH Act and the Quileute legislation, and Mr. Skibine will testify on the Little Shell legislation. Mr. Laverdure, will you please proceed with your testimony?

STATEMENT OF DONALD "DEL" LAVERDURE, PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. LAVERDURE. Thank you, and good afternoon, Mr. Chairman, Senator Tester. My name is Donald "Del" Laverdure, and I'm the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. I am pleased to be here today to present the Department's views on these two bills.

The first is S. 636, which is a bill to provide the Quileute Indian Tribe tsunami and flood protection through conveyances of land from the National Park Service. And the second bill, S. 703, is the HEARTH Act, the Helping Expedite and Advance Responsible Tribal Homeownership Act.

First, on the Quileute bill, the Department supports S. 636. We know that the Quileute is a smaller, federally-recognized tribe in the State of Washington. The tribe's current reservation consists of approximately 880 acres and is home to approximately 375 residents. The reservation is bordered to the north by the Quileute River and to the east and south by Olympic National Park. Most of the reservation is located within the flood zone. And much of the tribal infrastructure, as described earlier, including their administration buildings, schools, the elder center and housing, is within the tsunami zone.

Recent tsunamis in the Pacific Ocean, including the one which struck Japan last month and created a huge disaster, clearly demonstrate the risk faced by the tribe and its citizens and the need to move housing and infrastructure inland. Therefore, this legislation would make available to the Quileute Tribe 785 acres of land currently within the boundary of Olympic National Park, in order to facilitate the tribe's move to new lands on higher ground and away from the frequent flooding and tsunami risk that the tribe must currently contend with.

S. 636 also seeks to protect the natural resources of the land removed from the park, to encourage agreements between the National Park Service and the tribe on matters related to the land, and to designate approximately 4,100 acres of Olympic National Park lands as wilderness. The National Park Service has worked collaboratively with the tribe over many years to address numerous issues. As such, the Department supports S. 636 in its balance of tribal safety and protection of park resources as well as visitor access.

That concludes my statement on S. 636.

The Department also strongly supports S. 703, the HEARTH Act, which would amend certain sections of 25 U.S.C. Section 415, also known as the Indian Long-Term Leasing Act, to permit tribes that choose to develop their own leasing program to approve and enter into certain leases without prior express approval from the Secretary of Interior. Under this legislation, willing tribes would initially submit their own leasing regulations to the Department for approval.

Following secretarial approval of such leasing regulations, tribal governments would process leases for tribal trust land at the local level pursuant to their own laws, and without a requirement for further approval by the Secretary. This has the potential to significantly reduce the time it takes to approve leases for homes and small businesses.

Pursuant to the HEARTH Act, leases would be limited to an initial term of 25 years, but could be renewed up to two additional terms of 25 years each. The HEARTH Act also requires the Department to review tribal leasing regulations within 120 days, but does provide us with the flexibility to extend this time period in consultation with the applicant tribe.

The HEARTH Act also ensures that the Department will retain the authority to fill its trust obligation, to protect tribal trust lands through the enforcement or cancellation of leases approved under tribal regulations or the rescission of secretarial approval of tribal leasing regulations where it is appropriate. At the same time, the HEARTH Act ensures that the United States will not be liable for losses incurred as a result of leases approved under their own tribal leasing regulations.

Finally, the HEARTH Act would require the BIA to prepare and submit a report to Congress regarding the history and experience of Indian tribes that have chosen to assume this responsibility for operating certain Indian Land Title and Records Office, or LTRO, functions from the Bureau. Such review would include consultation with the Department of Housing and Urban Development, Office of Native American Programs, and those tribes managing LTRO functions. The Department agrees with the factors to be considered in the review.

Again, the Department strongly supports S. 703, and wants to continue our conversations with the Committee on further refinements to the text of the bill. In closing, I look forward to working with this Committee in continued support of tribal nations. This concludes my statement, and I am happy to answer any questions that you may have.

[The prepared statement of Mr. Laverdure follows:]

PREPARED STATEMENT OF DONALD "DEL" LAVERDURE, PRINCIPAL DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

S. 636

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on S. 636, a bill to provide the Quileute Indian Tribe tsunami and flood protection, and for other purposes.

The Department supports S. 636. This legislation would make available to the Quileute Indian Tribe 785 acres of land currently within the boundary of Olympic National Park in order to facilitate the tribe's move to new lands on higher ground,

away from the frequent flooding and the tsunami risk that the tribe currently must contend with. The legislation also seeks to protect the natural resources of the land removed from the park, to encourage agreements between the National Park Service and the tribe on matters related to the land, and to designate approximately 4,100 acres of Olympic National Park as Wilderness.

The Quileute Indian Tribe is a small, Federally recognized tribe in the State of Washington. The Quileute Indian Reservation, established in 1889, is located on the Olympic Peninsula along the Pacific Ocean. The reservation is bordered to the north by the Quillayute River and to the east and south by Olympic National Park. It consists of approximately 880 acres and is home to about 375 residents. Most of the reservation is located within the flood zone and much of the tribal infrastructure, including their administrative buildings, school, elder center, and housing is within the tsunami zone. Recent tsunamis in the Pacific Ocean, including the one which struck Japan last month, clearly demonstrate the risk faced by the tribe and the need to move housing and infrastructure inland.

The 785 acres of land within Olympic National Park that would be held in trust for the tribe under S. 636 are in two parcels. The northern parcel, known as Thunder Field, is comprised of approximately 510 acres along the south side of the Quillayute River. A 275-acre parcel, 220 acres of which are designated wilderness, lies immediately south of the current reservation boundary. There are no park-owned facilities or trails in this area, and there are few opportunities for park visitors.

In addition to providing for the 785 acres to be held in trust by the United States for the benefit of the Quileute Indian Tribe, and to excluding this land from the boundary of Olympic National Park, S. 636 also would:

- designate approximately 4,100 acres of new wilderness within Olympic National Park as additions to the existing Olympic Wilderness;
- provide for placing in trust for the benefit of the tribe the approximately 184 acres of non-Federal land that the tribe has recently acquired;
- express the intent of Congress regarding preservation, protection and alteration of the 785 acres, and cooperative efforts between the National Park Service and the tribe.
- provide specific restrictions on the use of the 785 acres in order to protect the land's resources; and
- provide for continued public access and use of park and tribal lands at Second Beach, Rialto Beach, and along the Quillayute and Dickey Rivers.

The National Park Service has worked collaboratively with the tribe over many years to address these issues. As such, the Department supports S. 636 and its balance of tribal safety with protection of park resources and visitor access.

S. 703

Good afternoon Mr. Chairman and members of the Committee. My name is Del Laverdure and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. I am pleased to be here today to present the Department's views regarding S. 703, the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act.

This Administration continues to support tribal self-determination, and we recognize that tribal control over tribal resources is intrinsic to this policy.

We understand that tribal homelands are essential to the health, safety, and welfare of the First Americans, and that it is important for Indian tribes to have the ability to determine how their homelands will be utilized. This is why the Department is in the process of revising our own regulations governing leasing on Indian lands. Our revisions will streamline the process by which leases of Indian lands are approved, thereby promoting homeownership, economic development, and renewable energy development on tribal lands.

The HEARTH Act is consistent with this effort, and we are pleased to strongly support this legislation. S. 703 would amend certain sections of 25 U.S.C. § 415 (the Indian Long-Term Leasing Act) to permit tribes that choose to develop their own leasing program to approve and enter into certain leases without prior express approval from the Secretary of the Interior. Under this legislation, willing tribes would initially submit their own leasing regulations to the Secretary of the Interior for approval. Following Secretarial approval of such leasing regulations, tribal governments would process leases for tribal trust land at the tribal level, pursuant to their own laws, without a requirement for further approval of the Secretary. This has the potential to significantly reduce the time it takes to approve leases for homes and small businesses.

Pursuant to the HEARTH Act, leases would be limited to an initial term of 25 years, but could be renewed for up to two additional terms of up to 25 years each. Tribes could also approve leases for public, religious, educational, recreational, or residential purposes for a term of up to 75 years where permitted by tribal regulations. Tribal leasing regulations would not apply to mineral leases or leases of individual Indian allotments.

As noted above, under S. 703, tribes that desire to develop and implement their own regulations governing leasing would be able to submit tribal regulations for approval by the Secretary of the Interior. The Secretary would be required to approve tribal regulations that are consistent with the Department's own regulations governing leasing on Indian lands. The HEARTH Act requires the Department to review tribal leasing regulations within 120 days, but does provide us with the flexibility to extend this time period in consultation with the affected tribe.

The HEARTH Act ensures that the Department will retain the authority to fulfill its trust obligation to protect tribal trust lands through the enforcement or cancellation of leases approved under tribal regulations, or the rescission of Secretarial approval of tribal leasing regulations, where appropriate. At the same time, the HEARTH Act ensures that the United States will not be liable for losses incurred as a result of leases approved under tribal leasing regulations.

Finally, the HEARTH Act would require the BIA to prepare and submit a report to Congress regarding the history and experience of Indian tribes that have chosen to assume responsibility for operating certain Indian Land Title and Records Office (LTRO) functions from the BIA. Such review would include consultation with the Department of Housing and Urban Development Office of Native American Programs, and those Indian tribes managing LTRO functions. The Department agrees with the factors to be considered in the review.

We anticipate that the HEARTH Act will ultimately reduce the costs of implementing tribal leasing programs for the Federal Government by allowing willing Tribes to assume control of leasing on tribal lands. By increasing efficiency in the implementation of tribal leasing programs, the HEARTH Act will go a great distance in promoting homeownership, economic development, and renewable energy development by restoring tribal authority over tribal lands. The Department strongly supports S. 703 and wants to continue our conversations with the Committee on further refinements to the bill text. In closing, I look forward to working with this Committee in continued support of Indian tribes.

Thank you for the opportunity to present testimony on S. 703. I will be happy to answer any questions you may have.

The CHAIRMAN. Thank you very, very much for your testimony. Mr. Skibine, will you please proceed with your testimony?

STATEMENT OF GEORGE T. SKIBINE, DEPUTY ASSISTANT SECRETARY FOR MANAGEMENT, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. SKIBINE. Thank you very much, Mr. Chairman, Senator Tester. My name is George Skibine, I am the Deputy Assistant Secretary for Management, Indian Affairs at Interior. I am here today to provide the Administration's testimony on S. 546, the Little Shell Tribe of Chippewa Indians Restoration Act of 2011.

Essentially, the Department is not opposed to enactment of S. 546. We recognize that Congress has the authority to recognize American Indian groups as Indian tribes with a government-to-government relationship with the United States.

S. 546, the Little Shell Tribe, if enacted, would acknowledge the Little Shell Tribe of Chippewa Indians of Montana. This group is Petitioner Number 31 in the Federal acknowledgment process and has submitted its letter of intent a long time ago, back in 1978. I just want to point out that in 1978, I was in the second year of my career at Interior. I was a much younger man, just almost as good looking as Mr. Laverdure here. Those days are gone, so I am making that point to say that this has been a very long process for the

Little Shell Band, and one that is, because of its length, is a cause of concern for our boss, Assistant Secretary Larry Echo Hawk.

At any rate, the decision became final in 2009. It is not actually final for the Department, it was final for the Assistant Secretary. But under our regulations, the Little Shell Band filed a request for reconsideration before the Interior Board of Indian Appeals in 2010. And from what I understand, all briefings before the Board have been completed, and a decision should be coming fairly closely.

In its final determination, the Department denied Federal acknowledgment to the Little Shell Tribe because the evidence showed, in our view, that the group failed to meet three of the seven mandatory criteria. Nevertheless, having not been acknowledged, the tribe is seeking Congressional redress at this point. We agree that this Congress should only exercise this option sparingly, and only in instances where there is an overriding reason to bypass the regulatory process. But I think Senator Tester in his opening comment specified that this perhaps was one such instance.

This concludes my comments on S. 546. We would like to work with the Committee as the bill moves forward regarding some technical issues we have with some of the findings in the bill. Thank you very much.

[The prepared statement of Mr. Skibine follows:]

PREPARED STATEMENT OF GEORGE T. SKIBINE, DEPUTY ASSISTANT SECRETARY FOR MANAGEMENT, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and Members of the Committee. My name is George Skibine. I am the Deputy Assistant Secretary for Management—Indian Affairs at the Department of the Interior (Department).

I am here today to provide the Administration's testimony on S. 546, the Little Shell Tribe of Chippewa Indians Restoration Act of 2011.

The recognition of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. The Department believes that the Federal acknowledgment process allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship. However, we also acknowledge that under the United States Constitution, Congress has the authority to recognize American Indian groups as Indian tribes with a government-to-government relationship with the United States. For this reason, we do not oppose enactment of S. 546.

Background

In 1978, the Department promulgated regulations for the Federal process for groups seeking acknowledgment as Indian tribes. These Departmental regulations are found at Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR part 83) "Procedures for Establishing that an American Indian Group exists as an Indian Tribe."

To be acknowledged under the Department's Part 83 regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

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

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 an historical Indian tribe or from historical Indian tribes that combined and

functioned as a single autonomous political entity and provide a current membership list;

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

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

A criterion shall be satisfied 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 under the Part 83 regulatory process.

The Department's acknowledgment process provides the thorough and deliberate evaluation which must occur before the Department acknowledges a group's tribal status. These decisions must be fact-based, equitable, and thus legally defensible. While Congress may grant recognition to Indian tribes, the Department's position is that legislative action should be reserved for those cases where there is an overriding reason or reasons to bypass the Department's regulatory process.

S. 546, the Little Shell Tribe of Chippewa Indians Restoration Act

S. 546, the Little Shell Tribe of Chippewa Indians Restoration Act of 2011 would acknowledge the Little Shell Tribe of Chippewa Indians of Montana. This group, Petitioner #31 in the Department's Federal acknowledgment process, submitted its letter of intent to the Department in 1978, and completed documenting its petition in 1995. A Final Determination against the federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana was issued on October 27, 2009, and published in the Federal Register on November 3, 2009, 74 Fed Reg. 56861. The decision is not final and effective for the Department because the Little Shell Tribe filed a request for reconsideration before the Interior Board of Indian Appeals (IBIA) on February 1, 2010. All briefings before the IBIA have been completed, and the matter is ready for a decision.

In its Final Determination, the Department denied Federal acknowledgment to the Little Shell Tribe because the evidence showed that the group failed to meet three of the seven mandatory criteria in 25 CFR Part 83. Having been denied acknowledgment as an Indian tribe through the Department's regulatory process, the Little Shell Tribe now has turned to Congress for federal acknowledgement, since there is no other avenue to obtain tribal status. It is the position of the Department that Congress should use its power to recognize American Indian groups through legislation sparingly, and only in instances where there is an overriding reason to bypass the Department's regulatory process.

In closing, if the Congress chooses to move forward with S. 546, we would like to work with the Committee on clarifying some issues related to the Department's findings.

This concludes my prepared statement. I am happy to answer any questions the Committee may have. Thank you.

The CHAIRMAN. Thank you very much, Mr. Skibine.

Let me ask this question to Mr. Laverdure. Can you describe the steps that would be taken following enactment of this legislation to transfer the lands into trust for the Quileute Tribe? And comment on how long you think the process would take.

Mr. LAVERDURE. Thank you, Mr. Chairman. In truth, in the language of the bill, it appears that the language would require mandatory acquisition as opposed to discretionary. And the transfer of those lands should, I couldn't give a specific time period, but it should move expeditiously because they are already in Federal title, and the transfer would be from the National Park Service over to the Bureau of Indian Affairs on behalf of the Quileute Nation.

The CHAIRMAN. When you say expeditiously, can you give me a time frame on that?

Mr. LAVERDURE. I wish I could, Mr. Chairman, other than to say that we will move it as fast as we can, assuming the bill passes.

The CHAIRMAN. Mr. Laverdure, if the HEARTH Act is enacted and tribes seek the authority it grants, is the Department prepared to put in place the internal processes to make sure the leasing regulations are reviewed in a timely manner?

Mr. LAVERDURE. Yes, Mr. Chairman. In fact, the Department is undergoing consultation on the revision of our existing leasing regulations, which have been agricultural regulations and non-agriculture. And during this consultation period, we have had three sessions recently in the last few weeks. We are going to take a revision of these 50-year old regulations so that they reflect modern times for economic development, residential leasing and the like.

Because of the significant changes, all of that will help us expedite and implement the HEARTH Act, should it be passed by Congress and signed by the President.

The CHAIRMAN. Thank you.

Mr. Skibine, at a hearing before this Committee in November 2009, you stated that the Department is committed to reforming the acknowledgment process and is currently exploring ways to improve that process. Can you please provide the Committee with an update on your efforts to reform the acknowledgment process?

Mr. SKIBINE. Yes, Mr. Chairman, thank you for this question. When Assistant Secretary Echo Hawk was before this Committee for confirmation, he made a commitment at the instigation of some of the members of the Committee to take a very hard look at the current process for acknowledgment and to essentially see what could be done. So he instructed me to start working on this process.

And what we did over the past two years is develop potential appropriate amendments to the regulation in 25 C.F.R. Part 83 that would essentially streamline the process. We are trying to get a regulation that will have a definite beginning and where there will be a definite ending, so we will know exactly how long this process will take. Obviously, it is taking too long right now.

So that is what we are developing. We are looking at the standard for review of the seven mandatory standards. We are taking a look at the standards themselves to see if those should be changed because of the issue that we have found with implementation of the standard. What I propose is to shorten the process by eliminating review before the Interior Board of Indian Appeals, which is where Little Shell is now. But that process in the past could take two or three years, in addition to where they are right now.

So we are trying to eliminate that, and instead provide some sort of administrative forum before the Assistant Secretary makes a final decision. What I have found is in effect that, I think some of the groups that are petitioning also feel that it is not a fair process, or necessarily impartial. We want to inject an individual in there that would essentially be submitting a recommended decision to the Assistant Secretary that would be outside of the process right now.

Also what I want to do is eliminate the endless extensions that are granted under the current regulations. Granted, they are granted both to the petitioner and to the Government. But essen-

tially what I have seen is that tends to lengthen the process considerably.

So these are the kinds of things that we are looking to do. A draft has been developed by the staff. It is now under review by our political group. Mr. Del Laverdure is recused from the Little Shell matter, but in his official capacity as Principal Deputy he would be involved in that process of looking at the regulations overall. And potentially, then afterwards there would be some consultation with Indian tribes, then a proposed rule in the Federal Register and eventually a final rule.

I think Assistant Secretary Echo Hawk is committed to have that process completed before the end of the first term of the Obama Administration.

The CHAIRMAN. I am glad to hear you say that you also consulted with the tribes. Is this normally the practice of working on issues like this, to consult with the tribes?

Mr. SKIBINE. Yes. We have a consultation policy at the Department of the Interior, and in Indian Affairs, where we definitely consult with Indian tribes on matters affecting them. So yes, we would do that normally.

The CHAIRMAN. Mr. Skibine, can you tell me who the Obama Administration named as the lead person handling Federal recognition decisions at the Department?

Mr. SKIBINE. The Assistant Secretary, Larry Echo Hawk, is the decision maker for Secretary Salazar on acknowledgment decisions. If he is recused from that matter, and he is recused from the Little Shell matter because of a family conflict, then essentially, at the time the decision was left to me as I was then the Acting Principal Deputy. Now Mr. Del Laverdure is the Principal Deputy, but he is also recused from Little Shell, because of family issues, I suppose, and as a result, that is why I am here before you today.

The CHAIRMAN. Well, thank you very much for revealing that you do pay attention to the relationships. I really want to be sure we can cut back the persons that are handling this.

Let me call on Senator Tester for his questions.

Senator TESTER. Thank you, Mr. Chairman. I want to thank both Del and George for being here today. Del, it is always good to see you, whether it is here or back in Montana. I appreciate your service.

The same with you, George. I appreciate your Service very, very much, even though we have a disagreement. Now that I know you are the decision maker, now we really know where to put the blame.

[Laughter.]

Senator TESTER. I would just say this. Back in 2000, in my opening statement I talked about the Department of the Interior got a positive finding for the Little Shell. They met seven out of seven. And I think if I heard your testimony correctly, they didn't meet three out of seven.

Have those seven things changed?

Mr. SKIBINE. No, they have not.

Senator TESTER. Okay, so what has changed? Did somebody blow it in 2000 and make a wrong decision? Have the facts changed around it? What has changed that ten years ago, a decision could

be made that they met the criteria, and ten years later, they barely made half of them?

Mr. SKIBINE. I think that what happened is that the staff at Interior, in examining the petition after 2000, and after the submission of comments, decided that in looking at the evidence that several departures from precedent that were made by Assistant Secretary Gover in his 2000 determination were in the opinion of the staff not warranted. And they went at length to explain why they didn't feel those departures were warranted.

That is why in the end there was a change in the decision.

Senator TESTER. Yes, but the change wasn't made in 2000, was it?

Mr. SKIBINE. No. The decision in 2000 was a proposed decision. Then it went out for comment. And in the Federal Register notice, in fact, the Secretary at the time did ask for comments on the departure from precedent. In the end, we felt that the departure from precedents were not warranted, and that is why the final decision came about.

Senator TESTER. Can you tell me what the three things they didn't meet, what were they if you can tell me briefly?

Mr. SKIBINE. Yes. The first one is that the petitioners were not identified as an Indian entity since 1900 on a substantially continuous basis. That is criterion A. The second one, that the Little Shell did not provide sufficient evidence of a distinct community from historical time to the present. And third, that the petitioner did not provide sufficient evidence of a political influence from historical time to the present.

Now, I want to point out that because the decision is pending before the Interior Board of Indian Appeals, so the decision is not final for the Department, it is sort of an appeal process, I feel uncomfortable——

Senator TESTER. I understand that. I won't pin you down on that, we can wait until later. Hopefully, it won't be necessary, but we can wait until later.

So when the facts are gathered, back in 2000 when the facts were gathered from the Little Shell and anybody else you are gathering facts from, and the information is sorted through, who makes the decision on those facts, you or the staff?

Mr. SKIBINE. The ultimate decision maker is me as the Acting Principal Deputy at the time.

Senator TESTER. Who is the real decision maker?

Mr. SKIBINE. Well, the fact is this. The fact is that the staff of the Federal acknowledgment team essentially puts together the final decision package. They have a team of very qualified doctors in various fields. And essentially, the final decision, it is a document that is over 25 pages long with appendices.

Senator TESTER. Is this full-time staff, or are these folks that work outside on a contract basis?

Mr. SKIBINE. They are full-time staff.

What I have found is, in fact, that by the time the decision comes to the Assistant Secretary, it is, in this particular case, we spent months going back reading and reading it again and going back to the staff. But in effect, it is essentially well nigh impossible to change that finding.

Senator TESTER. It is impossible?

Mr. SKIBINE. It is practically impossible. Because I am not an expert on history, on genealogy and stuff like this. So this is why, when we are proposing revisions to these regulations, I think we need to somehow alter the process to provide for a decision maker to have a somewhat more of a view from——

Senator TESTER. So is part of the process sorting through the information, was any political appointee involved in that process?

Mr. SKIBINE. No, they were not.

Senator TESTER. These were all hired folks?

Mr. SKIBINE. Right.

Senator TESTER. Okay. So you talk about the fact that it is very, very difficult to overturn or to undo what they have done. And I get that.

Let me talk about the Indian Board of Appeals. Who serves on that?

Mr. SKIBINE. There are administrative law judges that are appointed, they are not political appointments. They serve as the judges in the Office of Indian Appeals.

Senator TESTER. Who staffs them?

Mr. SKIBINE. They have attorneys, career attorneys who staff them.

Senator TESTER. Are any of the people that staff them, or any of the people on the Board of Indian Appeals part of the group that makes the initial decision whether to recognize or not recognize?

Mr. SKIBINE. No.

Senator TESTER. Okay. So all these folks are outside the agency that you contract with them?

Mr. SKIBINE. Yes.

Senator TESTER. That are on the Indian Board of Appeals?

Mr. SKIBINE. That is correct.

Senator TESTER. How often are they turned over? Are they turned over per Administration or every two years or what?

Mr. SKIBINE. The board members?

Senator TESTER. Yes.

Mr. SKIBINE. The Interior Board of Indian Appeals judges are permanent appointments.

Senator TESTER. They are permanent appointments. So they were there in 2000?

Mr. SKIBINE. Well, I don't know that. I am not sure, maybe some of them were. I cannot answer that question.

Senator TESTER. Okay. You could probably find me that answer, couldn't you?

Mr. SKIBINE. Of course.

Senator TESTER. Okay. I would like to have that.

Can you answer me if the Interior Board of Indian Appeals has ever reversed a negative determination on recognition?

Mr. SKIBINE. I think they have. I think what they do is remand the matter back to the Assistant Secretary if they have issues with that.

Senator TESTER. Could you tell me when they have done that?

Mr. SKIBINE. I can provide that answer, but I am not familiar with the specific times when this has happened.

Senator TESTER. Okay. The reason I ask is because I don't believe they ever have. So if I am wrong on that, I would love to get the right information.

Okay, first of all, I appreciate the fact that you are not opposed to the bill. And I also appreciate the fact that you came out with the decision, even though I think it was an incorrect decision. Ultimately, in the end, it still is ironic to me that a decision, first of all, there was a land base that was meant to be acquired back in 1908, 1914 and 1925, BIA never did it. And this has been going on far longer, far longer than, and John Sinclair, the last time he was here to testify, his dad started this. Maybe even before that, maybe it was his granddad.

And every political entity in the State of Montana, every tribe thinks this is the right thing to do. We have people that have been disqualified because they have to be connected with Little Shell somehow. And all this stuff just doesn't make any sense if they haven't been around forever. And they have been around forever. But we will continue this process, and I also appreciate the fact you are trying to streamline this process, because I think it is very, very tough. So that is good.

Has the Department ever reversed a positive proposed finding on Indian recognition?

Mr. SKIBINE. You mean besides Little Shell?

Senator TESTER. Yes.

Mr. SKIBINE. I am not aware of any, but I can also find that information.

Senator TESTER. That would be good.

[The information referred to follows:]

The Interior Board of Indian Appeals (IBIA) is an appellate review body that exercises the delegated authority of the Secretary of the Interior in appeals involving Indian matters. It is located in Arlington, Virginia, within the Department's Office of Hearings and Appeals. It is separate and independent from the Bureau of Indian Affairs, the Office of the Assistant Secretary – Indian Affairs, and the Office of the Solicitor.

The personnel at IBIA are Steven K. Linscheid, Chief Administrative Judge; Debora G. Luther, Administrative Judge; Sara E. Costello, Docket Attorney; Pamela J. Eichhorn, Legal Assistant; and Margo M.L. Ellis, Legal Assistant. Judge Linscheid started at IBIA in November 2003; Judge Luther started at IBIA in October 2006. Their predecessors were Chief Administrative Judge Kathryn A. Lynn, who served on IBIA from 1986 to 2004; Administrative Judge Anita S. Vogt, who served on IBIA from 1986 to 2003 and again from 2004 to 2005; and Administrative Judge Colette J. Winston, who served on IBIA from 2003 to 2004.

Senator Tester also inquired about acknowledgment decisions where the outcome changed between the proposed finding and final determination, or changed based on decisions by IBIA. The following decisions on petitioners who have completed the administrative process are pertinent:

- Wampanoag of Gay Head: proposed finding not to acknowledge, final determination to acknowledge
- Mohegan: proposed finding not to acknowledge, final determination to acknowledge
- Samish: proposed finding not to acknowledge, final determination not to acknowledge. Review by administrative law judge at Office of Hearings and Appeals following which the Assistant Secretary – Indian Affairs issued final determination to acknowledge.
- Chinook: proposed finding not to acknowledge, final determination to acknowledge. Review by IBIA referred issues to the Secretary and on reconsideration following which the Assistant Secretary – Indian Affairs issued a reconsidered final determination not to acknowledge
- Eastern Pequot and Paucatuck Eastern Pequot: proposed findings to acknowledge, final determinations to acknowledge. These determinations were vacated and remanded by IBIA following which the Associate Deputy Secretary issued reconsidered final determinations not to acknowledge
- Schaghticoke: proposed finding not to acknowledge, final determination to acknowledge. This determination was vacated and remanded by IBIA following which the Associate Deputy Secretary issued a reconsidered final determination not to acknowledge.

In addition, the IBIA in numerous other acknowledgment decisions has referred issues to the Secretary that have not resulted in a change in outcome.

Senator TESTER. Thank you, Mr. Chairman. Sorry I took so much time.

The CHAIRMAN. Thank you. We will have a second round on these questions, Senator Tester.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

And Mr. Laverdure, thank you so much for your testimony. You are in support of this legislation S. 636, is that correct?

Mr. LAVERDURE. That is correct.

Senator CANTWELL. And you believe that we have settled any concerns or the reservation and the northern boundary and all of that?

Mr. LAVERDURE. All their concerns have been met.

Senator CANTWELL. Good. That is all I actually had, Mr. Chairman. I will quit while we are ahead. My questions are for the next panel. Thank you.

The CHAIRMAN. Thank you very much, Senator Cantwell.

Mr. Skibine, let me follow up with a question that has been around for a while. This Committee and the Congress have a successful record of restoring and recognizing Indian tribes. Yet we have heard over the years many times about the administrative process as to how lengthy, burdensome, expensive and non-transparent it is. Will you tell the Committee what you are doing to rectify this process?

Mr. SKIBINE. Well, as I think I have, in one of the questions earlier, what I said is we are in the process of revising the regulations in 25 C.F.R. Part 83, and in order, in the revisions, we have a draft that is now under review by the political team. The impetus, what we are trying to do, essentially, is to make it a finite process where there is a definite beginning, there is a definite end. We are trying to shorten the time frames, so that it doesn't take so long. We are trying to eliminate some of the extensions that occur under current regulations. We are trying to also hopefully eliminate a BIA review, because that is an additional process that can take several years.

And because, frankly, in my opinion, the review by the IBIA of an Assistant Secretary's decision, that is the only time that the Interior Board of Indian Appeals reviews decisions that are made by the Assistant Secretary for Indian Affairs. In all other cases, the IBIA can only review decisions of regional directors or underlings, but not of the Assistant Secretary. So it is unique and not the common practice for the Board to review those decisions.

We are also looking at the burden of proof. We want to clarify what the burden of proof is for meeting the standards. And I think we are also looking at, taking a very close look at the standards themselves, 1 through 7 or through A to whatever, especially the first three. The first one requires identification on a substantially continuous basis since 1900. I think the precedent indicates that this has to be every 10 years, it has to be identification from a non-Indian entity. In other words, we are taking a look at this to see if that really belongs in there. And then we are taking a look at what is in the other two standards also.

So hopefully, by the time we are done, we will have a process that will be shorter, clearer and will essentially be easier to address for the petitioners.

The CHAIRMAN. Federal recognition decisions are supposed to be made using "reasonable likelihood standard." When you say that the Department has "uniform and rigorous review," aren't you heightening the standard, when the regulations clearly state that the conclusive proof is not required?

Mr. SKIBINE. No, the conclusive proof is not required. And I agree with that. We are in fact taking a look at that burden of proof to see whether in fact that should be changed. And that is one of the things we are taking a look at.

But even under the existing standard, conclusive proof is not required. The question is, it is not technically a legal standard that operates in other areas of the law. So should we replace that with a more certain standard that is more understandable for everyone, like preponderance of the evidence, which is not the normal standard.

The CHAIRMAN. Yes. Well, as you can tell, we are trying to zero in on how we can move some of these decisions along. You point out that others with other knowledge and skills maybe need to be part of the process. Do you think, and I am trying to get at this, but do you think the process is so broken for tribes in seeking recognition that it is time for Congress and this Committee to step into the role of recognizing tribes?

Mr. SKIBINE. Well, this Committee, first of all, you do have the authority to recognize tribes. That is why this bill is before you. On the other more substantive policy issue, I think that would be a question for our political leadership to respond to.

The CHAIRMAN. Thank you. I thank you so much for your answers here, and I am looking forward to working together with you in trying to expedite the process. And as you can tell, I am trying to find out the best we can as to maybe how we can improve it. I am sure you are, too. I certainly want to keep trying on this, and look forward to working with you on trying to bring this process about.

Thank you very much for your statements.

I would like to invite the second panel to the witness table. Today, we have John Sinclair, President of the Little Shell Tribe; Kim Gottschalk, from the Native American Rights Fund; and Bonita Cleveland, the Chairperson of the Quileute Nation. I want to say welcome to our witnesses. Thank you for being here, and we look forward to your testimony.

Mr. Sinclair, will you please proceed with your statement?

STATEMENT OF HON. JOHN SINCLAIR, PRESIDENT, LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA

Mr. SINCLAIR. Good afternoon, I want to thank you and Senator Barrasso for bringing this legislation, as well as the rest of the Committee. I would also like to express my deep gratitude to Senator Tester for bringing this bill, and to Senator Baucus for cosponsoring S. 546.

On behalf of the Little Shell Tribe of Montana, I thank you for the opportunity to testify in support of S. 546, legislation to confirm a government-to-government relationship between the Little Shell Chippewa Indians of Montana and the United States. My name is John Sinclair, and I am honored to serve the Little Shell Tribe, as my father and my grandfather have done before me.

Congress began work on recognizing our tribe in 1908, more than 100 years ago. In that year, and again in later years, Congress appropriated money to buy land for the tribe. A primary purpose for this land base was to allow the tribe to organize as a recognized tribe.

Of particular importance after Congress passed the Indian Reorganization Act in 1934, Congress again appropriated money to purchase land for the Little Shell Tribe. Despite Congress' intent that

Little Shell organize on that land, it never happened because the money was spent to purchase land for the already-recognized tribes. We are asking that Congress finally complete the process it started in 1908 by enacting S. 546.

There are two other tribes, the Little River Band and the Little Traverse band of Ottawa Indians, that have been recognized by Federalization on the basis that the BIA began, but never finished, organizing them under the IRA. We deserve and are overdue for the same kind of recognition legislation.

However, there are even more reasons for Congress to enact special legislation for Little Shell. In 1982, Congress enacted the Pembina Judgment Act, which allocated funds now worth $3 million which were conditioned on our Federal recognition. Even the BIA has said that this unique situation could justify special recognition legislation for Little Shell. In the words of the final determination, referring to both the previous efforts to organize under the IRA and the distribution of the judgment funds, the Bureau said, "Congress could direct that they be used to purchase land for the group, as contemplated in the 1930s, should Congress choose to recognize the Little Shell petitioner."

These circumstances mean that Congress can and should enact S. 546. This is our last chance. Little Shell and Congress have been having this conversation now for more than 100 years. For too long, we have been refugees in Montana, waiting for the United States to fulfill its promises.

Our neighbors, both Indian and non-Indian alike, all have recognized that we are a tribe. All seven recognized tribes in Montana support us. The two tribes in neighboring Wyoming, the Wind River and Northern Arapaho, support us. The State of Montana supports us. Our local counties support us. They know us better than the staff at the Bureau's Office of Federal Acknowledgment. We urge Congress to fulfill its promises and join those who know us best by enacting S. 546.

Thank you.

[The prepared statement of Mr. Sinclair follows:]

PREPARED STATEMENT OF HON. JOHN SINCLAIR, PRESIDENT, LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA

Chairman Akaka, Vice Chairman Barrasso, our friends Senator Tester and Senator Baucus, and honorable members of this Committee on Indian Affairs, on behalf of the Little Shell Tribe of Montana, I thank you for the opportunity to testify in support of legislation that would confirm the federal relationship between the Little Shell Tribe of Chippewa Indians of Montana and the United States.

My name is John Sinclair and I have the honor of serving as President of the Little Shell Tribe. Before me, my father and my grandfather also served our Tribe working to realize our people's federal recognition. The Little Shell Tribe is organized under our 1977 Constitution. Our government consists of an elected Tribal Council (two year term) and Executive Board (four year term) and our tribal enrollment encompasses about 4,500 members. As a landless tribe my people are largely settled on the fringes of rural towns in Montana on the Front Range and along the Highline, as well as in the cities of Great Falls and Helena.

The Little Shell Restoration Act of 2011 (S. 546) cosponsored by Senator Tester and Senator Baucus would finally end our long struggle for federal recognition, for which so many of my people have fought tirelessly over the past century. The Restoration Act is consistent with Congress' and the Department of the Interior's historical commitments to acknowledge our people and establish a land base for us. The need for congressional action has become absolutely necessary since the Department abandoned its July 24, 2000 proposed positive finding that the Tribe had met all

the seven mandatory criteria of the Part 83 regulations and should be recognized. On October 27, 2009 the Department reversed this decision and found that the Tribe had not met the burden of proving all the regulatory criteria of recognition. I am here before you today, as I have been a number of times in the past, to urge that you exercise your plenary authority over Indian tribes and recognize the United States' political relationship with the Little Shell Tribe of Chippewa Indians. We are Indians, we are a Tribe, and all we desire is the same recognition that you offer our sister tribes.

Little Shell of Chippewa Indians Restoration Act of 2011, S. 546

The proposed Little Shell Tribe of Chippewa Indians Restoration Act of 2011 would afford my people the federal recognition that has long been promised to us. S. 546 provides that we will be a duly recognized tribe just like our sister tribes in Montana and across the United States. The Act instructs the Secretary of the Interior to acquire 200 acres in trust so that we can finally have a tribal land base. It also explicitly states that we are eligible to acquire additional lands under section 5 of the Indian Reorganization Act, an important provision given the 2009 Supreme Court decision in Carcieri v. Salazar. The Act would also right the wrong that was inflicted against us by the Department's flawed decision not to recognize our Tribe based on the imperfect process established under the Part 83 regulations.

Previous Congressional Efforts to Confirm the Federal Status of The Little Shell Tribe

Congress has been aware of the Little Shell Tribe's dilemma for years and several times has voiced its desire to legislate a solution for us. In 1934 Congress enacted the Indian Reorganization Act (IRA), which provided a mechanism for groups of Indians like ours to organize and apply for land. In December 1935, the Commissioner of Indian Affairs took steps to organize our people under the IRA. The Commissioner proposed a form to enroll our people, stating:

> It is very important that the enrollment of homeless Indians in the State of Montana be instituted immediately, and it is proposed to use this form in the determination of Indians who are entitled to the benefits of the Indian Reorganization Act.
>
> BIA Letter, December 23, 1935. This effort resulted in the Roe Cloud Roll, named after Dr. Henry Roe Cloud, an Interior official who played a large part in the project. Once the roll was complete, the Field Administrator clearly stated that the purpose of the roll was to settle our people and bring them under active federal supervision:
>
> The landless Indians whom we are proposing to enroll and settle on newly purchased land belong to this same stock, and their history in recent years is but a continuation of the history of wandering and starvation which formerly the Rocky Boy's band had endured.
>
> Out of the land purchase funds authorized by the Indian Reorganization Act, we are now purchasing about 34,000 acres for the settlement of these Indians and also to provide irrigated hay land for the Indians now enrolled on Rocky Boy's Reservation. The new land, if devoted wholly to that purpose, would take care of only a fraction of the homeless Indians, but it is our intention to continue this program through the years until something like adequate subsistence is provided for those who cannot provide for themselves. The first step in the programs is to recognize those Indians of the group who may rightfully make claim of being one-half degree, which is the occasion for presenting the attached applications. *The fact of these people being Indian and being entitled to the benefits intended by Congress has not been questioned.*
>
> Roe Cloud Roll applications, 1937 (emphasis added). Even though the appropriation of funds for the Little Shell people was clear acknowledgment of our status as a tribe, one desperately in need of the federal protection extended to other tribes, the Department of the Interior was never able to fulfill this promise. The limited resources available to acquire land were expended for tribes already recognized.

In 1940, Senator James Murray formally requested that the Department fulfill the federal government's promise to acquire land for the Little Shell Band. Assistant Commissioner Zimmerman responded that his office was "keenly aware of the pressing need of the landless Chippewa Cree Indians of Montana. The problem thus far has been dealt with only in a very small way. I sincerely hope that additional funds will be provided for future purchases in order that the larger problem remaining can be dealt with in a more adequate manner." Unfortunately, despite the efforts of

Congress the funds were never appropriated and the problem was never dealt with in anything resembling an adequate manner.

Final Determination Against Recognition of The Little Shell Tribe

On October 27, 2009, over thirty years after our initial petition, the Office of Federal Acknowledgment issued their final determination against acknowledgment of my people. Only an appeal to the Interior Board of Indian Appeals has prevented that decision from becoming effective. It could be years before the IBIA rules. Despite the fact that the Proposed Finding was in favor of recognition, that no substantive negative comments were received, and that we submitted thousands of additional pages of evidence to support our position, the OFA chose to reverse their decision. Their previous decision had taken into account historical circumstances as required by the regulations, and concluded that certain departures from precedent were justified. The Tribe was encouraged to submit additional information, not as a condition of being recognized, but merely to narrow what were viewed as the necessary departures from precedent. Imagine our surprise then, when OFA totally reversed its judgment and chose to strictly construe the requirements of the regulations so as to conclude that we failed criteria (a) recognition by outsiders during the period 1900–1935); (b) community from historical time to the present; and (c) the exercise of political authority from historic times to the present. Significantly, the finding concluded that our additional work had shown that 89 percent of our people trace from a historic tribe, thus meeting criterion (e) without any need to depart at all from precedent. In sum, we were told that we met the requirements, we worked in good faith to help the department, and then we were hit with a total reversal of policy. Is it any wonder that the Tribe has lost faith in the acknowledgment system?

My people have spent the past thirty years fighting for our recognition through the lengthy and burdensome administrative recognition process imposed by the Department under the Part 83 regulations. In the course of this pursuit we have been truly lucky to have the assistance of the Native American Rights Fund (NARF), a legal aid organization devoted to the protection of indigenous people's rights in the United States, pro bono. They agreed to work on our petition because, as an organization familiar with tribes and tribal rights, they had faith in Little Shell as an Indian tribe. NARF has expended over $1 million to retain historians, genealogists, and other expert consultants to provide the very technical and arcane information that the Office of Federal Acknowledgment often requires.

The lengthy process also inflicts an immeasurable human cost, wherein the acknowledgment torch is passed from one generation to another. The task of securing professionals to assist us with our petition and the collection of documents from repositories across the United States, Canada and England was itself demanding, but it paled in comparison to the demands of providing for my people without the protection of federal recognition, without a land base. It is heartbreaking that now after nearly 30 years in the administrative process, in the politically charged atmosphere of Washington, D.C., the Department has reversed its proposed favorable finding and decided not confer federal acknowledgment. Now, we must look to Congress once again to enact legislation to confirm federal recognition of the Little Shell Band, recognition that Congress has presumed for generations was appropriate for Little Shell.

Congressional Action Is Absolutely Necessary

Congress has plenary power with regard to tribes in the United States. It is Congress then who has the final power and authority to recognize or terminate a relationship with a tribe, not the Department. Congress has not relinquished that authority to the Department of the Interior. The administrative regulations were adopted by the Department without benefit of legislation. As a result, Congress can and should act for the Little Shell since the administrative process cannot and has not worked for us. That is what the Little Shell people ask this body to do now through S. 546.

Congress has enacted similar legislation for other tribes which, like Little Shell, have a history of congressional efforts to reorganize the tribe. Congress enacted such legislation for tribes such as the Little Traverse Bay Band of Odawa Indians and the Little River Band–tribes, like us, whom the Department attempted to recognize in the 1930s but because of the lack of appropriations, recognition was never completed. The Department of the Interior noted this unique history, even in its Final Determination against federal acknowledgment:

> Congress has plenary power over Indian affairs and, considering two historical factors, could recognize this petitioner as an Indian Tribe. First, the Department initiated action under the Indian Reorganization Act of 1934 that affected

> the ancestors of a significant majority of the petitioner's members. And second, Congress passed the Act of December 31, 1982 (96 Stat. 2022), conditionally allocating certain trust funds to "the Little Shell Tribe of Chippewa Indians of Montana" petitioner.

Notice of Final Determination, 74 Fed. Reg. 56861 (Nov. 3, 2009). The Department went on to note that more than $3 million remains in trust under the allocation act and offered that "Congress could direct that they be used to purchase land for the group, as contemplated in the 1930s, should Congress choose to recognize the Little Shell petitioner." *Id.*

The existence of this judgment fund is another circumstance unique to Little Shell. As the Department noted, Congress allocated a portion of the settlement to the Little Shell Tribe. Some of these funds were distributed to our tribal members but roughly $3 million is still held in trust by the Secretary of the Interior pending possible federal recognition of our Tribe. The existence of this fund means that money is finally appropriated and available to purchase land for the Little Shell and the only thing that is needed is Congressional direction and permission to do so.

It is also important to note that the proposed Congressional action to confirm federal recognition of the Little Shell Tribe enjoys broad support in Montana. My people enjoy the support of all the federally recognized tribes in Montana. I'm proud to state that not one negative substantive comment was received after the Department issued their initial proposed finding in favor of recognition of my Tribe. The support of the other tribes in Montana is indicative of the merits of our recognition. Who is in a better position to perceive who is a "real tribe" in the State of Montana, the other tribes of Montana or a career bureaucrat sitting in Washington, D.C.? Our sister tribes in Montana have intimate knowledge or our culture and history that spans the many years that we have resided in the same territory as them.

We are also grateful to have the support of the State of Montana as well. Governor Schweitzer and the Montana State Legislature, by Joint Resolution, have expressed their support for our federal recognition. Hill, Cascade, Glacier and Blaine County as well as the City of Great Falls, the local governments most directly impacted by our recognition, have expressed their support of legislation to recognize the Little Shell Tribe. In fact, *the State of Montana recently provided us with land* from which we can provide essential governmental services—something the federal government had promised to do throughout the twentieth century but has yet to accomplish.

Our neighbors, both Indian and non-Indian alike, have all recognized that we are a "tribe." Many of them have petitioned Washington in support of our cause over the last century. They still stand with us today. Congressional recognition of our Tribe would not stir local animosity nor would it provoke strong sentiments against our cause. It would provide a sense of relief and closure for my people and for our friends in Montana who have tirelessly supported our cause and watched our plight over the past century.

Conclusion

Distinguished Senators, it is to you that I make my people's final appeal. For too long we have been refugees without a homeland in our own aboriginal territory, unable to provide proper schools for our children or healthcare for our elders. Throughout this ordeal I have watched as tribal members have passed away without realizing our dream of recognition and I have seen new tribal members born without the protections that federal recognition entails. All I ask is that this body make good on the promises that have been made to the Little Shell Tribe over the past century and acknowledge your recognition of my people.

I thank you for your time and for your consideration of S. 546. I am more than happy to answer any questions from the Committee.

The CHAIRMAN. Thank you very much, Mr. Sinclair.

Mr. Gottschalk, will you please proceed with your testimony?

STATEMENT OF K. JEROME GOTTSCHALK, STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND

Mr. GOTTSCHALK. Chairman Akaka and Senator Cantwell, thank you for the opportunity to speak today in support of S. 546. My name is Kim Gottschalk, I am an attorney at the Native American Rights Fund. We have been honored to represent the Little Shell

Tribe in its administrative quest for recognition for more than 20 years.

I want to focus on just two very basic points in my talk today. One, that the summary of final determination against recognition of the Little Shell Tribe in no way means that they are not a tribe that should be recognized. And I think Mr. Skibine testified today they do not oppose it. I am somewhat puzzled as to why they are not supporting the bill. But that is point number one.

Point number two, I do not think that this is even an instance of bypassing the administrative procedure in any way. I think this has been contemplated by them from the very beginning because they know that the regulations do not fit the situation.

The Federal acknowledgment regulations, as they exist, propose a one size fits all, cookie cutter approach to Federal recognition that does not fit the historical reality of the Little Shell Tribe, who through a long part of their history were a tribe that hunted buffalo; they were migratory for large parts of the year. And when the buffalo played out, they were subject to immense economic, social and geographic disruption.

Well into the 20th century, Little Shell members lived on the absolute fringes of society in abject poverty. They were referred to as trash heap Indians, breeds, half-breeds, and other similar non-complimentary terms. When faced with this historical reality and the paper-driven approach adopted by the regulations, you can see why there is not a good fit. This situation is not calculated for the Little Shell people to produce a paper trail or for outside observers to penetrate into their social situation.

When faced with this situation, Assistant Secretary Gover said, okay, what do we do with this? The evidence clearly shows that they are an Indian tribe. We have to interpret these regulations with some flexibility and common sense. An example would be the requirement that you be recognized as an Indian entity by outsiders. The fact that they were recognized as individual Indians isn't good enough. They expect the dominant society to have penetrated to the underlying social and political reality of the tribe, to recognize an entity.

The same is true of showing community throughout history, political authority throughout history. Secretary Gover made the determination that you take the evidence that clearly establishes such patterns of community and political authority in certain time periods, and you presume, make a reasonable presumption, a reasonable likelihood that those persisted during other time periods. That is the reason for the positive proposed finding.

I would like to point out that at the time this was going on, the Director of Federal Acknowledgment, Mr. Lee Fleming, wrote a memo to his superior in connection with Little Shell. He opposed coming out with a favorable finding, and I would just like to quote two short sentences: "Another alternative would be to recommend legislation to acknowledge this petitioner. This recommendation would be based on a finding that because of the unique and complicated nature of its history, this petitioner is outside the scope envisioned by the regulations, but nonetheless merits tribal status."

This is a natural follow-on from that conclusion. They had a choice to either be flexible and adopt a common sense approach to the regulations or adopt a mechanistic approach and realize that they were confessing that the regulations didn't fit the situation. That is the situation we are in now. I want to make very clear that we did a lot of work on this after the proposed finding. We satisfied the Office of Federal Acknowledgment that 89 percent of Little Shell members trace to the historic Band of Chippewa Indians. This is well above the 80 percent guideline accepted by the Department for this criterion. So there is no doubt you are dealing with Indians and you are dealing with an Indian tribe.

I feel I must address a couple of matters very briefly that Mr. Skibine mentioned. One of which is, he said they put out for comment after the proposed finding for comments on the departures from precedent, and then they changed their mind on the departures from precedent. The implication might be that there were some comments received that caused that change. There were no such comments.

[The prepared statement of Mr. Gottschalk follows:]

PREPARED STATEMENT OF K. JEROME GOTTSCHALK, STAFF ATTORNEY, NATIVE AMERICAN RIGHTS FUND

Chairman Akaka, Vice Chairman Barrasso, Senator Tester, and honorable members of this Committee on Indian Affairs, on behalf of the Little Shell Tribe of Montana, I thank you for the opportunity to testify before this Committee today in order to provide some perspective on the long, expensive, and frustrating process experienced by the Little Shell Tribe in attempting to comply with the administrative requirements for federal acknowledgment. I am an attorney at the Native American Rights Fund and we have assisted the Tribe in its efforts to achieve recognition for more than twenty years. NARF's out of pocket expenses for consultant work have exceeded one million dollars and we have devoted four thousand hours of attorney time to this effort.

The Little Shell Tribe first sent a letter to the Bureau of Indian Affairs petitioning for federal acknowledgment in 1978. This petition was transferred to the administrative process of Federal acknowledgment which became effective on October, 2, 1978. The BIA received an initial partially documented petition in December of 1982 and issued an obvious deficiency letter in January of 1983. The Tribe submitted additional materials in 1983 and a revised documented petition in September of 1984. In April of 1985, the BIA sent a second, more detailed, technical assistance letter. The Tribe responded to this letter in November of 1987 and submitted additional materials in 1989. Subsequently, the Tribe, through NARF, hired new researchers who did more research and submitted more materials. The BIA determined that the petition was ready for active consideration on March, 23, 1995 but it was not put on active consideration until February, 1997, nearly two years later. Notwithstanding that the regulations provide in Section 83.10 (h) that proposed findings are to be issued within one year after notification that a petition has been put on active consideration, or February of 1998 in the case of Little Shell, the proposed findings (PF) were not issued until July 14, 2000, or nearly one and one half years beyond the prescribed time.

The PF was in favor of recognition and indicated that it departed from prior decisions in regard to four criteria, noting that prior precedent is not binding and that "...such departures from previous practice on these matters are permissible and within the scope of the existing acknowledgment regulations." 65 Fed. Reg. 45394, 45395 (July 21, 2000). The proposed finding explained the rationale behind the departures from precedent. As to criterion a) which requires identification as an Indian entity on a

substantially continuous basis since 1900, the Assistant Secretary accepted as a "reasonable likelihood that references to the petitioner's individual ancestors as residents of Indian settlements before the 1930's are consistent with the identification of these and other ancestors of the petitioner as Indian groups after 1935." The Assistant Secretary stated, "The Department believes that, absent strong proof to the contrary, it is fair to infer a continuity of identification from the evidence presented, particularly in light of the fact that an absence of formal organization can be attributed to the United States' pursuit of a discredited policy of treating 'full-blooded' Indians differently from those of mixed white and Indian ancestry....[T]o rigidly impose a mechanistic burden of proof on a people whose lack of formal organization is attributable to misguided Federal policy would be manifestly unjust and inconsistent with the regulations." Summary under the Criteria for the Proposed Finding for Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana, (July 14, 2000) at pp. 6-7.

As to criteria b) community and c) political influence the Assistant Secretary accepted "...as a reasonable likelihood that patterns of social relationships and political influence among the Metis residents of settlements in North Dakota and Canada during the mid-19th century persisted among their descendants who migrated to Montana...Based on the entirety of the record, especially the history of the United States' dealings with the ancestors of the petitioner, the strong evidence of continuous internal social interaction, the consistent existence of the petitioner's ancestors as distinct social and cultural communities, and the understandable difficulty in completing research on a very large number of dispossessed Indians on the American frontier, the Department proposes to find that the criteria (b) and (c) are met in this case." Id. at p. 6.

Finally, as to criterion e) descent from a historic Tribe, based on the additional work done by the Tribe's researchers, the final determination acknowledges that at least 89% of the Tribe's members trace from the historic Pembina Band of Chippewa and that this criterion is met without any need for a departure from precedent. 74 Fed. Reg. 56861, 56865-6 (November 3, 2009).

The PF invited "... on these various matters, including the consistency of these proposed findings with the existing regulations." 65 Fed. Reg. 45394, 45395 (July 21, 2000). There were only two comments received during the comment period. In its final determination (FD), the OFA acknowledged that one of the comments was rendered moot by additional materials that the Tribe submitted, and that the second commenter offered no new documentation or citations to support her claims. Summary under the Criteria and Evidence for Final Determination Against the Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana, October 27, 2009 at pp. 16-17. Thus, the PF was in favor of recognition, there was no new evidence against recognition, and "no direct comments on the issue of the PF's departure from precedent other than to ask 'why' such departures had occurred and request an explanation."

At this point, one wonders how the FD could overturn the PF, when no evidence against the PF was submitted during the comment period. The apparent answer is contained in the October, 27, 2009 summary in support of the FD which states that "The PF invited public comment from the petitioner and third parties on these 'departures from previous practice' and on the 'consistency' of the PF 'with the existing regulations.' It stated that such 'supplementary evidence' could create 'a different record and a more complete factual basis for the final determination,' and 'eliminate or reduce the scope of these *contemplated* departures from precedent' (65 FR 45395; Little Shell PF 200, Summary, 7; emphasis added). The emphasis added is by the Assistant Secretary in the FD. The apparent purpose is to suggest that the departures from precedent were always up for grabs.

This is disingenuous in two regards. First, the PF acknowledged that "This proposed finding is based on the available evidence, and, as such, does not preclude the submission of other evidence during the 180-day comment period....Such new evidence may result in a modification or reversal of the conclusions reached in the proposed finding." PF at 6. Thus, if negative evidence or comments were received, it might modify the conclusions. But no such evidence or comments were received. Second, the Tribe was encouraged to submit supplementary evidence and "Such supplementary evidence may create a different record and a more complete factual basis for the final determination, and thus eliminate or reduce the scope of these contemplated departures from precedent." Id. at 7. This is precisely what happened in regard to criterion e) descent from an historic tribe where the FD acknowledges that this criterion is met without the need for any departure from precedent.

The Tribe continued working in the good faith belief that it had met its burden, because the PF said that it had. It worked to ensure that it could respond to any negative evidence which might be presented – none was – and to help eliminate or reduce the scope of any departures from precedent – which it did as to criterion e). No reasonable interpretation of the word "contemplated" as used in the PF would include the possibility that without contrary evidence or persuasive argument, the Bureau might change its mind on a whim. And yet that is what happened. Is it any wonder that the Tribe is frustrated?

The administrative process clearly has not served the Little Shell Tribe and is not designed for Tribes such as Little Shell. It puts the Tribe to a virtually impossible standard of evidence. Criterion a) requires that outsiders identify petitioners not just as Indian individuals, but as an Indian entity. Essentially, this criterion requires interaction between outsiders and the tribal community sufficient to produce a document identifying the tribal community every ten years. The FD recognizes that there were many references from 1900 to 1935 to landless Indians, breeds and other uncomplimentary names. But it says that there were not references to Indian entities. The misfit of the criterion to Little Shell is breathtaking. Historically, the Little Shell was a migratory band, following the buffalo herds between the United States and Canada. By the early 1880's, most of the herds had disappeared and Little Shell ancestors began to settle in out of the way, rural places in Montana. Even then, Little Shell ancestors avoided contact with the dominant society because that contact subjected them to open and blatant

discrimination. Thus, Little Shell survived as a migratory people off the official radar screen. By its nature, this life style does not produce the paper trail required by criterion a.

As to criteria b (community) and c (political influence), the BIA requires proof of relationships – in the case of community, relationships among the tribal members, and in the case of political influence, relationships between the tribal members and their political leaders. Again, self-identification of leaders and oral tradition are not sufficient for a tribe to carry its burden of proof. There must be documentary evidence, or alternatively statistics (e.g., on marriage rates) from which the BIA is willing to presume the existence of interaction. Obviously, such documents are not likely to exist for a tribal community that survived historically in the traditional way and in modern times by avoiding dominant society. Combine this with the economic, social and political disclocation suffered by the Little Shell, as the BIA itself found, it becomes clear that Little Shell presents a unique circumstance in which a paper driven process simply will not work. As a result, failure by Little Shell on these criteria in the final determination does not mean that it does not exist as a tribe; it only means that the administrative process is simply not well suited to judge the unique history and circumstances of Little Shell. As the Assistant Secretary noted in the Proposed Finding on Little Shell, the administrative process must be applied in a flexible manner, giving different weight to various kinds of evidence, to accommodate the unusual history of Little Shell. 65 Fed. Reg. No. 141, at 45395 (July 21, 2000) ("...the evidence as a whole indicates that the Little Shell petitioner is a tribe."). Ultimately, though, the BIA found that the process did *not* allow for this flexibility and there was insufficient evidence of these three criteria for Little Shell.

The Little Shell is an admitted Indian people, as the finding as to criterion e) demonstrates conclusively. However, because the regulations require documentation of detailed, nuanced issues over a long period of time, Little Shell was declined. Clearly, this is a failure of the administrative process as applied to Little Shell, not a failure on the part of Little Shell to exist as an Indian tribe. The appropriateness of legislation under these circumstances was noted even by the professional staff at the BIA, the same personnel who ultimately recommended that Little Shell be declined for federal acknowledgment. Writing in 2000, the chief of the Office of Federal Acknowledgement effectively admitted the unsuitability of the process for Little Shell. He noted the departure of the proposed Little Shell finding from past precedent and suggested that special legislation should be considered: "Another alternative would be to recommend legislation to acknowledge this petitioner. This recommendation would be based on a finding that because of the unique and complicated nature of its history, this petitioner is outside the scope envisioned by the regulations, but nonetheless merits tribal status." Memorandum from Chief, Branch of Federal Acknowledgment and Research, to Acting Deputy Commissioner, on Proposed Finding on the Petition of the Little Shell Tribe of Chippewa Indians, May 5, 2000 (Attachment A). This is precisely why S. 546 should be enacted by Congress.

The FD has not become effective yet because of an appeal filed with the Interior Board of Indian Appeals. That body may take years to rule. Its scope of review is limited and to my knowledge no tribe has ever improved its position on appeal. The best that has ever been done is to have a favorable decision affirmed.

Only Congress can now establish the government to government relationship with the Tribe to which its status entitles it. The Department knows that the Little Shell deserve recognition, as shown by its references to Departmental action in the 1930s and Congressional action in 1982 that support Congressional recognition now.

ATTACHMENT

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

MAY 5 2000

Tribal Services - AR

Memorandum

To: Acting Deputy Commissioner

Through: Director, Office of Tribal Services

From: Chief, Branch of Acknowledgment and Research

Subject: Proposed Finding on the Petition of the Little Shell Tribe of Chippewa Indians

Attached is a draft proposed finding to acknowledge the Little Shell petitioner, based on the language of your e-mail message of April 14, 2000 (copy attached). The regulations require the Assistant Secretary to "prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision" (§83.10(h)). You extended the period for the Little Shell proposed finding until May 12, 2000, to allow preparation of such a decision document.

In drafting the finding, we have been unable to expand the rationale of the decision beyond that given in the e-mail. Consequently, we have described in this memo where additional guidance is needed on the evidence, reasoning and analyses you used in concluding the regulations are met.

We are concerned that the e-mail text does not give a specific explanation why the petitioner meets each of the seven mandatory criteria, as past decisions have done. In addition, the e-mail text does not note that this decision departs significantly from past precedent on several of the criteria. We believe that the decision should identify these changes and provide a rationale for the changes. Finally, we are concerned that the language of the e-mail appears to base acknowledgment of tribal sovereignty upon descent from a tribe without a showing of the maintenance of continuous tribal existence as a political community. Such a decision is inconsistent with the regulations. We believe these issues, which are outlined in greater detail below, should be addressed in order to develop a defensible decision.

There are several alternative approaches which could be adopted in lieu of issuing a positive proposed finding in order to meet your objectives. We request that you consider these options, which are outlined in the final section of this memo.

ISSUES WHICH NEED CLARIFICATION

The text of your e-mail focuses on evidence of descent, stating that you considered descent from a treaty tribe to be "compelling," despite "evidentiary gaps." Such evidence is required by criterion (e), but evidence other than descent is required by the other six criteria. We need a more detailed explanation of the other evidence you have considered in concluding there is sufficient evidence for the Little Shell to meet the criteria other than criterion (e). Alternatively, it is not clear how the referenced "evidentiary gaps" are filled by evidence of descent.

The text places emphasis on a conclusion of the technical report that many, albeit a minority, of the petitioner's members were listed on a judgment roll to share in an award made by the Indian Claims Commission. These funds, by law, were paid on the basis of lineal descent from a historical tribe. Thus compilation of the judgment roll was not based on evidence of the existence of a distinct community or the exercise of tribal political influence. We are therefore uncertain how it applies to criteria (b) and (c), if that was the intent.

The e-mail text refers to the petitioner's ancestors as having been "involved in Little Shell's band." The technical report did not identify substantial involvement which would help demonstrate continuity under criteria (b) and (c). To develop this part of a finding, we need to know what kind of involvement, at what time periods, has been considered in reaching your decision.

The reference in the e-mail text to "the migrations issues and distances between settlements" is unclear. Issues relating to tribal continuity arise from the unresolved questions of how and when the petitioner's ancestors migrated to Montana, and whether they migrated as individuals or as a group or groups. Issues relating to the existence of social community and political influence arise from the great distances between historical Montana settlements of the petitioner's ancestors as well as modern populations of the petitioner's members. If the text's conclusion is that the evidence relating to these issues is sufficient, guidance is needed for the decision document concerning the evidence you have considered concerning the migration of the petitioner's ancestors and their settlement pattern in Montana and found to be sufficient to meet criterion (b) and criterion (c).

The e-mail text says that two of the six treaty signers for the Pembina Band in 1863 were "half breeds." The technical report did not reach this conclusion. We assume that you have based this conclusion on the fact that two of the Pembina "warriors" who signed the treaty had French surnames. We have drafted the proposed finding to reflect that fact that the name of the signer from whom a few of the petitioner's members appear to descend was Joseph Gourneau rather than John Gorneau. Evidence available in the record for this finding states that Gourneau was 4/4 Chippewa (or Chippewa and Menominee). He appears to have acquired a French surname from his father's stepfather, who also was named Joseph Gourneau. In this case, then, it does not appear that a French surname equated with Métis or "mixed-blood" status.

The e-mail text does not set out reasons or evidence which would to establish the continuity as a tribal political community of the petitioner's Métis ancestors with the Pembina Band required to meet criteria (b) and (c). The text provides only a brief suggestion, from treaty-related documents, of a political linkage between the Pembina Band and their Métis relatives in the treaty period. The technical report notes that historical studies conclude Métis were, by and large, not part of tribes but were socially and culturally distinct peoples with separate leaders. The technical report does not have substantial information to show political linkages between the petitioner's Métis ancestors and the Pembina Band but leaves open the possibility that additional evidence may show them to have been united as a single political body.

Your e-mail of April 14, 2000, does not provide a rationale for how each of the seven mandatory criteria has been met. Past practice has been to evaluate the evidence relating to each criterion and to present a discussion which concludes whether or not each criterion was met. The present draft does not separately address each criterion. To prepare a revised decision which specifically addresses each criterion we will need additional guidance on the evidence and reasoning upon which you have relied to find that the petitioner meets its burden of proof for each of the criteria.

We have drafted the proposed finding on the assumption that the intent was to find that a majority of the petitioner's current members descend either from ancestors who can be assumed to have been members of the historical Pembina Band prior to the treaty of 1863 or from ancestors who were documented members of the successor Turtle Mountain Band circa 1892. The language of the e-mail message incorrectly stated that the petitioner's ancestors[1] encompassed the majority of the Pembina Band. However, the technical report did not identify the members of the historical Pembina Band and could not make this conclusion based on the available evidence. There is of course no requirement that a petitioner represent most of the descendants of an antecedent tribe.

DEPARTURES FROM PRECEDENT

The e-mail text appears to accept an absence of evidence meeting criterion (b) and criterion (c) for a period of at least 70 consecutive years. The existing precedent is that in every case the Department has required evidence of continuous historical existence of a distinct community (criterion (b)) and the exercise of political influence or authority (criterion (c)), without any substantial periods of inactivity or insufficient evidence. Is the intent to change the precedents concerning continuity and/or is there evidence for continuity that you have considered in this part of your decision? The language of the regulations requires continuity for these two criteria, defining "continuously" as "extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption" (§83.1). Tribal continuity is the essential legal requirement of the Secretary's authority to acknowledge tribal existence.[2]

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[1] We have assumed that the reference to "descendants" was intended to be "ancestors."

[2] The Department, in promulgating the acknowledgment regulations (59 FR 9282), noted that "The Federal court in *United States v. Washington* rejected the argument that, 'because their ancestors belonged to treaty tribes,

The e-mail text appears to reduce the standard for meeting criterion (e) to a "majority" of the petitioner's members having descent from a historical tribe, while the existing precedent has required at least 80 percent of members to have descent from a historical tribe. Is the intent to alter this precedent?

The e-mail text places emphasis on a conclusion of the technical report that 2 percent of the petitioner's members descend from one of the six signers of the 1863 treaty, who you have identified as Metis. What reasoning or historical facts provide a basis for giving descent from a treaty signer more weight than descent from other members of a historical tribe? There is no precedent for this is in past cases and we did not find regulatory language on which to base it.

The e-mail text does not specifically address criterion a. The technical report found there was an absence of evidence meeting criterion (a), external identification, for a period of 35 consecutive years. The criterion requires such identification on a "substantially continuous basis." The existing precedent has required evidence meeting criterion (a) for each decade.

The text of your e-mail found the attempts of the Little Shell group in the 1930's to achieve IRA status important because it indicated "the desire for the Little Shell group to maintain their status." The existing precedent has not accepted a desire or attempt to obtain recognition as evidence which indicates the existence of a tribe or as evidence that meets the criteria. The regulations provide that any group that believes it should be acknowledged as an Indian tribe can petition (§83.4 (a)), irrespective of whether the group is a tribe or not. It is unclear from the language of your e-mail whether you also intended to refer to the Federal government's intentions, since these were to change rather than maintain the status of the Little Shell's ancestors, by organizing them as a community of half-blood Indians under the IRA.

The e-mail text emphasizes the support of federally-recognized tribes for the acknowledgment of this petitioner. There is precedent for citing such expressions of support as evidence which meets criterion (a) at a specific time. However, in evaluating the other criteria, existing precedent has given little weight to mere expressions of support for or opposition to a petition by other parties, absent their submission of evidence or arguments relevant to the criteria. We note that giving these expressions greater weight would appear to require giving greater weight than has been given in the past to opposition by recognized tribes. In past decisions, opposition from recognized tribes has not been considered a basis on which to deny the acknowledgment of a petitioner (e.g., Cowlitz, Snoqualmie and San Juan Southern Paiute).

ALTERNATIVES TO THE DRAFT PROPOSED FINDING

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the appellants benefitted from a presumption of continuing existence.' The court further defined as a single necessary and sufficient condition for the exercise of treaty rights that tribes must have functioned since treaty times as 'continuous separate, distinct Indian cultural or political communities' (641 F.2d 1374 (9th Cir., 1981)). Thus simple demonstration of ancestry is not sufficient."

In view of these issues and questions about the issuance of a positive proposed finding in its current form, you may wish to consider the following alternative ways of meeting your objectives.

(1) Suspension of Active Consideration:

In a meeting you had with the BAR staff, a suggestion was made that the petitioner be given a technical assistance letter rather than a negative proposed finding in order that the petitioner could correct the deficiencies in its documentation prior to the issuance of a proposed finding.

The main problem with this petition is the lack of evidence about the petitioner's ancestors prior to 1927. This deficiency appears to have stemmed from the petitioner's argument that it had been previously recognized by the Federal Government during the 1930's. BAR advised them, well prior to active consideration, that this was not correct. The petitioner responded with the incorrect assumption that it had been part of the Turtle Mountain Band in North Dakota and had therefore previously been recognized by the Federal Government as late as 1904 as part of that tribe. For these reasons, most of the documentation in the record relating to the 19th century pertains to the Turtle Mountain Reservation and not to the petitioner's ancestors in Montana.

The Assistant Secretary has the authority under the regulations (§83.10(g)) "to suspend active consideration . . . upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration." The rationale in this instance would be that the petitioner submitted its documentation under a misunderstanding of its status, and now will be given an opportunity to respond thoroughly to the requirements of the regulations.

The petitioner could be sent a copy of the technical report plus a new technical assistance letter containing specific recommendations on the further research and additional documentation needed to improve the petition.

(2) Recognition Outside of the Acknowledgment Regulations:

The acknowledgment regulations may not be the appropriate means for the consideration of the status of this petitioner. The statement in the regulations on the "scope" of the administrative process of acknowledgment says that it applies "only to those American Indian groups indigenous to the continental United States. . . ." (§83.3(a)).

The technical report found that, with the evidence available in the record for this case, only 48 percent of the petitioner's members could be linked to a named ancestor on a 19th century record which would establish that they had ancestry from the historical Pembina Band of Chippewa or its successor the Turtle Mountain Band. The technical report found that many of the petitioner's members had ancestry from the Red River Colony in British territory, while the ancestry of many of the petitioner's members had not been traced and potentially derived from a Canadian origin.

While it may be possible to establish, by the reasonable likelihood standard, that the Métis along the Red River in both American and British or Canadian territory were part of one historical community, the petitioner has not done so. There also is reason to believe that such a transnational Métis community was the product of intermarriages between non-Indians and members of several Indian tribes, not just one historical American Indian tribe.

The case can be made that, despite the possibility that this petitioner has origins substantially from Canadian rather than American Indians, there are federally-recognized Indian tribes today that have similar origins. The closest parallel to the composition of the Little Shell of Montana is the Chippewa-Cree Tribe of the Rocky Boy's Reservation in Montana. The argument can be made that, despite the possible inability of the Little Shell petitioner to meet the requirements of the acknowledgment regulations, elementary fairness dictates that it achieve the same status as similar Indian groups. An acknowledgment decision issued outside the regulations would be based on your general authority to recognize tribes.

(3) Support of Legislative Recognition:

Another alternative would be to recommend legislation to acknowledge this petitioner. This recommendation would be based on a finding that because of the unique and complicated nature of its history, this petitioner is outside the scope envisioned by the regulations, but nonetheless merits tribal status. This alternative would be best pursued, however, after receipt of comments on a recommended negative proposed finding, so that the most complete understanding of the petitioner's history and connection with historical tribes would be available.

Congressional recognition would eliminate questions likely to be raised under alternative (2) above about the extent of the Secretary's authority to recognize tribes.

(4) Reconsider the BIA's Recommended Proposed Finding:

We continue to recommend that you issue a proposed finding against acknowledgment, revising our draft proposed finding as necessary and providing sufficient technical assistance to the petitioner to allow it to use the comment period to demonstrate that it meets the acknowledgment regulations. This alternative would be the one most consistent with your directive published in the *Federal Register* on February 11, 2000, which stresses the role of the proposed finding to define the deficiencies in the petition and to identify the additional evidence needed from the petitioner, and the role of the comment period as the appropriate means for the petitioner to use to present additional evidence to remedy the deficiencies in its original petition.

The recommended proposed finding rested not on a conclusion that the petitioner is not a tribe, but on a conclusion that the record contained inadequate evidence for a long, multigenerational period of time which constitutes a major portion of the history of the petitioner's ancestors. Historical records exist which could provide relevant missing information. Identifying these records and explaining how they could be used would be the major focus of the technical assistance the BAR staff would provide to the petitioner to aid it in its response to the proposed finding.

The CHAIRMAN. Thank you very much, Mr. Gottschalk, for your testimony.

Ms. Cleveland, will you please proceed with your testimony?

STATEMENT OF HON. BONITA CLEVELAND, CHAIR, QUILEUTE TRIBE

Ms. CLEVELAND. Thank you, Mr. Chairman.

Mr. Chairman and other members of the Committee, on behalf of the Quileute people, thank you for allowing us to speak with you today about how our children and elders could be killed in a tsunami unless we move our village to higher ground.

Wa-ta-lich-ta asoos ta. Thank you, thank you, thank you from the bottom of our hearts. With me today, Mr. Chairman, I have our tribal council representatives, Mrs. DeAnna Hobson, Mrs. Carol Hatch, and our Executive director, Mr. Bill Peach, our legal advisor, Harold Bailey, and Jackie Jacobs.

Although the Japanese tsunami is a very recent reminder of the destruction that happens after an earthquake in the ocean, our people have been living for decades among decades with the fear of a tsunami and our flooding. Our tribal council has prepared today to share a video with you and your Committee. If we could do that.

[Video shown.]

Ms. CLEVELAND. So as you have just seen from the video, our community knows that our school children, our elders will not get out in time. Our children are really worried, and I want to share with you a piece of artwork from one of our students that shows their fear.

Because our village is located on only one square mile, Mr. Chairman, and we are between the Pacific Ocean and the Olympic National Park, we have nowhere else to go. There is only one road in and one road out of La Push. This road is usually under three to four feet of water when flooded. For decades my uncles have negotiated with the Olympic National Park to try and bring resolution to the dispute over the boundary of our reservation. Finally, last year, we were able to reach an agreement with the Park to settle this dispute. We would like to express our deepest appreciation to the Park Superintendent, Karen Gustin, for her hard work and her understanding of the dangers our tribe faces.

Senator Cantwell's legislation would allow the Quileute Tribe a permanent way out of the danger zone. For the many visitors to the Olympic National Park, including the Twilight fans, the bill will ensure permanent access to our beautiful beaches through the trailhead owned by the tribe. Senator Cantwell's bill will also return our people a cultural and sacred site that we know as Thunder Field. Our people have utilized Thunder Field for many, many cultural activities, gathering our berries and placing our canoes to fish.

An organization that understands our way of life is the National Congress of American Indians. I would like to express my appreciation for the NCAI to be here today with us. Mr. Chairman, I would like to submit two NCAI resolutions passed in 2008 and 2011.

We have enjoyed a very close working relationship with the City of Forks, and we have consulted with the town of Forks on this bill. Mr. Chairman, I would also like to submit for the record a letter from Forks supporting this bill also.

The time has come once again to make a difference for our people who have always had such close cultural ties with the land base since the beginning of time. Without this bill, Mr. Chairman, the tsunami could be very dangerous to our people. Mr. Chairman, I have been so honored to represent my people today before you. I hope the words and the video show our urgent and desperate need. Wa-ta-lich-ta asoos ta. Thank you.

[The prepared statement of Ms. Cleveland follows:]

PREPARED STATEMENT OF HON. BONITA CLEVELAND, CHAIR, QUILEUTE TRIBE

Mr. Chairman and Members of the Committee, on behalf of the Quileute people, thank you for allowing me to speak about how our children and elders could be killed in a tsunami unless we can move our village to higher ground. *Wa –ta- lich- ta asoos ta. Wa –ta- lich- ta asoos ta. Wa –ta- lich- ta asoos ta*. Translation: Thank you from the bottom of my heart.

With me today are members of the Quileute Tribal Council, DeAnna Hobson and Carol Hatch, our Executive Director, Mr. William Peach, the Tribe's legislative counsel, Mr. Harold Bailey, and the Tribe's Communication Consultant, Ms. Jackie Jacobs. I am here today to be the voice of the Quileute people, and to ask this Committee to act on Senator Cantwell's legislation, Senate Bill 636.

Although the Japanese tsunami is a very recent reminder of the destruction that follows an earthquake in the ocean, our people have been living for decades with the fear of a tsunami and flooding.

Our homes, Tribal school, elder center and administrative buildings at La Push are built basically at sea level, and there is a huge fault line right off our coast called the Cascadia subduction zone. Some might ask why we have located our Tribal infrastructure in harm's way, but this Committee knows the reason: our Tribe was forced onto a one-mile square reservation, the Olympic National Park completely surrounds our reservation, and we have no more land to move our tribal facilities out of danger.

The time has come once again to make a difference for our people who have always had close cultural ties with the land since the beginning of time. It starts all over again, with Senator Cantwell's introduction of the Quileute tsunami protection and land transfer legislation. The challenges have been great, there has been consultation upon consultation for many years with the different leaderships of our village. Without this legislation, the tsunami danger could lead to the extinction of our Quileute people. It is time to take great measures to ensure that there is more done by the Congress than introducing a bill on the floor of the Senate. As Quileute people who have always had ancient cultural ties with our land and beneficiaries

since the beginning of time, we know best when it is time to move freely as they had done back in the days. Freely is the key word that is not possible for today's Quileutes. We all know Mother earth gives as well as she has the power to take away...

In the past, our people lived, hunted and fished on many thousands of acres throughout our Northwest Coast. However, as you are aware, our land base is between the Pacific Ocean and Olympic National Park. Senator Cantwell's legislation would give our Tribe a permanent way out of tsunami danger zone. The beaches will remain open to the thousands of visitors who can access those beaches over a trailhead owned by the Quileute Tribe.

Many people have an impression of the Quileute people through the *Twilight* books and movies, but our reality is completely different. Our Tribe is small, and most of our economic livelihood depends on fishing. I have been involved in Northwest Indian fishing issues for many, many years, and I can tell you that this is a constant struggle to maintain the right to fish in areas our forefathers fished for centuries. Hollywood's version of the Quileute people does not show the economic hardships we face, nor the struggle we consistently face to preserve our culture and way of life when we are confined to a one-mile square reservation.

Beyond the tsunami danger, our Tribe faces the consistent threat of flooding from the Quileute River. We get 12 feet of rain per year, an average of 144 inches. There is only one road in and one road out of La Push, and this road is often under 3-4 feet of water. An important part of Senator Cantwell's legislation would allow the Tribe and the Olympic Nationalal Park to work together to plan flood protection measures that would benefit both the Tribe and Park visitors.

The land that would be transferred to the Tribe has been logged, and there will be a tree line between the new Tribal buildings, the Olympic Nation Park trails and the beaches. For those who are concerned about the loss of some wilderness land, I ask that they think about the Japanese tsunami victims and then imagine the death and destruction that will occur when, not if, a tsunami hits La Push.

Every detail of the land transfers and easements contained in Senator Cantwell's bill has been carefully evaluated and negotiated with the Olympic National Park for many years. The legislation offsets the loss of wilderness adjacent to our reservation by adding large tracts of new wilderness to the Olympic National Park.

We are concerned about the federal budget crisis, but I want to be very clear that Senator Cantwell's bill requires minimal federal costs. There are no federal dollars going to the Quileute Tribe for this settlement, only federal land. The Olympic National Park will incur small charges for survey and title costs, and will commit its staff's time to implementing the settlement.

For our part, we have devoted hundreds of hours of time by our Quileute Tribal Departments and staff and legal counsel to identify and negotiate the land transfers and easements with the Park. In comparison to the federal dollars that would be spent in responding to a tsunami that would destroy our village and injure so many, the cost of this legislation are truly insignificant.

I want to express my sincerest appreciation and respect to all the current and past members of the Quileute Tribal Council, and the staff of the Quileute Natural Resources, who have worked for so long to preserve and protect our tribe. One part of the land transfer, the Thunder Field area, has tremendous cultural and historic value to our Tribe, and our forefathers would be happy that their descendants may once again call that special place our own. It is a sad fact that Thunder Field is in a flood zone, and the land is constantly eroding as the Quileute River moves closer and closer to our village. But our Tribal Council recognizes our obligation and debt to our forefathers for whom Thunder Field was such an important part of their values and traditions that we cherish. If the Quileute people can regain Thunder Field, then we will have made an important contribution to our cultural heritage.

The only way the legislation can be successful is that if the Congress moves quickly before a tsunami destroys La Push. We know that this Committee and the Senate have many other pressing matters to deal with, and we are fearful that this legislation will not be enacted soon enough.

As Tribal Chair, I am constantly asked why it has taken so long for the federal government to recognize the injustice to our Tribe and the danger we face. Our Tribal School is at sea level next to the Pacific Ocean and the students ask their teachers: "Could we be killed by the wave?" and "Could we get out in time?" Some of those children have expressed their worries in art work, and I have with me today some of their pictures and drawings that show that our children understand the danger they face every day they come to school.

We have just learned that a wall of water 48 feet tall hit the Japanese nuclear plant. We now know that in the past an earthquake off the Oregon coast produced a tsunami that traveled all across the Pacific to hit Japan. We know that the Cascadia subduction zone has produced massive earthquakes in the past, and that another earthquake could happen at any moment. And most worrisome, we the Quileute people know that, based on our practice tsunami evacuation drills, we may not have sufficient warning to get our children and elders to safety in time. To those people who discount the danger of tsunami, I say – please come to La Push and see with your own eyes our immediate need.

We are also aware that some people do not understand the long history of our dispute with the Olympic National Park, and do not agree that the Tribe should receive any federal land. We are fearful that those people will slow the progress of this legislation, and that the potential for a Japan-type tsunami will become a horrible reality for our Tribe. To those people I say, please, think of the sad pictures

of the child victims in Japan and imagine what it would be like to see similar pictures coming from La Push. We ask this Committee to be a champion for our children, and to be a strong and constant voice for quick legislation action. For our part, we will continue to be a leader in tsunami awareness and preparation, and we will never stop asking for this legislation.

Mr. Chairman, in closing, I would like to thank Olympic National Park Superintendent, Karen Gustin, for her continued hard work on the land settlement, and to express our deepest appreciation to all the public officials and private citizens who care about the survival of the Quileute people and who are supporting Senator Cantwell's bill.

I also want submit for the record six important items that I urge your Committee to consider:

(1) Letters of support from public officials in the State of Washington.

(2) The recent draft resolution of the National Congress of the American Indian supporting Senator Cantwell's legislation, as well as a previous NCAI resolution expressing concern about tsunami danger to our people.

(3) The complete 10 minute video on the tsunami danger produced by the Quileute Tribal Council, viewable at http://www.quileutenation.org

(4) Pictures of the past flooding from the Quillayute River.

(5) A list of the scientific articles that explain the earthquake and tsunami danger from the Cascadia subduction zone.

(6) A listing of the recent television and radio reports that record the tsunami danger to the Quileute people.

I ask everyone to view our Tribal Council's tsunami video and to support to Senator Cantwell's legislation.

As for many many moons, this has yet to become a reality for the Quileute people.

On behalf of the Quileute people I have come with a token, a carved moon, so you will remember the Quileute people's cry.

ATTACHMENTS

NATIONAL CONGRESS OF AMERICAN INDIANS

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Chickasaw Nation

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PACIFIC
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ROCKY MOUNTAIN
Scott Russell
Crow Tribe

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Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Robert Tippeconnic
Comanche Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh

The National Congress of American Indians
Resolution #EC-11-001

TITLE: Support of Federal Legislation to Protect the Quileute People from Tsunami and To Express Sympathy to the Japanese Tsunami Victims

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 the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Quileute Indian Tribe is an Indian Tribe organized under the Indian Reorganization Act, and the Quileute Tribal Council is the duly constituted governing body of the Quileute Indian Tribe by authority of Article III of the Constitution and By-laws of the Quileute Indian Tribe approved by the Secretary of the Interior on November 11, 1936; and

WHEREAS, the Quileute Indian Reservation is located on the western coast of the Olympic Peninsula, with the Pacific Ocean to the west and surrounded by the Olympic National Park on the north, south and east; and

WHEREAS, most of the Quileute Reservation village of La Push is located within the coastal floodplain, with the Tribal administrative buildings, the school, the elder center and tribal housing all located in a tsunami zone; and

WHEREAS, the recent tsunami disaster in Japan stands as a tragic reminder of the vulnerability of the Quileute people, and the need for immediate action to move Tribal facilities to higher ground; and

WHEREAS, for many decades, the Quileute Tribe and the Olympic National Park have had a dispute over the Reservation boundaries along the Quillayute River; and

WHEREAS, this dispute intensified as the Quileute Tribe has faced the urgent need for additional lands for housing, schools and other Tribal purposes outside the tsunami and river flood zones; and

WHEREAS, the Quileute Tribal Council and the Olympic National Park engaged in lengthy negotiations to resolve the boundary dispute and to protect the Quileute people from the tsunami and flooding threat; and

WHEREAS, in 2008, the NCAI passed Resolution PHX-08-073 adopted at the Phoenix Arizona Annual Session recognizing that the Quileute Tribe's administrative buildings, school, elder center and tribal housing are located in the tsunami zone, and supporting draft legislation that would resolve the boundary dispute and to protect the Quileute people.

WHEREAS, the Quileute Tribal Council and the Park reached agreement in 2010 on proposed legislation to resolve the dispute, and the Quileute Tribal Council has asked the Congress to enact this legislation; and

WHEREAS, Senator Maria Cantwell of Washington State and Congressman Norm Dicks of Washington State have introduced legislation to protect the Quileute people from tsunami and to resolve the dispute between the Quileute Indian Tribe and the Park.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support Senator Cantwell's legislation, S. 636, and Congressman Dicks' legislation, H.R. 1162; and

BE IT FURTHER RESOLVED, that the NCAI urges the Congress to act with speed and urgency on S. 636 and H.R. 1162 so that the people and facilities of the Quileute Indian Tribe can be moved to higher ground as soon as possible; and

BE IT FURTHER RESOLVED, that the NCAI wishes to extend its deepest sympathies to the Japanese tsunami victims and their families, and

BE IT FURTHER RESOLVED, that the NCAI believes that swift enactment of S. 636 and H.R. 1162 would honor the memory of the Japanese tsunami victims by preventing another tragedy that could destroy the Quileute Indian Tribe.

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the Executive Committee of the National Congress of American Indians on April 5, 2011, with a quorum present.

President

ATTEST:

Recording Secretary

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

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Joe A. Garcia
Ohkay Owingeh (Pueblo of San Juan)

FIRST VICE-PRESIDENT
Jefferson Keel
Chickasaw Nation

RECORDING SECRETARY
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Standing Rock Sioux Tribe

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Robert Chicks
Stockbridge-Munsee

NORTHEAST
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Narragansett

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Juana Majel
Pauma-Yuima Band of Mission Indians

ROCKY MOUNTAIN
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SOUTHEAST
Archie Lynch
Haliwa-Saponi

SOUTHERN PLAINS
Darrell Flyingman
Cheyenne-Arapaho Tribes

SOUTHWEST
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Alvin Moyle
Fallon Paiute-Shoshone

EXECUTIVE DIRECTOR
Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

The National Congress of American Indians
Resolution #PHX-08-073

TITLE: Support of Draft Legislation Resolve the Northern Boundary Dispute between the Quileute Indian Tribe and the Olympic National Park

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 the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Quileute Indian Tribe is an Indian Tribe organized under the Indian Reorganization Act, and the Quileute Tribal Council is the duly constituted governing body of the Quileute Indian Tribe by authority of Article III of the Constitution and By-laws of the Quileute Indian Tribe approved by the Secretary of the Interior on November 11, 1936; and

WHEREAS, the Quileute Indian Reservation is located on the western coast of the Olympic Peninsula, with the Pacific Ocean to the west and surrounded by the Olympic National Park on the north, south and east; and

WHEREAS, most of the Quileute Reservation village of La Push is located within the coastal floodplain, with the Tribal administrative buildings, the school, the elder center and tribal housing all located in a tsunami zone; and

WHEREAS, for many decades, the Quileute Tribe and the Olympic National Park have a dispute over the Reservation boundaries along the Quillayute River; and

WHEREAS, in recent years, this dispute has intensified as the Quileute Tribe has faced an urgent need for additional lands for housing, schools and other Tribal purposes outside the tsunami and river flood zones; and

WHEREAS, the Quileute Tribal Council and the Olympic National Park have been engaged in long-term discussions to resolve the boundary dispute and to protect the Quileute people from the tsunami threat; and

WHEREAS, the Quileute Tribal Council and the Park have reached agreement on draft legislation to be submitted to Congress to resolve these pressing issues.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the draft legislation for the resolution of the northern boundary dispute between the Quileute Indian Tribe and the Olympic National Park; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2008 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center in Phoenix, Arizona on October 19-24, 2008, with a quorum present.

President

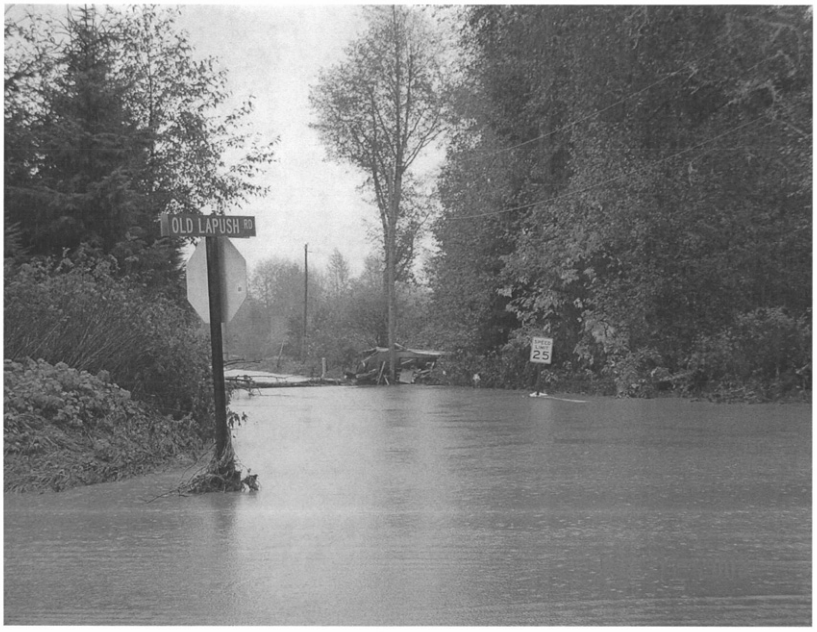
ATTEST:

Recording Secretary

WATER

STOP
FEB 4 2006

FEB 4 2006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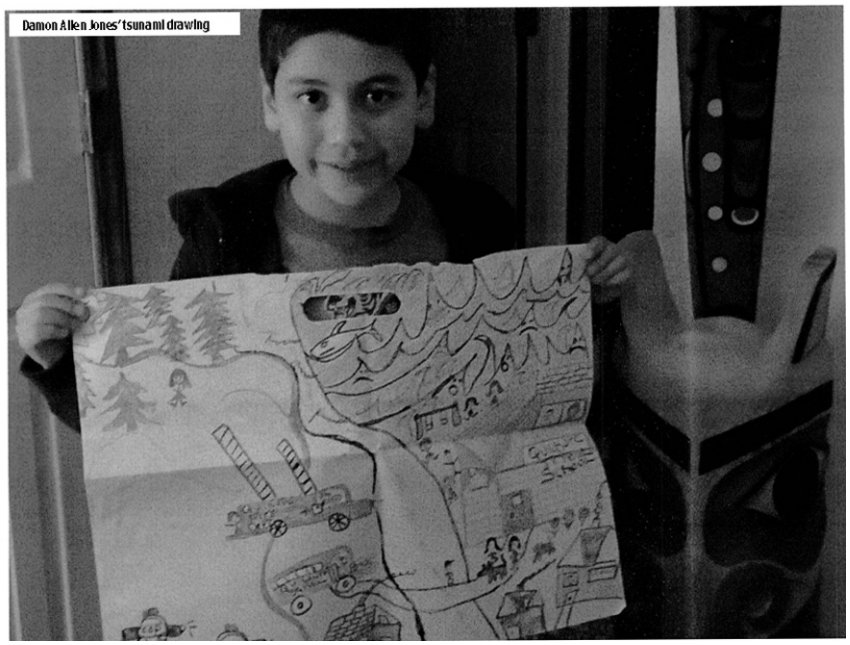
OCT 17 2003

OCT 17 2003


Damon Allen Jones' tsunami drawing

SUBMISSION #6 FOR THE RECORD
TSUNAMI DANGER SCIENTIFIC ARTICLES

Scientific and Media Weblinks on Historical Tsunamis and the Pacific Northwest Subduction Zone:

http://www.mapsofworld.com/tsunami/largest-historical-tsunamis.html

http://wcatwc.arh.noaa.gov/64quake.htm

http://academic.evergreen.edu/g/grossmaz/DANIELSC/index.html

http://www.oregongeology.org/tsuclearinghouse/projects-ecolacreek.htm

http://www.montrealgazette.com/news/1700+tsunami+caused+damage+Japan/4428377/story.html

http://geology.com/records/biggest-tsunami.shtml
http://www.drgeorgepc.com/Tsunami1958LituyaB.html

http://www.andaman.org/mapstsunami/tsunami.htm

http://www.usc.edu/dept/tsunamis/alaska/index.html

Points About the Earthquakes and Tsunami Wave Heights:

The 2011 Japan earthquake was 9.0, with tsunami wave height up to 33 feet in Japan, 1.7 feet at La Push, Washington

The 2004 Indonesian earthquake was 9.0 on the Richter scale, with tsunami wave height up 100 feet in Indonesia

The 1964 "Good Friday" Alaska Quake was 8.4 on the Richter scale, with tsunami wave height up to 200 feet (in Shop Bay AK), wave heights up to 20 feet along the West Coast -- 7 feet in La Push.

The 1960 Chilean Earthquake was 9.5 on the Richter scale (highest on record), with tsunami wave height up to 82 feet in Chile

The 1958 Alaska Quake at Lituya Bay Alaska was estimated at 6.7 on the Richter scale, and because of the rock cascading down into a tidal inlet, created a localized tsunami with a wave more than 1500 feet

1929 Newfoundland Quake was 7.2 on the Richter scale, with wave height up to 22 feet in Canada.

The 1700 Oregon earthquake was estimated at 9.0 on the Richter scale, with tsunami wave height up to 50 feet in Oregon

SUBMISSION #7 FOR THE RECORD
RECENT QUILEUTE TSUNAMI DANGER PRESS ARTICLES

Recent Media Weblinks to Reporting on Quileute Tsunami Danger:

http://www.q13fox.com/news/kcpq-tsunami-would-wipe-out-local-tribe-20110406,0,2261665.story

http://www.king5.com/news/local/Tribe-desperate-to-move-village-to-higher-ground--118687154.html

http://indiancountrytodaymedianetwork.com/2011/03/quileute-officials-lobby-safety-olympic-national-park/

http://www.twilightlexicon.com/2011/03/23/the-quileuete-nation-seeks-tsunami-legislation-and-needs-your-help/

http://www.kirotv.com/news/27322625/detail.html

http://www.peninsuladailynews.com/article/20110325/NEWS/303259987/quileute-tribe-releases-tsunami-video

http://www.salem-news.com/articles/april022011/tsunami-threat-tk.php

http://www.peninsuladailynews.com/article/20110318/news/303189988/legislation-would-give-quileutes-higher-ground

http://www.americanindianreport.com/wordpress/2011/03/legislation-would-help-quileute-move-out-of-tsunami-zone

http://twilightseriestheories.com/2011/03/23/the-quileute-nation-needs-your-help

http://seattletimes.nwsource.com/html/localnews/2013720131_quileute20m.html

500 East Division Street • Forks, Washington 98331-8618

Web: www.forkswashington.org

The Honorable Daniel K. Akaka
Chairman of the United States
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington DC 20510

12 April 2011

Dear Mr. Chairman:

I am writing on behalf of the City of Forks Washington to support Senate Bill 636, tsunami protection legislation for our Native American neighbors, the Quileute Indian Tribe. During the City Council's meeting last night, this topic was added to our agenda for the Council's discussion and consideration. The City Council and I strongly support the adoption of this bill.

The Quileute Tribe and the City of Forks have long maintained an effective and mutually-respectful working relationship. The City recognizes the urgent public safety needs of the Quileutes, who live in constant tsunami danger. The recent tragedy in Japan only has reaffirmed the pressing need for a solution to the eminent threat that the Quileute people face. We believe that Senate Bill 636 is the best approach to protecting the Quileute people and that the legislation accomplishes this goal without a significant financial burden on U.S. taxpayers.

The City of Forks applauds your Committee for holding such a prompt hearing on Senate Bill 636 after Senator Cantwell introduced the Bill. We urge the Committee to act quickly on Senate Bill 636 so that the legislation can be implemented before a tsunami disaster strikes here along the Pacific Northwest coast. Averting such a disaster must become one of the highest priorities for all of us in the days ahead; your quick action is greatly appreciated and reassures all of us that you and your colleagues are aware of our needs in "the other Washington."

Sincerely,

Bryon Monohon
Mayor

cc: Senator Patty Murray
Senator Maria Cantwell
Governor Christine Gregoire
Rep. Norm Dicks

The CHAIRMAN. Thank you very much for your testimony, Ms. Cleveland.

I know that it has been a long and difficult struggle for the Little Shell Tribe to try to obtain Federal acknowledgment. Mr. Sinclair, can you discuss the toll that this process has taken on the Little Shell Tribe?

Mr. SINCLAIR. The toll is that we have not been able to supply the services that would help us to overcome the racist attitudes that have held us back for so long. One of the reasons that we don't fit into this cubby hole that the OFA process tried to put us in is because we have not been able to use our resources we have to educate our children so that we can do something like that, educate our children, keep our people healthy. It is just something that

without the support of groups like NARF and Patton Boggs, we wouldn't be able to be here today. It is sad that we have to depend on charity from others, but that is just kind of the lot that we have been led into.

The CHAIRMAN. Mr. Gottschalk, your testimony highlights several flaws and inconsistencies within the Federal acknowledgment process. What recommendations do you have to improve this process? And do you think the process can be improved, or does Congress need to act?

Mr. GOTTSCHALK. I believe Congress probably will need to act. There are many things that need to be improved. You yourself raised the issue of transparency with Mr. Skibine. I would like to point out that after our last submissions were made, the Bureau sent a researcher out for more than three weeks to do additional on the ground research. There was no provision in the regulations that allowed us to have that information and comment on it prior to final decision.

To add insult to injury, when we asked for the information, we were required to pay $5,000 for copying costs. We have appealed that decision, but it hasn't been decided. So we had to put up that money to get the documents that related to our very petition for recognition, plus no opportunity to comment on them. That to me is not transparency.

One of the people that they interviewed was an expert on Metis people, and Little Shell in particular. We used him in our IBIA appeal to write a document on our behalf. And his testimony was totally positive. We saw no reflection of it in the outcome, in the final determination. That does not instill confidence in the process. I think there has to be recognition of the fact that the requirements are extraordinarily onerous.

I think criteria A, which says that outside observers must consistently recognize the group as an Indian entity, cannot possibly be a requirement. It could be possible evidence of the existence of community or political authority. It can't possibly be an independent requirement, because that would mean if a tribe met all the substantive requirements to be a tribe, they were in fact a tribe, but outside observers didn't notice that, then they are not a tribe.

Can that really be the state of our law today? And yet that is one of the seven mandatory criteria in the Federal acknowledgment regulations. I think it needs to be simplified. It needs to have more transparency and it needs to involve tribes more. There has to be an opportunity perhaps for give and take, perhaps for direct examination, cross examination of the experts in OFA. Those are my thoughts for right now.

The CHAIRMAN. Thank you for your answers.

Ms. Cleveland, I want to say thank you so much for showing us the video, to show us where the tribe's reservation is located. It was a very powerful showing of how precarious your situation is.

Ms. CLEVELAND. Yes.

The CHAIRMAN. Can you tell us what type of warning the tribe would get in the event of a tsunami and how the evacuation plan would be carried out, with only one road, as you mentioned, in and out of the reservation?

Ms. CLEVELAND. Yes, Mr. Chairman. We have an evacuation tsunami warning that goes off for our village that can be heard, sometimes can be heard and sometimes cannot be heard. So we have had several evacuation warnings and it has taken our tribal members approximately six to seven minutes to get out of the lower village. And that is loading the children in the buses. These are practice warnings, may I remind you. And we won't get out in time from the lower village.

The CHAIRMAN. And as you mentioned, there is just one road in and out?

Ms. CLEVELAND. Yes. We have one road into our village and one road out. If we were hit by a tsunami and that road was destroyed, we would have no way out. We would be trapped.

The CHAIRMAN. Thank you very much for your responses.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for asking these questions. I think you do see by the video the precarious situation that the Quileute are in. Thank you, Chairperson Cleveland, for your testimony and bringing the spirit of the Quileute people to this hearing room today.

I wanted to ask, you have done a good job of showing the impact of the Pacific, and we probably didn't emphasize enough for people about this most recent warning system was in Japan. But obviously something that would happen on the Cascadia Subduction Zone, right off our coast would be an immediate impact. That is why you are emphasizing the time to evacuate would be very minimal.

But can we also talk about the Quileute River, and its impact? Because I know that it is also part of your boundary area. And with the heavy rains and the fact that you are right next to a temperate rain forest, you have a lot of issues with flooding from the river. Could you comment on that, channels for the river and how that impacts the reservation and how moving to a bluff would alleviate that issue?

Ms. CLEVELAND. Yes. We are impacted by the river, our lower village, we are on one square mile. And our lower village is surrounded on one side by the river, and then the other side is surrounded by the Pacific Ocean. Behind us, we are surrounded by the Olympic National Park. So during the winter months, our river is overflowing into people's homes and we are having to move the people out of their homes, they are flooded. Their homes are flooded, every winter, winter after winter after winter this is occurring with our tribal people. And it really impacts our people and it creates a hardship for them because they have nowhere to go. They have to move in with relatives, to higher ground somewhere else until we can get their houses cleaned up again, Mr. Chairman.

Senator CANTWELL. So this land trade with the Department of the Interior will allow you to relocate to that higher ground. But it also preserves or actually, I would say probably even enhances the continued access of a larger community to the magical places of La Push and Rialto and everything else for the region, is that correct?

Ms. CLEVELAND. That is correct, yes it is.

Senator CANTWELL. So could you comment a little bit about the importance of that and continuing to have access to those places that you get to enjoy every day?

Ms. CLEVELAND. I guess number one priority would be giving us access to higher ground and it would allow people safety and protection and being able to live at ease. And it would allow people to enjoy the beautiful beaches that we are surround by and able to continue our fishing on the rivers, as we have done for centuries.

Senator CANTWELL. Thank you. Again, thank you, and could you just emphasize, you mentioned the Twilight tribe. Could you expound on that for a minute? Some people may have one impression, so maybe you could comment.

Ms. CLEVELAND. Our tribe is known for the movie, Twilight. We have a lot of tourism that comes to our community because it is a famous movie that is out there, Twilight. They come and tour our village to see the actors that were in the Twilight movie. So we have many, many visitors that come to our village to stay. This would protect all the tourists also.

Senator CANTWELL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Cantwell.

I want to say thank you to this panel for coming here and testifying on these bills. As you know, we are trying as a Committee to try to move the decisions on these as we can. Thank you for helping us with the information you have given us, and also to work on a process of speeding up some of the decision making that we face now.

So thank you very much for your testimony.

I would like to invite the third panel to the witness table. For the third panel, we have Robert Tippeconnie, from the National Congress of American Indians, and Cheryl Causley, Chairperson of the National American Indian Housing Council.

Thank you very much for being here at this hearing. We look forward to your testimony.

Mr. Tippeconnie, please proceed with your statement.

STATEMENT OF ROBERT TIPPECONNIE, SOUTHERN PLAINS AREA VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. TIPPECONNIE. Good afternoon, Chairman Akaka. My name is Robert Tippeconnie, from the Comanche Nation. I am also the Southern Plains Area Vice President of the National Congress of American Indians.

The National Congress of American Indians strongly supports S. 703, the HEARTH Act, because it promotes tribal self-determination and the management of tribal lands, and would allow tribes to lease their own lands without the delay and the bureaucracy that happens within the Bureau of Indian Affairs.

The legislation is also optional. So each tribe may elect to go under this Act or not. Many tribes desire to manage their own lands and promote economic development and are in the best position to do that, to decide for themselves whether the Act suits their needs.

We attached the National Congress of American Indians resolution, PSP 09–0116, in support of the legislation. The provisions of

the legislation are straightforward. A tribe would be able to lease its own land without approval of the Secretary of the Interior if the lease is executed under tribal government regulations that are approved by the Secretary of the Interior.

Tribal leasing regulations must be consistent with the Secretary's leasing regulations and must provide for an environmental review process. NCAI supports the legislation and offers one suggestion for clarification. The waiver of Federal liability could include situations unrelated to the lease. For example, a Federal surveying error could result in a trespass of a third party. We therefore believe the intention here is to exempt the U.S. from liability for the terms of the lease, because the Secretary of Interior would have no role in reviewing those terms.

We would urge, therefore, the Committee to consider narrowing the Federal waiver of liability appropriately. National Congress of American Indians supports this legislation and in the future, we would encourage the Congress to continue to develop more legislation that will support tribal self-determination and in the management of tribal lands.

On S. 636, the bill to provide the Quileute Tribe with tsunami and flood protection, this hearing also includes the consideration of this bill. We support the legislation and we attach a recent resolution from the National Congress of American Indians. The Quileute Tribe and their members live in a very exposed area, as we have heard, on the northwest coast, and have a great need for an immediate solution following the tsunami that caused catastrophic damage in Japan.

The geographical situation of the Quileute creates a similar risk for disastrous events. And we urge the Congress to act now, while the need for action is fresh in our minds.

NCAI views passage of S. 636 as another step in fulfilling the Federal trust responsibility and inclusion of Native people in national emergency preparedness that all citizens should have in this U.S. Country. Thank you for your favorable support for this timely legislation.

In conclusion, the primary purpose of both bills is to empower Indian tribes to control their own lands. The National Congress of American Indians supports this purpose very, very strongly. We thank you for your diligent efforts on behalf of Indian Country and on these and many other issues.

[The prepared statement of Mr. Tippeconnie follows:]

PREPARED STATEMENT OF ROBERT TIPPECONNIE, SOUTHERN PLAINS AREA VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the National Congress of American Indians, thank you for the opportunity to provide our views on this important legislation. NCAI supports the legislation, and we appreciate today's hearing because it will draw more attention to the bill. NCAI particularly appreciates the Committee's attention to the longstanding problems of land management and economic development on Indian lands.

The bill has been titled as an Indian housing bill, but it is broader legislation. It is essentially a set of amendments that would expand the Navajo Leasing Act of 2000 to all federally recognized tribes. NCAI strongly supports the bill because it promotes tribal self-determination in the management of tribal lands, and would allow tribes to lease their own lands without the delay and bureaucracy of approval within the Bureau of Indian Affairs. The legislation is also optional; each tribe would decide for itself whether or not to take advantage of the Act. Many tribes de-

sire to manage their own lands and promote economic development, and are in the best position to decide for themselves whether this Act suits their needs. We attach NCAI Resolution PSP–09–016 in support of the legislation.

The provisions of the Navajo Leasing Act, 25 U.S.C. 415(e), and this legislation are straightforward:

1) Leases on tribal land do not require approval if they are executed under tribal government regulations approved by the Secretary of Interior;

2) Tribal leasing regulations must be consistent with the Secretary's leasing regulations, and must provide for an environmental review process;

3) The terms of tribal leases can be expanded considerably—up to 25 years with 2 renewals for business or agricultural leases, and up to 75 years for public, religious, educational, recreational or residential leases;

4) Direct payment to the tribe is permitted, but the tribe must provide documentation of lease payments to the Secretary;

5) The United States is not liable for losses sustained by any party to a lease executed pursuant to tribal regulations;

6) Interested parties may petition the Secretary to remedy any violations of the tribal leasing regulations.

NCAI supports the legislation and offers one suggestion for clarification. Under the trust responsibility section of the legislation, it states that the "The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1)." We do not believe that such a broad waiver of federal liability was intended, because it could include situations unrelated to the lease. For example, a surveying error by the Bureau of Land Management could result in a trespass by a third party. We believe the intention here is to exempt the U.S. from liability for the terms of the lease, because the Secretary would have no role in reviewing those terms. We would urge the Committee to consider narrowing the federal waiver of liability appropriately.

As a final note, NCAI supports this legislation because it is an extension of existing law that can be made rapidly available to encourage tribal self-determination in surface leasing and because it is voluntary to each tribe. In the future we would encourage Congress and the Administration to continue to develop more comprehensive legislation that will support tribal self-determination in the management of tribal lands.

S. 636, A Bill to Provide the Quileute Tribe with Tsunami and Flood Protection

This hearing also includes consideration of S. 636, legislation to assist the Quileute Tribe. NCAI also supports this legislation, and we attach our recent resolution. The citizens of the Quileute Tribe have lived on the northwest coast for thousands of years. Due to current boundary limitations the tribal population resides within a coastal flood plain which includes a community school, elder center, and tribal administrative buildings. Passage of S. 636 would enable the Tribe to move up to a safer location.

Quileute citizens have expressed the need for an immediate resolution following the tsunami that caused catastrophic damage to Japan. The geographical situation of Quileute people creates similar risks for disastrous events, and we urge Congress to act now while the need for action is fresh in our minds.

NCAI views passage of S. 636 as another step in fulfilling the federal trust responsibility and inclusion of native peoples in the national emergency preparedness that all citizens should have in this great country. Thank you for your favorable support for this timely legislation.

Conclusion

The primary purpose of both bills is to empower tribes to control their own lands and NCAI supports this purpose very strongly. We thank you for your diligent efforts on behalf of Indian country on these and many other issues.

ATTACHMENTS

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band – Mission Indians

RECORDING SECRETARY
Theresa Two Bulls
Oglala Sioux Tribe

TREASURER
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Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

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Central Council Tlingit & Haida

EASTERN OKLAHOMA
Cara Cowan Watts
Cherokee Nation

GREAT PLAINS
Marcus D. Levings
Mandan, Arikara and Hidatsa Nation

MIDWEST
Matthew Wesaw
Pokagon Band of Potawatomie

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Brian Cladoosby
Swinomish Tribal Community

PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Archie Lynch
Haliwa-Saponi Indian Tribe

SOUTHERN PLAINS
Darrell Flyingman
Cheyenne & Arapaho Tribes

SOUTHWEST
Joe Garcia
Ohkay Owingeh

WESTERN
Irene Cuch
Ute Indian Tribe

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005

The National Congress of American Indians
Resolution #PSP-09-016

TITLE: In Support of Amending the Indian Long Term Leasing Act to Spur Housing Development in Native American Communities

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 the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Indian Long Term Leasing Act of 1955 ("ILTLA") as currently written requires the Secretary of the Interior to review and approve leases for residential, commercial and other purposes for parcels of land on Indian reservations; and

WHEREAS, the ILTLA process can become lengthy, taking many months or longer, which often hinders the development of housing and related infrastructure development; and

WHEREAS, under ILTLA, certain Indian tribes that have been authorized to negotiate and execute leases of their tribal trust lands with the requirement that the leases be reviewed or approved by the Secretary of the Interior have been successful in spurring housing and community development in their communities; and

WHEREAS, reform of the leasing process under ILTLA will remove barriers between Native American families and homeownership.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support reforming Federal leasing requirements to encourage homeownership and business development in Native American communities by allowing tribes to enact their own leasing regulations and approve residential leases and leasehold mortgages; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2009 Annual Session of the National Congress of American Indians, held at the Palm Springs Convention Center in Palm Springs, California on October 11-16, 2009, with a quorum present.

ATTEST:

Recording Secretary

President

NATIONAL CONGRESS OF AMERICAN INDIANS

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PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Robert Tippeconnic
Comanche Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh

The National Congress of American Indians
Resolution #EC-11-001

TITLE: Support of Federal Legislation to Protect the Quileute People from Tsunami and To Express Sympathy to the Japanese Tsunami Victims

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 the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Quileute Indian Tribe is an Indian Tribe organized under the Indian Reorganization Act, and the Quileute Tribal Council is the duly constituted governing body of the Quileute Indian Tribe by authority of Article III of the Constitution and By-laws of the Quileute Indian Tribe approved by the Secretary of the Interior on November 11, 1936; and

WHEREAS, the Quileute Indian Reservation is located on the western coast of the Olympic Peninsula, with the Pacific Ocean to the west and surrounded by the Olympic National Park on the north, south and east; and

WHEREAS, most of the Quileute Reservation village of La Push is located within the coastal floodplain, with the Tribal administrative buildings, the school, the elder center and tribal housing all located in a tsunami zone; and

WHEREAS, the recent tsunami disaster in Japan stands as a tragic reminder of the vulnerability of the Quileute people, and the need for immediate action to move Tribal facilities to higher ground; and

WHEREAS, for many decades, the Quileute Tribe and the Olympic National Park have had a dispute over the Reservation boundaries along the Quillayute River; and

WHEREAS, this dispute intensified as the Quileute Tribe has faced the urgent need for additional lands for housing, schools and other Tribal purposes outside the tsunami and river flood zones; and

WHEREAS, the Quileute Tribal Council and the Olympic National Park engaged in lengthy negotiations to resolve the boundary dispute and to protect the Quileute people from the tsunami and flooding threat; and

WHEREAS, in 2008, the NCAI passed Resolution PHX-08-073 adopted at the Phoenix Arizona Annual Session recognizing that the Quileute Tribe's administrative buildings, school, elder center and tribal housing are located in the tsunami zone, and supporting draft legislation that would resolve the boundary dispute and to protect the Quileute people.

WHEREAS, the Quileute Tribal Council and the Park reached agreement in 2010 on proposed legislation to resolve the dispute, and the Quileute Tribal Council has asked the Congress to enact this legislation; and

WHEREAS, Senator Maria Cantwell of Washington State and Congressman Norm Dicks of Washington State have introduced legislation to protect the Quileute people from tsunami and to resolve the dispute between the Quileute Indian Tribe and the Park.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support Senator Cantwell's legislation, S. 636, and Congressman Dicks' legislation, H.R. 1162; and

BE IT FURTHER RESOLVED, that the NCAI urges the Congress to act with speed and urgency on S. 636 and H.R. 1162 so that the people and facilities of the Quileute Indian Tribe can be moved to higher ground as soon as possible; and

BE IT FURTHER RESOLVED, that the NCAI wishes to extend its deepest sympathies to the Japanese tsunami victims and their families, and

BE IT FURTHER RESOLVED, that the NCAI believes that swift enactment of S. 636 and H.R. 1162 would honor the memory of the Japanese tsunami victims by preventing another tragedy that could destroy the Quileute Indian Tribe.

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the Executive Committee of the National Congress of American Indians on April 5, 2011, with a quorum present.

President

ATTEST:

Recording Secretary

The CHAIRMAN. Thank you very much, Mr. Tippeconnie, for your testimony.

Ms. Causley, will you please proceed with your testimony?

STATEMENT OF CHERYL A. CAUSLEY, CHAIRWOMAN, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Ms. CAUSLEY. Good afternoon, Chairman Akaka.

I want to thank you for your leadership in introducing S. 703. My name is Cheryl Causley, and I am the Chairwoman of the National American Indian Housing Council.

NAIHC is the only national non-profit organization solely dedicated to advancing housing, physical infrastructure and economic development in American Indian, Alaska Native and native Hawaiian communities. I am an enrolled member and director of housing for the Bay Mills Tribe of Chippewa Indians.

Mr. Chairman, you have my prepared statement, so let me just highlight a few things regarding S. 703, better known as the HEARTH Act, that we think are most important.

On tribal trust lands, one of the biggest barriers to home ownership is the delay in getting a residential lease approved. We believe this is simply unacceptable and if passed, the HEARTH Act is a step in the right direction to address this problem.

As I mentioned in my written testimony, the Indian Home Loan Guarantee Program, also known as Section 184, which is administered by HUD, guarantees loans for Native American individuals, families, tribes and tribal housing programs that are made to private sector lenders. The goal of this program is to address lack of mortgage lending in tribal communities.

While this program has been very successful off-reservation, I need to point out that due to lease delays, only 18 percent of these loans have been provided on tribal trust land. In addition, when we have tribal members qualify for a conventional mortgage, delays in the leasing process often result in mortgages being closed with a much higher interest rate, sometimes adding thousands on the terms of the overall mortgages for our people.

Because real property on Indian lands cannot be sold, there is no real estate market to speak of, and land leasing is often the only and the best way to generate capital for capital-starved tribal economies. The bill, if enacted, gives tribes the freedom to choose whether to tribalize the surface leasing program or continue to go through the secretarial approval process. As it did last year, we expect the Congressional Budget Office to find this bill will be a zero cost proposal and in fact, may save money by transferring activities from the Federal to tribal governments.

In my recent visits with many Congressional offices, I have received the same message: Congressional leaders believe in our mission and would love to help us, but with limited Federal resources, they seek solutions with little or no cost to the Federal Government. Members of this Committee, the HEARTH Act is exactly that, a solution to overcoming a barrier to home ownership in tribal communities with little or no cost to the Federal Government.

Finally, NAIHC's official position, supported by resolutions from the Affiliated Tribes of the Northwest Indians and the United Southern and Eastern Tribes, is to support an efficient environmental review process. We feel that an overly burdensome process is an imposition on tribal authority and sovereignty, and will slow down rather than expedite the tribal surface leasing process. In the 111th Congress, NAIHC held a series of meetings and negotiations with officials of the BIA, the Interior's Solicitor's Office, HUD, leadership from the Senate Committee on Indian Affairs and Congressman Heinrich, the sponsor of the original HEARTH bill.

The result was language on the environmental review portion that has been included in S. 703. It is this language that NAIHC fully supports.

The goal of the HEARTH Act is to put tribes in the decision making role and expedite surface leasing so development can occur in tribal communities. These are the most important elements as we see, Mr. Chairman. I am happy to answer any questions that you may have.

[The prepared statement of Ms. Causley follows:]

PREPARED STATEMENT OF CHERYL A. CAUSLEY, CHAIRWOMAN, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Introduction

Good morning Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Senate Committee on Indian Affairs. My name is Cheryl Causley and I am the Chairwoman of the National American Indian Housing Council (NAIHC), the only national Indian non-profit organization dedicated to advancing housing, physical infrastructure, and economic development in tribal communities in the United States. I am also the Executive Director of the Bay Mills Housing Authority and an enrolled member of the Bay Mills Indian Community.

I want to thank Vice Chairman Barrasso and Chairman Akaka for their leadership in introducing S. 703, and for the opportunity to appear today and provide my views regarding the "Helping Expedite and Advance Responsible Tribal Homeownership Act" (S. 703), which was introduced in the Senate on March 31, 2011.

Native American Housing Assistance and Self-Determination Act

Despite recent improvements in the delivery of housing assistance, Indian housing is still substandard when compared with housing available to other Americans. An estimated 200,000 housing units are needed immediately in Indian Country and approximately 90,000 Native families are homeless or under-housed. Overcrowding on tribal lands is almost 15 percent, and 11 percent of Indian homes lack complete plumbing and kitchen facilities.

Before I present my views on S. 703, allow me to describe the framework in which Indian tribes provide housing and housing related community development through the Native American Housing Assistance and Self Determination Act (NAHASDA).

NAHASDA is grounded in the solid foundation of Indian Self-Determination. Enacted in 1996, NAHASDA was a result of the combined efforts of Indian tribes, tribal housing authorities and Federal policymakers who came together to lay out a new vision for building strong tribal communities by providing quality and affordable housing and related physical infrastructure.

The objective of NAHASDA is to consolidate into a single block grant, once-disparate Federal housing funding programs, and to assign tribes the responsibility of program decision-making rather than the Department of Housing and Urban Development.

While the delivery of housing has improved since 1996, many challenges remain, including working with Indian tribal trust lands which are held in common and cannot be collateralized to attract private capital. In most tribal areas, inadequate or non-existent physical infrastructure and weak economic conditions in general hinder if not rule out a robust housing sector.

Without a doubt, NAHASDA is the single biggest source of housing capital for Indian people and its success is dependent on how tribes can adequately address these other challenges.

Indian Trust Lands and the Indian Long-Term Leasing Act of 1955

Most Indian tribal land is held in trust or restricted status by the United States for the beneficial ownership of Indian tribes or individual Indians. Trust lands may not be sold but may be leased for a variety of purposes under applicable law. The *Indian Long-Term Leasing Act of 1955* (the 1955 Act) requires the approval of the Secretary of the Interior (Secretary) for certain types of leases of Indian trust and restricted Indian lands. Any lease that is not approved by the Secretary is invalid.

Timely processing of lease documents is critical not only for housing but also for Federal loan guarantee programs. One program—the Indian Home Loan Guarantee Program—also known as the Section 184 Program, addresses the lack of mortgage lending in tribal communities by offering mortgage financing to eligible Native American individuals, families, tribes and tribally-designated housing entities. The Section 184 Program, administered by HUD, guarantees these loans that are made by private sector lenders.

Because tribal trust lands may not be foreclosed upon, borrowers are obliged to have a valid leasehold, which is also subject to the approval of the Secretary. In the event of a default, the physical structure and leasehold interest are subject to foreclosure. The requirement of secretarial review and approval for these leases, in this instance, is time-consuming and is a contributing factor to the low homeownership rate in Native communities.

Current law authorizes leases for up to 25 years with an option for one additional 25-year term for a total 50-year term for "public, religious, educational, recreational, residential, or business purposes . . ." NAHASDA authorizes lease terms for "housing development and residential purposes" for 50-year terms, but retains the requirement of secretarial approval to render the lease valid.

The Secretary, acting through the Bureau of Indian Affairs (BIA), administers the land leasing process which can become lengthy, taking months—and sometimes years—hindering housing, infrastructure, and related economic development on trust lands. Because of these delays, and the desire by individual Indian tribes for more authority and tribal control in the leasing of their own lands, 45 Indian tribes have sought relief from the 1955 Act by petitioning Congress for specific, tribe-by-tribe Federal legislation.

Most recently, the Navajo Nation succeeded in amending the 1955 Act to develop and manage its own surface leasing ordinance. The amendments were made in 2000, and as a result the Navajo Nation may enter into lease agreements and renewals of leases without the Secretary's review or approval.

The HEARTH Act

In 111th Congress, the HEARTH Act was introduced in the House of Representatives by Representative Martin Heinrich and introduced in the Senate by Senator Byron Dorgan. During its review and consideration by the Senate Committee on Indian Affairs, the bill was modified to include provisions related to tribal environmental review that were negotiated by the Senate Committee on Indian Affairs leadership, the Bureau of Indian Affairs, the U.S. Department of the Interior's Solicitor's Office, Representative Heinrich, and the NAIHC.

The bill as modified was passed by the Senate Committee on Indian Affairs and it is this version that the NAIHC supports.

In March 2011, Vice Chairman Barrasso, together with Chairman Akaka and Senators Tester, Udall, Thune, and Johnson introduced S. 703, the HEARTH Act of 2011. The House companion bill, H.R. 205, was introduced by Representative Heinrich in January 2011.

The HEARTH Act will offer capable and willing Indian tribes the authority to enact their own tribal leasing regulations and to negotiate and enter into certain leases without the approval of the Secretary. It will go a long way in strengthening tribal self-determination and tribal economies at the same time.

As both H.R. 205 and S. 703 provide, it is crucial that any such proposal be made available to Indian tribes on a voluntary basis, leaving the decision as to whether to participate with the tribes themselves.

In addition, the HEARTH legislation directs the BIA to prepare and submit to the Congress a report detailing the history and experience of Indian tribes that have chosen to assume responsibility for administering the Indian Land Title and Records Office (LTRO) functions from the BIA.

Conclusion

The NAIHC strongly supports S. 703 because it respects and fosters Indian tribal decision-making, expedites what can often be lengthy Federal administrative processes, and will improve the delivery of Federal housing assistance and expand economic opportunity in tribal communities.

Thank you and if you have questions I would be happy to answer them.

The CHAIRMAN. Thank you very much, Ms. Causley.

Mr. Tippeconnie, the National Congress of American Indians has supported the HEARTH Act in the past, and has taken a position that it will reduce the Federal costs involving approving leases for tribes. Can you describe how this particular legislation will reduce Federal costs?

Mr. TIPPECONNIE. The area in which costs can be reduced is the fact that it takes years. If you look at the record of circumstances, I can think of a tribe in the northwest who attempted to get a lease, it took over a year and a half. Now, expenses are made on

the side of the nation, the Indian nation, as well as on the side of the Federal Government. Because they have to affect time, effort and staffing to review these things.

And of course, I would say from the National Congress of American Indians' posture that it is very, very expensive to the Indian nations themselves. And it is a real difficult thing, because the result may be, in the effort to attempt to get a lease, one of the tribes, again, Swinomish of the northwest, they were hopeful to gain a million dollars a year in a lease. And that lease took over one and a half years to kind of work on.

Well, what we find out in Indian Country, those persons that want to do business with a nation, they don't have that time. They are looking at a place where they can effect some return on their investment as well as that is what the Indian nations are attempting to do.

The CHAIRMAN. Mr. Tippeconnie, can you describe to the Committee how the current bureaucratic delays in the leasing process have affected economic development opportunities for the tribes?

Mr. TIPPECONNIE. Yes. As I cited earlier, I cited the Swinomish taking that time where they could have, hopefully, gained a million dollars revenue to the nation. But because it was taking such time delays to get approval from Interior, they lost out on that.

Also there have been the wind power opportunities in the Plains area, like on the Rosebud in the Dakotas. They too, wanting to effect leases, there comes a point when the parties that want to venture or work with Indian nations just lose patience. Because again, you can't sit on these financial kinds of matters. They are very, very necessary to effect quickly.

So that is a result, it is just too much time. If the nations had this law passed, you can see that it expedites. It is in the hand of the Indian nation itself and can be hopefully expedited in time.

The CHAIRMAN. Ms. Causley, in your testimony you state that an estimated 200,000 housing units are needed in Indian Country. In your opinion, how will enactment of the HEARTH Act help to address the need for housing units in Indian Country?

Ms. CAUSLEY. For tribal members who are qualified to go out and obtain a mortgage, what we do is we take them in, we usually do some type of credit counseling and we fit them into a slot. I hate to put it that way, but that is what we do in my particular office. We see if they are better for a rental program, if they can obtain a conventional mortgage, if they need a 184 program, or perhaps a USDA product.

If we go the conventional mortgage route, or even the 184 route, the time constraints on our reviewing the mortgage and the leasehold process really, really affects the bank's interest. You also have the time involved of the housing authority staff trying to put these products out. When you are talking two and three years in some instances, they are on the phone the majority of the time saying, "where are we with this lease," and the progress is stopped.

So the quicker administratively that we can put forth these things, the more houses we can put on the ground and the more interest we can get from the banks.

The CHAIRMAN. Thank you for your responses. Would you have an idea of why there is such a delay on these decisions on a lease?

Ms. CAUSLEY. I think there is so much housing needed throughout Indian Country, and they are severely understaffed, undermanned. They have other situations that they have been dealing with. It is just a slow, cumbersome product that I believe the majority of our tribes, if they wish, could do much more efficiently.

The CHAIRMAN. Thank you.

Senator Barrasso?

Senator BARRASSO. Thank you very much, Mr. Chairman. I just want to follow up on the lead that you had set with these questions. It is a concern when you hear the shortage of 200,000 housing units and the impact on economic activity and opportunities, as well, as you both testified.

If I could ask you, Mr. Tippeconnie, we talked about how this has affected economic opportunities. Do you think if we got this passed, it would actually be able to expand economic activity?

Mr. TIPPECONNIE. Oh, yes, I could envision that. Because those that would like to venture in a relationship of economic opportunity to the nations, they can see the time frame may be considerably reduced, and that they have a party that they directly relate to. Yes.

Senator BARRASSO. So the overall question then is, can you kind of characterize what interest there is out there among Indian tribes in taking advantage of the HEARTH Act, if we are able to get this successfully passed and signed into law?

Mr. TIPPECONNIE. I think there is a great anxiousness. If you go across the Country, every tribe is attempting, I can't speak and say just generally, every tribe, but I would like to imagine that they do, as we hear it, they are wanting a diverse enterprise or economic opportunity. Some don't have that, and some sit, as I mentioned, with wind power opportunities or energy options. They would like to see those expedited.

So if it is in their hands, you can see the party with whom they were working, they are more of a willing partner. Because time is of the essence when you get into financial relationships.

Senator BARRASSO. Ms. Causley, I saw you shaking your head. Is there anything you would like to add to that?

Ms. CAUSLEY. Investors have a very, very short time frame. They are also dealing with short terms of tribal governments. So when they come and they offer you a product, it is necessary that you are able to say, "yes, I can do that and I can do it now." Otherwise, you will not maintain their interest for very long. And the same goes for bankers.

Senator BARRASSO. In your written testimony, I think you did a very nice job of explaining that the BIA's "land leasing process can be lengthy, taking months and sometimes years," and you went on to say "hindering housing infrastructure and related economic development on trust lands."

I don't know if you could maybe provide the Committee either now or maybe later in writing some details on the causes of such a time-consuming land leasing process, and thoughts that you have on that.

Ms. CAUSLEY. The current leasing process is so overly burdensome. We all have to support the HEARTH Act, because it creates an efficient means for tribes who have capacity to basically operate

and manage their surface leasing process on their tribal lands. It is time for the Federal Government to support tribal self-determination, allow tribes the opportunity to achieve our own visions for our communities. And they can't do that without complete tribal control.

We believe the overly burdensome environmental review process defeats the goals of the HEARTH Act, and requires a tribe to fully implement a NEPA-like process for every residential lease, even those homes that are privately financed. It is an imposition on tribal authority, on sovereignty, and will slow down, rather than expedite, home ownership on tribal land and any kind of economic development.

Senator BARRASSO. I want to ask a question for both of you to respond to. The long-term leasing act limits the authority of most Indian tribes to enter into surface leases with the approval of the Secretary to a primary term of up to 25 years, and then a one-time renewal of up to 25 years. So for decades, Indian tribes have sought and obtained from Congress some exemptions from the Act's restrictions on the duration of these leases. The Act has been amended a number of times over the years to add the names of Indian tribes to a list of tribes authorized to enter into the surface leases, with the approval of the Secretary, for a term as you know up to 99 years.

The HEARTH Act would authorize tribes to enter into business and agricultural leases without the approval of the Secretary, which is what we want, for a primary term of up to 25 years and then two renewal terms of up to 25 years each, so for an additional 50 years. Do you believe that restriction of the two 25 year terms, is that an appropriate number for us to look at?

Mr. TIPPECONNIE. Of course, it always depends upon the tribe itself. Because if you look into the circumstances, I think the term is a great option. It gives the nation that flexibility to continue with some enterprise or some financial relationship.

But again, I would say, it is dependent. And of course, it would take due diligence on the part of the nation to be sure that when they enter into something that they would extend beyond. Of course, when you get into these relationships, financial, they want more than the 25 years, especially when you look at something that is very profitable, it is really an enterprise that will generate a great return to both parties. They want a term that is greater than the 25 years. And of course, if they could extend and they are successful in the marketplace, each of us in that relationship, then certainly the longer term is greater.

Senator BARRASSO. I will ask another part of the question, because you've made me think about this, and you can respond to the whole thing, just give me your best thoughts. Do you anticipate that there are tribes which have the authority to enter into the surface leases for that term of up to 99 years, if they would be discouraged from taking advantage of the HEARTH Act? I would be happy to hear from either or both of you on that.

Ms. CAUSLEY. I don't think they would be discouraged. Currently right now, the BIA is going through some revisions of the residential leasing regulations. And NAIHC has been working with them on those year terms. So hopefully our member tribes and the tribes

at NCAI and all of the ones that have set forth their resolutions can come to an agreement and we will all push forward with the same number.

Senator BARRASSO. Is there anything else that you would like to share with the Committee? We will make this part of the permanent record, anything we may not have asked that you would like to share with us?

Mr. TIPPECONNIE. One thing I would like to share is the fact that the Secretary's regulations, you somewhat have to be in compliance with. So we would hope we have a relationship in that effort.

But also, I want to express the fact that there is this environmental process. And I want to make the point that Indian nations are very strong about that as well. If we get into something that is necessary to be smart in the eyes of our adjoining public as well as our own Indian nation and our peoples, I just want to bring on the record that yes, we will be smart about that.

Senator BARRASSO. Ms. Causley, anything else on your mind that you would like to share with us?

Ms. CAUSLEY. I would just like to go back to the 2009 testimony of a Navajo man that actually provided testimony on this Act. He stated right now that we have a lot of what he referred to as our soccer moms and dads leaving the reservation Because we have no place to bring them back to, because it is so difficult to gather housing that they qualify for. They are not low income, we can't help them. If they cannot get a lease and build their own, they are not coming back.

Unlike other places, we tend to teach our youth from our examples and our teachings are more than just books. We need to find a way to keep our talented young role models within our communities and back home. And I appreciate you helping us do that.

Senator BARRASSO. Mr. Chairman, I think we have certainly heard, through your leadership, a compelling case for support of the HEARTH Act, which we have multiple co-sponsors on this Committee.

Thank you, Mr. Chairman. Thank you very much.

Ms. CAUSLEY. Thank you for all your support.

The CHAIRMAN. I want to thank my partner, friend and Vice Chairman for his part in this. We will look forward to working with him.

I also want to thank our witnesses for participating in today's hearing. I know many of you have traveled a long way, and we thank you for that. I also want to thank the Administration for providing their views on these very important bills, and for us to continue to try to find ways of working together, and trying to improve the processes that are now in place.

I appreciate your testimony on the struggle you have faced in trying to bring Federal recognition to your tribes. As you are probably aware, I am fighting for the native people of Hawaii to receive recognition and have the same rights as federally-recognized tribes. So I fully understand how important this legislation is to the people of Little Shell Tribe, and I look forward to working with Senator Tester on moving this bill.

I also understand the concerns of the Quileute Tribe and their people. I want to thank you for coming here today to share your

story with the Committee. In Hawaii, we are all too aware of what it is like to live under the threat of a tsunami, and to deal with the devastating effects. This is an important bill and we look forward to working with Senator Cantwell to move the bill through Congress.

As we have heard today, the HEARTH bill will improve the ability of tribes to manage their own resources. I really want to thank Senator Barrasso for his leadership on this bill. I will continue to work with him on this bill that is so important to tribes across our Country.

I want to remind any interested parties that the hearing record will remain open for two weeks for any additional comments or questions they may have. And also for the members, as well.

So again, thank you for all your valuable testimony and responses. I look forward to continuing to move these bills that are important to the people of America as well as the Senators that are on the Committee. Thank you very much. This hearing is adjourned.

[Whereupon, at 4:15 p.m., the Committee was adjourned.]

A P P E N D I X

Puyallup Tribe of Indians

April 25, 2011

Honorable Daniel K. Akaka, Chairman
United States Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20501

Re: Puyallup Tribe of Indians Support of Senate Bill 636

Dear Mr. Chairman:

On behalf of the Puyallup Tribe of Indians we would like to submit Tribal Council Resolution No. 210411-A, in support of Senate Bill 636, introduced by Senator Maria Cantwell, to provide the Quileute Indian Tribe tsunami and flood protection, and for other purposes. As you are aware, the Quileute Indian Tribe is Federally recognized tribe in the State of Washington and is located on the Olympic Peninsula along the Pacific Ocean. The majority of the Quileute Reservation village of La Push and essential facilities and infrastructure are located within the coastal floodplain and tsunami zone. The recent tsunami disaster in Japan last month clearly demonstrates the vulnerability of the Quileute Indian Tribe and the need to move tribal facilities and infrastructure inland out of the tsunami and floodplain zones.

Senate Bill 636 and the companion legislation introduced by Congressman Norm Dicks, House Resolution 1162, provide a solution to the eminent threat that the Quileute Indian Tribe face with regards to constant tsunami danger. By providing approximately 275 acres of land located within the Olympic National Park and approximately 510 acres of land along the Quillayute River, also within the Park, the Quileute Indian Tribe will have the necessary land to move the Tribal Administrative buildings, school, the elder center and tribal housing out of the coastal floodplain and tsunami zone i.e. higher ground! In the best interests and safety for the people and facilities of the Quileute Indian Tribe, the Puyallup Tribal Council encourages Congress to act with speed and urgency on the enactment of S. 636 and H.R. 1162. Should you have any questions or require additional information, please feel free contact Michael A. Bowechop, Legislative Analyst. Thank you.

Sincerely,

Herman Dillon, Sr., Chairman

cc: Honorable Maria Cantwell, U.S. Senate
Honorable Patty Murray, U.S. Senate
Congressman Norm Dicks
Chairwoman Bonita Cleveland, Quileute Tribe

3009 E. Portland Ave. • Tacoma, Washington 98404

PUYALLUP TRIBAL COUNCIL
RESOLUTION NO. 210411-A

WHEREAS, the Puyallup Tribe of Indians has existed since creation as the aboriginal people, who are the owners and guardians of their land and waters; and

WHEREAS, the Puyallup Tribe is an independent sovereign nation having historically negotiated with several foreign nations including the United States in the Medicine Creek Treaty; and

WHEREAS, the Puyallup Tribal Council is the governing body of the Puyallup Tribe of the Puyallup Reservation in accordance with the authority of its sovereign rights as the aboriginal owners and guardians of their land and waters, as reaffirmed in the *Medicine Creek Treaty*, and their *Constitution and By-Laws* as amended; and

RESOLUTION SUMMARY:
EXECUTION OF A RESOLUTION WHEREIN THE PUYALLUP TRIBAL COUNCIL EXPRESSES SUPPORT FOR FEDERAL LEGISLATION TO PROVIDE THE QUILEUTE INDIAN TRIBE TSUNAMI AND FLOOD PROTECTION, AS CONTAINED IN SENATE BILL 636, AND HOUSE RESOLUTION 1162. -- PLEASE REVIEW ENTIRE TEXT.

WHEREAS, the *Quileute Indian Tribe* is an Indian Tribe organized under the Indian Reorganization Act and is located on the western coast of Washington State's Olympic Peninsula, surrounded by the Olympic National Park on the north, south and east; and

WHEREAS, the majority of the Quileute Reservation village of La Push and Tribal Administrative buildings, school, the elder center and tribal housing are located within the coastal floodplain and tsunami zone; and

WHEREAS, the recent tsunami disaster in Japan is a reminder of the natural powers of Mother Earth and stands as tragic reminder of the vulnerability of the Quileute Indian Tribe and the Quileute people; and

WHEREAS, the Quileute Tribe and the Olympic National Park have had a long standing dispute over the Reservation boundaries along the Quillayute River and have engaged in lengthy negotiations to resolve the boundary dispute and to protect the Quileute Tribe from tsunami and flooding threats; and

WHEREAS, legislation introduced by Senator Maria Cantwell and Congressman Norm Dicks of Washington State will protect the Quileute people from tsunami and flooding threats and will resolve the boundary dispute between the Quileute Indian Tribe and the Olympic National Park; and

WHEREAS, on April 14, 2011, Bonita Cleveland, Chair of the Quileute Indian Tribe, provided testimony before Senator Daniel K. Akaka, Chairman of the United States Senate Committee on Indian Affairs requesting urgent action on Senator Cantwell's legislation, Senate Bill 636 and the companion legislation introduced by Congressman Norm Dicks, House Resolution 1162.

NOW, THEREFORE BE IT RESOLVED, the *Tribal Council of the Puyallup Tribe of Indians* does hereby support Senator Cantwell's legislation, S. 636 and Congressman Dick's legislation, H.R. 1162, to provide the Quileute Indian Tribe tsunami and flood protection by providing the Tribe with approximately 275 acres of land currently located within the Olympic National Park and approximately 510 acres of land along the Quillayute River, also within the Park; and

BE IT FURTHER RESOLVED, that in the best interests and safety for the people and facilities of the Quileute Indian Tribe, the *Tribal Council of the Puyallup Tribe of Indians* encourages Congress to act with speed and urgency on the enactment S.636 and H.R. 1162; and

BE IT FURTHER RESOLVED, by the *Tribal Council* hereby authorize the Chairman (Herman Dillon, Sr.), and in his absence, the Vice-Chairman (Lawrence W. LaPointe), to execute this Resolution and other such required documents on behalf of the Tribe.

CERTIFICATION

I, Nadine Pratote, Secretary of the Puyallup Tribal Council of the Puyallup Reservation do hereby certify that the above Resolution was duly adopted at a Regular Meeting of the Puyallup Tribal Council held within the Puyallup Indian Reservation, on the 21st day of April 2011, a quorum being present with a voice vote of 4 For, 0 Against, 0 Abstaining and ___ Not Voting it's adoption.

BY: Nadine Pratote
***Secretary*, Puyallup Tribal Council**

ATTEST:

Herman Dillon Sr.
***Herman Dillon, Sr.*, Chairman**
Puyallup Tribal Council

PREPARED STATEMENT OF THE CHEROKEE NATION

GWY.β DβP
CHEROKEE NATION™
P.O. Box 948 • Tahlequah, OK 74465-0948 • (918) 453-5000

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Chad "Corntassel" Smith
Principal Chief

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Joe Grayson, Jr.
Deputy Principal Chief

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, thank you for convening this hearing and giving the Cherokee Nation the opportunity to submit testimony regarding the HEARTH Act and its role to expedite the lease approval process in Indian Country. The Cherokee Nation is the second-largest tribal nation in the United States with more than 300,000 citizens and a 7,000-square-mile Oklahoma jurisdiction. To maintain self reliance and economic stability, the Cherokee Nation strives to create meaningful jobs and develop a vibrant hub of industry and commerce in Oklahoma and this is often hindered by the bureaucracy of the federal government.

Therefore, it is with great hope and pride that we encourage the Committee Members to push forward the HEARTH Act (S.703) and expand the Navajo Leasing Act of 2000 to encompass ALL federally-recognized tribes. The reform of this law would give tribes more power over their own interests and give them the ability to enact tribal-leasing regulations on sovereign land without the approval of the Secretary of the Interior. The current system only proves to be a lengthy process which often hinders housing, infrastructure, economic growth and tribal self-determination.

While the Navajo Nation Trust Lands Leasing Act of 2000 was a start for reforming the policies and bureaucratic leasing regulations of the BIA, more needs to be done to ensure similar terms are accessible to all federally-recognized tribes. The Cherokee Nation is in full support of this Bill and the changes that need to take place to ensure the sovereign power and rights of tribes. Through the federal policy of termination, tribal nations lost their right to self-determination and were forced to rely on the BIA and the Secretary of the Interior's trust responsibility for land leases and it is time to give more authority to tribes who are capable of handling their own interests.

This Senate Bill will reform that policy which continues to obstruct Indian nations who have the authority to enact leasing regulations and negotiate and enter into leases without bureaucratic entanglements and the prolonged acceptance process of the Secretary. However, in recent decades, as tribes have expanded their economic standing and self-governance, this outdated system stands in the way of the Cherokee Nation because we have demonstrated our right and full capability to manage our own land and economic policy without the need for a bureaucratic intermediary. Therefore, the Cherokee Nation is supportive and happy to see the Committee working to increase tribal authority and self-determination.

Cherokee Nation opposes all recognition of Native American tribes through legislation. The Cherokee Nation specifically opposes S. 546, the Little Shell Tribe of Chippewa Indians Restoration Act of 2011. Although the recognition process at the Office of Federal Acknowledgment (OFA) is not perfect, it is a process with specific guidelines and objective measurement standards. Cherokee Nation supports the OFA process as the sole process for petitioning groups seeking federal recognition as a Native American tribal government. Cherokee Nation continues to support Congress' oversight and reform of the OFA, but, by no means should Congress begin recognizing tribal entities on a case-by-case basis.

Providing federal acknowledgment to a group through legislation inevitably results in inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of determining federal recognition of a tribe will often be based on emotion and politics. The OFA, not Congress, is staffed with experts, such as historians, anthropologists, and genealogists, whose jobs are to determine the merits of a group's claims that it meets the requirements for federal recognition. Congressional reversal of OFA decisions undermines its authority and diminishes the public perception of all federally recognized tribes if certain groups are afforded recognition without satisfying all of the OFA's requirements.

The Office of the Assistant Secretary-Indian Affairs (AS-IA) denied recognition of the Little Shell Tribe of Chippewa Indians in a final decision published in October of 2009. In the decision, AS-IA stated that the Little Shell did not meet three of the criteria for federal recognition, specifically the requirements that a tribe: (1) has been identified as an Indian entity on a substantially continuous basis at least since 1900; (2) comprise a distinct community since historical times and maintain significant social relationships and interaction as part of a distinct community; (3) and maintain political influence over a community of its members or over communities that combined into the petitioner.

Additionally, Cherokee Nation does not believe state recognition should be afforded any weight in determining whether a group should be afforded federal recognition. The state-recognition process often involves little to no consideration of the OFA's seven requirements for federal recognition. State recognition of Native American groups increases the likelihood of misappropriation of federal funds, fraudulent activity, and infringes upon the sovereignty of legitimate Tribal Nations.

In conclusion, Cherokee Nation supports the current federal acknowledgment process and opposes legislative recognition of any tribe, including S. 546. The seven criteria used in the acknowledgment process that is set forth in Title 25 eliminates any abuse or unfair opportunity and requires each petitioning entity to meet the same guidelines for recognition. The requirements are not unreasonably stringent. The seven criteria add transparency to the recognition process and allow the OFA staff to base decisions on fair, measurable, and objective standards without political influences or unfair treatment. Once again, the Cherokee Nation thanks the Chairman, Vice Chairman and the Members of the Committee for their time and should you have any additional questions, please contact our Cherokee Nation Washington Office.

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