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REPORT
103–620

RESTORATION OF FEDERAL SERVICES TO THE POKAGON BAND OF POTAWATOMI INDIANS

JULY 25, 1994.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of California, from the Committee on Natural Resources, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany S.1066]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the Act (S. 1066) to restore Federal services to the Pokagon Band of Potawatomi Indians, having considered the same, report favorably thereon without amendment and recommend that the Act do pass.

PURPOSE

The purpose of S. 1066 is to reaffirm the federal relationship between the United States and the Pokagon Band of Potawatomi Indians of Michigan, to acknowledge the existence of the Pokagon Band of Potawatomi Indians of Michigan as a distinct federally recognized tribe, to reaffirm the jurisdiction and other rights of the tribe, to establish a land base for the tribe, to authorize the organization of the tribe, and for other purposes.

BACKGROUND

The Pokagon Band of Potawatomi Indians consist of approximately 1500 members who continue to reside close to their ancestral homeland in the St. Joseph River valley of southwestern Michigan and northern Indiana. This area has been their home since at least the time of the first European contact in 1634.

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Early treaty relationships

The Pokagon Bank of Potawatomi Indians are the descendants of, and political successors to, the Potawatomi bands that were signatories to at least eleven treaties negotiated between representatives of the United States and Indian tribal governments: the Treaty of Greenville (1795), the Treaty of Grouseland (1806), the Treaty of Spring Wells (1815), The Treaty of the Rapids of the Miami of Lake Erie (1817), the Treaty of St. Mary's (1818), the Treaty of Chicago (1821), the Treaty of the Mississinewa on the Wabash (1826), the Treaty of St. Joseph (1827), the Treaty of St. Joseph (1828), the Treaty of Tippecanoe River (1832), and the Treaty of Chicago (1833).

The United States made its first request of the Pokagon Band to relinquish their lands in the southern Great Lakes region in 1795 at the Treaty of Greenville. Other Potawatomi bands who lived to the south and the east of the Pokagons made a number of treaties that conceded title of lands in Ohio and Indiana to the United States between 1796 and 1811. Prior to the War of 1812, however, Michagan lands were considered remote and the Michigan Potawatomi, including the Pokagon Band, were not seriously called upon to cede their lands until the 1821 Treaty of Chicago. In 1821, the Pokagons ceded to the United States land between the Grand and Kalamazoo Rivers, a region north of their modern home that they shared with the Grand River Ottawas.

The opening of the Erie Canal in 1825 turned the southern portions of Michigan into a major thoroughfare for American settlers, many of whom wished to farm in the Michigan lands occupied by the Pokagons. In 1828, the Pokagons and other Potawatomi bands sold their lands on the St. Joseph River, the heart of their Michigan territory. In 1833, the beginning of the Removal Era, the Pokagons were called to Chicago to negotiate a final treaty for the relinquishment of their last remaining lands in Michigan. The goal of federal, state, and territorial officials present at the Chicago negotiations was to purchase all of the remaining Potawatomi lands in the Great Lakes and move all of the remaining members to Kansas under the provisions of the newly enacted Indian Removal Act.

In the Treaty of Chicago (1833), the Potawatomi bands agreed to sell all of their lands. The Pokagon Band, however, was the only Potawatomi Band that refused to move west, choosing instead to negotiate a right, through a supplementary article dated September 27, 1833, to remain in Michigan and receive their share of prior treaty payments in Michigan (7 Stat. 431; Kappler, Indian Treaties 1778–1883, 402 at 413). The other Potawatomi bands were required to move to Kansas or Iowa. Two Potawatomi bands later retured to the Great Lakes area, the Forest County Potawatomi of Wisconsin and the Hannahville Indian Community of Michigan.

Post-treaty relationships

The Pokagon Band was specifically exempted from removal from Michigan by reason of the supplementary article to the 1833 Treaty of Chicago. Furthermore, the supplementary article provided for annuity payments due them under prior treaties as well as the sale of their last remaining reservation. Despite these guarantees, and despite the Pokagon Band's transition to an agricultural economy

and acceptance of Christianity, in 1840 the United States Secretary of War, Joel Poinsett, ordered the United States Army under the command of General Hugh Brady, to remove the Pokagon Band to Kansas. Many Band members left Michigan and moved to Canada while others hid. Fighting removal, Leopold Pokagon and other Pokagon Band leaders met with Epaphroditus Ransom, an Associate Justice of the Michigan Supreme Court. Judge Ransom reviewed the treaty and wrote an opinion that the Pokagon Bank had a right to remain in Michigan. General Brady read the opinion and honored the Band's right to remain in Michigan. In 1843 Superintendent Robert Stuart, Detroit agency, Office of Indian Affairs, recommended to the Commissioner of Indian Affairs that the Band be paid the annuities due them in southwestern Michigan.

Following the 1843 opinion, the United States made partial annuity payments to the Pokagon Band at Silver Creek, Paw, Rush Lake and other southwestern Michigan sites between 1843 and 1866, but the full amount of the annuities due the Band were not paid. During this period, the Pokagon Band regulatory lobbied Congress and sent delegations to Washington in order to obtain full payment of the annuities. Numerous committees of the 36th, 37th, and 38th sessions of the Congress agreed that the Pokagon Band was not paid the full amount due them under the treaties signed between 1795 and 1833. In 1861, the Congress ordered the Secretary of the Interior to investigate their claims. Later that year, Congress enacted legislation ordered back-payments of the annuities. (14 Stat. 370, 1866). But the amount the Congress authorized to be paid was not the full amount due under the treaties and the Pokagon Band went back to the Congress. Again, numerous committees of the 41st, 42d, 43d, 44th, 45th, 47th, 49th, and 51st sessions of the Congress agreed that the Pokagon Band was entitled to payments under the treaties.

In 1885, a Senate resolution ordered the Secretary of the Interior to examine claims set forth in a memorial to the 45th Congress. A copy of the Senate resolution appears in a report of the Senate Committee on Indian Affairs to the 49th Congress. The memorial was made on behalf of the Pokagon Band and signed by Simon Pokagon as Chairman of the Band's business committee.

In 1890, the Congress authorized a suit in the Court of Claims by the Pokagon Band. (26 Stat. 24 1890). Both the United States Court of Claims and the United States Supreme Court agreed that the Pokagon Band was entitled to payments due from the treaties, *Potawatamie Indians* v. *United States,* 27 Ct Cl 403 (1892); *Pam-to-pee* v. *United States,* 148 US 691 (1893). Accordingly, in 1895 and 1896, the Commissioner of Indian Affairs ordered a census of the members of the Pokagon Band to determine who should be paid pursuant to the court award. The annuity payment roll for 1843 to 1866 was used to create a tribal roll from the census ordered by the Secretary. The census was carried out by special Indian agents John W. Cadmum and Marcus D. Shelby. The Pokagon Band continues to use the Cadmun/Shelby census rolls established in 1895 and 1896 as their base roll for membership.

The Band's political relationship with the United States

Historical records related to the disbursement of annuity payments in southwest Michigan from 1843 to 1866, as well as records related to the treaty right annuity payments made in 1892 and 1893 as a result of decisions by the Court of Claims and the Supreme Court of the United States, provides a great deal of historical information about the membership of the Pokagon Band, and the Band's relationship to the signatories of the 1833 and earlier treaties.

The tribal government has had a continuous line of leaders, variously denominated chiefs, business committee chairmen and tribal chairmen from treaty times to the present. The Band's long and ultimately successful struggle, waged both in the Congress as well as the federal courts, to attain the full treaty right annuity payments owed pursuant to treaties negotiated from 1795 to 1833, provides ample documentation of the tribal leadership of the Pokagon Band, as the historical record clearly demonstrates that the organized leadership of the Band demanded that the Office of Indian Affairs pay its annuities in southwestern Michigan, repeatedly sought Congressional action between 1843 and 1892, and hired attorneys to litigate their claims in the courts.

In 1888, the Secretary of the Interior approved a contract between the Pokagon Band and its attorney. Moreover, the Secretary specifically confirmed that the band was "residing in tribal relations" (Office of Indian Affairs, Letter Received, National Archives, 1182–1888). The Committee notes that the term "tribal relations" is a term of art used to designate groups that the United States formally acknowledges and recognizes as an Indian tribe. Hence, the Secretary of the Interior's approval of the attorney contract is significant because such approval was necessarily predicated upon the existence of a political relationship between the United States and the Pokagon Band.

After 1895, the tribe's business committee continued to meet to transact tribal business. Extensive minutes from these meetings still exist and are referenced in Clifton, *The Pokagons, 1683–1983 Catholic Potawatomi of the St. Joseph River Valley,* University Press of America, 1984. At the meetings officers were elected, petitions to the government approved, delegations appointed and unacceptable behavior sanctioned. A noteworthy effort of the tribal government during this period was the authorization for a suit against the city of Chicago to recover lake front property never ceded to the United States. The case was brought in the names of John Williams, Chief, Michael Williams, Secretary, and others. The tribal council fought the case all the way to the United States Supreme Court but did not prevail, *Williams* v. *Chicago,* 242 US 435 (1917).

In 1935, the Pokagon Band of Potawatomi Indians petitioned for reorganization and assistance pursuant to the Act of June 18, 1934, commonly referred to as the Indian Reorganization Act (IRA). Officials of the Office of Indian Affairs made several visits to the Band. Indeed, in 1937, officials from the Office of Indian Affairs began a search for land upon which to locate a reservation for the Pokagon Band. The Pokagon Band was not permitted to complete the process of organizing pursuant to the IRA however, because of an administrative decision not to provide services or to extend the bene-

fits of the Indian Reorganization Act to Indian tribal governments in Michigan's lower peninsula. In great part the administrative decision was predicated on the misguided assumption that residence on trust lands held in common for the Band was required for reorganization and the fact that appropriations to purchase such lands had run out.

In sharp contrast, tribal governments located in Michigan's upper peninsula and in nearby Wisconsin, including the Forest County Potawatomi and the Hannahville Indian Community, were provided services by the federal government and were extended the benefits of the Indian Reorganization Act. The Pokagon Band of Potawatomi have submitted extensive documentation to the Committee which demonstrates how inequitable historical treatment by the federal government and wide fluctuations in federal Indian policy account for their present day unacknowledged status.

In the period from 1946 to 1984, the Pokagon Band worked to secure its rights under the Indian Claims Commission Act. While the Band pursued its collective claim against the United States pursuant to the Indian Claims Commission Act it corresponded with the Indian office regarding the hiring of attorneys. Letters from the Indian office were addressed to the Tribal Council of the Pokagon Band asking whether the Band had hired its attorneys. Once again the Band's concerted action was successful and the Indian Claims Commission recognized the right of the council to pursue the claim on behalf of its membership and ultimately awarded compensation to the Pokagon Band members.

Current organization and services

As throughout the Band's history, the contemporary tribal council represents, the Band in its dealings with other governmental entities and organizations. For instance, the Band recently organized all of the Potawatomi Bands that originated in Michigan and Indian to negotiate with the University of Notre Dame for education rights of their members. It has negotiated with local schools to eliminate Indian stereotyping, and negotiated with various entities to obtain Potawatomi remains and sacred objects for reburial. The Council is elected by the general membership and meets as a whole at least monthly at the tribal center. Committees are appointed to deal with specific issues and situations. The Band's government is recognized by the Michigan Commission on Indian Affairs as the official certifier of blood quantum for band members seeking the benefits of Michigan's Waiver of Tuition for North American Indians statute, MCLA 390.1251 *et seq.* Band members are kept informed of tribal business by a newsletter sent to all members.

The Band provides services to its members to the extent it is able to without being included on the list of federally recognized tribes. It administers an Employment and Training Program for Native Americans under that title of the Job Training Partnership Act, 29 USC § 1501 and 1661; administers grants under Title II of the Indian Child Welfare Act, 25 USC § 1931 *et seq.*; and has received grants from the Administration for Native American Affairs, including funding for a unique economic development project to create Native American businesses in an enterprise zone in Benton

Harbor, Michigan. Further, the Michigan Commission on Indian Affairs has allocated Community Services Block Grant funds to the Band to help start a substance abuse program and the Band has administered a grant for an elders program from the Michigan Office of Services to the Aging. The Band is also the official contact point and referral agency to New Day Center, a residential substance abuse center located at the Keewenaw Bay Indian Community, a federally recognized tribe.

Continuous existence as a distinct community

The Pokagon Band has continued to exist as a distinct community residing within its traditional homelands. In 1837, the Band purchased almost 1300 acres of land from the United States in what is now Silver Creek township, Cass County, Michigan. This was part of the Band's traditional hunting territory. Soon after the band members moved on to the land the tribe donated 40 acres to establish Sacred Heat Catholic Church. Many members of the Pokagon Band continue to worship at Sacred Heart church and are buried in the church cemetery, including Leopold Pokagon. The Band also donated land to St. Dominic's Catholic Church at Rush Lake near Hartford, Michigan. While the church building no longer stands, the land remains a special gathering place for the Pokagon Band as it is the site of the Rush Lake Indian Cemetery. Every Memorial Day Pokagon Band members gather to honor deceased ancestors. For many years the Pokagon Band used the Silver Creek township hall for meetings and socials. In 1979, the Silver Creek Township sold the town hall and land on which it is located to the Pokagon Band for $1. This land continues to house the offices of the tribal government.

Tribal culture

In keeping with the traditions of the distant past the present day members of the men's and women's sacred societies participate in traditional ceremonies. The sweat lodge ceremony is observed on a weekly basis. The long house ceremony is conducted at the vernal equinox, summer solstice, autumnal equinox and winter solstice. Frequent pipe ceremonies commemorate special events, such as, the arrival of a newborn, the engagement of a young couple or the reunion of friends wishing to add solemnity to their bonds. Ghost suppers are conducted on the anniversary of the death of a loved one. Ritual fires are lighted for the dead and are maintained prior to the burial of band members. Perhaps the most significant aspect of traditional ways practiced by many band members is the simple act of placing tobacco on the earth at the onset of each day.

Traditional crafts are passed on to future generations by the Band's tribal elders as part of the black ash basketry co-op. Each week Band members meet at the tribal hall to make black ash baskets, do bead and quill work and teach the craft and the Potawatomi language to the younger generation. Making black ash baskets has been Pokagon Band tradition for hundreds of years. Until the late 1930's, the Band supplied to the University of Notre Dame all the laundry, waste and grocery baskets it needed. The Band's oral tradition holds that the Potawatomi donated to the University of Notre Dame the land upon which it sits. Thus, the University

of Notre Dame continues to recognize its unique relationship with the Pokagon Band by providing food baskets to needy Band members each year at Christmas time and supplying office space on campus to the Band.

Many Band members attended BIA funded Indian schools in Mt. Pleasant, Michigan, Holy Childhood in Harbor Springs, Michigan, the Haskell Institute in Kansas and others. There BIA teachers tried to force them to abandon the Potawatomi language. Despite such federally sanctioned efforts to destroy their language and culture, however, their native language has been preserved and is still spoken today by many members of the Pokagon Band. Annually Band members gather for celebrations, pow wows and to harvest huckleberries as did their ancestors for hundreds of years. The huckleberry harvest as a group endeavor ended only when a new parasite destroyed the huckleberries after World War II.

The Pokagon Potawatomi Indians are members of the Confederated Historic Tribes of Michigan Inc. and are acknowledged as a distinct Indian tribal government by the State of Michigan Commission on Indian Affairs, federally-recognized tribal governments located within and outside of the State of Michigan, local governments and governmental entities, as well as numerous private and public institutions in Michigan.

Summary

Other bands of the Potawatomi tribe that were signatories to the 1833 Treaty of Chicago and other treaties have been recognized by the United States including the Prairie Band, Citizens Band, Forest County Band and Hannahville Indian Community. Indeed, the last two named bands were required to move west of the Mississippi but returned east to Wisconsin and Michigan. The arbitrary fashion by which the United States extended federal recognition to Indian tribes located in the Great Lakes region, particularly in what is now the State of Michigan, is unfortunately quite clear.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings

Section 1 sets forth the findings of the Congress which includes the history of the tribe.

Section 2. Federal recognition

Section 2 provides for the federal recognition of the Pokagon Band of Potawatomi Indians and provides that laws applicable to Indian tribes generally shall apply to the Band.

Section 3. Services

Section 3 provides that the Band and its members shall be eligible for benefits and services provided to federally recognized Indian tribes and their members.

Section 4. Tribal membership

Section 4 provides that within 18 months after enactment, the Band is to submit to the Secretary membership rolls which the Sec-

retary is to publish in the Federal Register. Membership is to be determined in accordance with the Band's governing documents.

Section 5. Constitution and governing body

Subsection (a)(1) provides for the adoption of a constitution within 24 months of enactment.

Subsection (a)(2) provides that the governing documents in effect on the date of enactment are to be the interim documents of the Band.

Subsection (b)(1) provides that within 6 months after the Band adopts a constitution and bylaws pursuant to section (a)(1), the Secretary is to conduct elections of tribal officials.

Subsection (b)(2) provides that until the new officials are elected, the Band's governing body shall be those in place on the date of enactment.

Section 6. Tribal lands

Section 6 provides that the Band's land shall include lands upon which the Tribal Hall is situated and other lands subsequently acquired.

Section 7. Service area

Section 7 provides that the Band's service area is to consist of four counties in Michigan (Allergan, Berrien, Van Buren, and Cass) and six counties in Indiana (La Porte, St. Joseph, Elkhart, Starke, Marshall, and Kosciusko).

Section 8. Jurisdiction

Section 8 provides that the Band is to have jurisdiction, to the full extent permitted by law, over all lands taken into trust, and over all members who reside in its service area in matters pursuant to the Indian Child Welfare Act.

Section 9. Definitions

Section 9 provides definitions for terms used in the Act.

LEGISLATIVE HISTORY

H.R. 878 was introduced by Representatives Upton and Roemer on February 4, 1993. The Subcommittee held a hearing on H.R. 878 on September 17, 1993. H.R. 878 was reported without amendment out of the Subcommittee on November 8, 1993 by voice vote.

The identical Senate measure, S. 1066, was introduced by Senators Riegle and Levin on May 28, 1993. The Senate Committee on Indian Affairs held a hearing on February 10, 1994. S. 1066 was reported out of the Senate Committee on Indian Affairs without amendment on April 13, 1994, and was passed by the Senate under unanimous consent on June 13, 1994.

S. 1066 was referred to the Committee on Natural Resources on June 14, 1994. S. 1066 was reported without amendment out of the Committee on June 29, 1994.

COMMITTEE RECOMMENDATIONS

The Committee on Natural Resources, by voice vote, approved the bill and recommends its enactment by the House.

CHANGES IN EXISTING LAW

If enacted, S. 1066 would make no changes in existing law.

OVERSIGHT STATEMENT

The Committee on Natural Resources will have continuing responsibility for oversight of the implementation of S. 1066 after enactment. No reports or recommendations were received pursuant to rule X, clause 2 of the rules of the House of Representatives.

INFLATIONARY IMPACT, COST AND BUDGET ACT COMPLIANCE

In the opinion of the Committee, enactment of S. 1066 will have no inflationary impact on the national economy and will not result in significant costs. The estimated of the Congressional Budget Committee is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 12, 1994.

Hon. GEORGE MILLER,
Chairman, Committee on Natural Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1066, an act to restore federal services to the Pokagon Band of Potawatomi Indians, as ordered reported by the House Committee on Natural Resources on June 29, 1994. CBO estimates that S. 1066 could result in additional costs to the federal government of $30 million to $35 million over the next five years, assuming appropriation of the necessary funds. Enactment of S. 1066 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply. Also, enactment of S. 1066 would result in no significant cost to state or local governments.

S. 1066 would grant federal recognition to the Pokagon Band of Potawatomi Indians, which resides in the states of Michigan and Indiana. The act would make tribal members eligible for all services and benefits provided to federally recognized Indians. CBO estimates that the average annual cost of services and benefits provided nationally to American Indians and Alaska Natives is about $3,500 per tribal member. Based on estimated tribal enrollments totaling about 2,000, we estimate that S. 1066 could result in costs to the federal government of about $7 million annually, assuming the necessary funds are appropriated. Initial spending would probably be less, until all tribal members are identified and the services are fully underway.

The act would require the band to document and maintain a list of members and to adopt a constitution and by-laws. The Bureau of Indian Affairs (BIA) would assist the band in this effort. Based on information from the BIA, we expect that the cost of providing such services to the newly recognized tribe would total about $2 million over the 1995–1997 period.

Finally, the act would require the Secretary to acquire real property for the benefit of the band. The Secretary also may accept certain real property in the band's service areas. These properties would be held in trust and become a part of the band's reservation.

The provision would allow the Secretary to purchase property over an indefinite period of time on behalf of the band. The BIA's total appropriations to purchase land averaged about $1.1 million a year over the 1992–1994 period. CBO has no basis for estimating the value of the land that the band would request the Secretary to purchase in the future. Nonetheless, we expect that the cost of this provision would probably not exceed $1 million annually.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Robertson, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

DISSENTING VIEWS

S. 1066 is one of a number of bills brought before the Committee this Congress seeking legislatively to extend federal recognition to an Indian group.[1] These bills present the Committee, and ultimately the Congress, with one of the most difficult contemporary public policy issues in Indian Affairs: In which cases, if any, should we exercise our authority to extend federal recognition to a group seeking formal acknowledgement as an Indian tribe outside the established administrative process? In the last two Congresses, we have been asked to consider acknowledgement of the Pokagon Band of Potawatomi[2] Indians.[3] So far, we have declined to exercise that authority in their regard. The majority presents no compelling justification why we should depart from that well-reasoned course now.

I. FEDERAL RECOGNITION

So that the members of this Committee, and of the rest of the House, can fully understand the magnitude of the issues presented by S. 1066, a brief background on the importance of federal recognition is in order. The question of whether a Native American group constitutes an Indian tribe is one of immense significance in the field of federal Indian law. Because Congress' power to legislate for the benefit of Indians is limited by the Constitution of Indian tribes,[4] for most federal purposes it is not enough that an individual simply be an Indian to receive the protection, services, and benefits offered to Indians; rather, the individual must also be a member of an Indian tribe.[5] Though it might seem to the layperson that there is only one kind of Indian tribe, for purposes of American Indian law there are actually two—those that are recognized by the federal government and those that are not.[6]

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[1] See, e.g., H.R. 334, 103d Cong., 1st Sess. (1993) (Lumbee); H.R. 878, 103d Cong., 1st Sess. (1993) (Pokagon Potawatomi); H.R. 923, 103d Cong., 1st Sess. (1993) (Mowa Choctaw); H.R. 2366, 103d Cong., 1st Sess. (1993) (Jena Choctaw); H.R. 2376, 103d Cong., 1st Sess. (1993) (two Odawa bands); H.R. 3605, 103d Cong., 2d Sess. (1994) (Mowa Choctaw); H.R. 4232, 103d Cong., 2d Sess. (1994) (Burt Lake).

[2] Although there are varying spellings of the term "Potawatomi," this is the most prevalent and is also the version used by this band. Consequently, it is the spelling we have chosen to use. See Smithsonian Inst., 15 Handbook of North American Indians 741 (1978).

[3] See, e.g., H.R. 2958, 102d Cong., 1st Sess. (1991).

[4] U.S. Const., art. I, § 8, cl. 3; *cf.* U.S. Const., art. II, § 2, cl. 2.

[5] See, e.g., *Eps* v. *Andrus,* 611 F.2d 915, 918 (1st Cir. 1979)(*per curiam*).

[6] Nonrecognized Native American groups or tribes can further be broken down into three basic subgroups. The first are those that have never been recognized, like Native Hawaiians. See generally, Houghton, An Argument for Indian Status for Native Hawaiians—The Discovery of a Lost Tribe, 14 American Indian L. Rev. (1988). The second consists of those groups that were once recognized, but have had their tribal status terminated by Congress. See, e.g., Pub. L. No. 86–322, 73 Stat. 592 (Sept. 21, 1959)(Catawba Tribe); Pub. L. No. 85–91, 71 Stat. 283 (July 10, 1957)(Coyote Valley Ranch Band); Pub. L. No. 83–399, 68 Stat. 250 (June 17, 1954)(Mixed Blood Utes). The third are those that have applied for recognition, but have been turned down. See, e.g., 50 Fed. Reg. 38047 (1985)(Northwest Cherokee Wolf Band; Red Clay Intertribal Indian Band); 50 Fed. Reg. 18746 (1985)(Tchinouk Indians of Oregon).

"Recognized" is more than a simple adjective; it is a legal term of art. It means that the government acknowledges as a matter of law that a particular Native American group is a tribe by conferring a specific legal status on that group, thus bringing it within Congress' legislative powers. This federal recognition is no minor step. A formal, political act, it permanently establishes a government-to-government relationship between the United States and the recognized tribe as a "domestic dependant nation,"[7] and imposes on the government a fiduciary trust relationship to the tribe and its members. Concomitantly, it institutionalizes the tribe's quasi-sovereign status,[8] along with all the powers accompanying that status such as the power to tax,[9] and to establish a separate judiciary.[10] Finally, it imposes upon the Secretary of the Interior specific obligations to provide a panoply of benefits and services to the tribe and its members.[11] In other words, unequivocal federal recognition of tribal status is a prerequisite to receiving the services provided by the Department of the Interior's Bureau of Indian Affairs (BIA),[12] and establishes tribal status for all federal purposes.

II. THE HISTORY OF THE RECOGNITION PROCESS

Prior to the 1930's federal recognition of tribes took many forms; congressionally-sanctioned treaties, court cases, administrative decisions, and executive orders—and "was essentially sporadic, or, at best * * * plagued with all sorts of pitfalls and a lack of a systematic approach. * * *"[13] Instead of a process based on a well-reasoned set of standardized criteria, the granting of recognition was, by all accounts, nothing better than arbitrary and excessively political. For example, in 1851 the United States entered into a series of eighteen treaties (the "Barbour Treaties") with several California tribes providing for the relinquishment of all aboriginal land claims in California in exchange for 8.5 million acres of territory and other goods and supplies.[14] These treaties would have formed the basis for the federal recognition of these groups, but because of pressure from the California congressional delegation the treaties were never ratified—in fact, they were purposefully hidden for decades.[15] No one informed the tribes of the failure of ratification, and white settlers proceeded to occupy their lands anyway.[16]

In 1871, Congress provided that no tribe could thereafter be recognized as an independent sovereign entity with which the United

[7] *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 14 (1831).
[8] See *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 557–62 (1832).
[9] See *Warren Trading Post* v. *Arizona Tax Comm'n*, 380 U.S. 685 (1965); The Kansas Indians, 72 U.S. (5 Wall.) 737 (1866); *Buster* v. *Wright*, 135 F.2d 947 (8th Cir. 1905).
[10] See Ex parte Crow Dog, 109 U.S. 556 (1883); *Iron Crow* v. *Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956).
[11] See, e.g., 43 U.S.C. §1457 (1988); 25 U.S.C. §2 (1988).
[12] See, e.g. 43 U.S.C. §20 (1990)(Financial Assistance Social Services Program); 25 C.F.R. §101 (1990)(Loans to Indians Program); 25 C.F.R. §256 (199)(Housing Improvement Program).
[13] S. Hrg. No. 98–690, 98th Cong., 1st Sess. 2 (1983)(testimony of John Fritz, Deputy Ass't Sec. for Indian Affairs).
[14] See Smithsonian Institution, 8 Handbook of North American Indians 701–02 (William C. Sturtevant ed. 1978); Bureau of Indian Aff., Dep't of Interior, Indians of California 8–12 (1968). For a listing of these treaties, see H.R. 2144, 102d Cong., 1st Sess. 9–10 (Apr. 30, 1991).
[15] See H.R. Hrg. No. 102–77, 102d Cong., 2d Sess. 41–42, 171–72, 186 (May 28, 1992)(H.R. 2144); 8 Handbook of North American Indians, supra note 14, at 702–03; H.R. Hrg. No. 102–59, 102d Cong., 1st Sess. 41, 42 (Oct. 10, 1991) (H.R. 2144).
[16] Id. at 41–42.

States could conclude a treaty.[17] Similarly, in 1919 Congress retired another method of recognizing an indigenous group as a tribe when it prohibited the President from creating reservations by executive order.[18] Thus, by the early 1900's, this curtailment of available avenues of dealing with the tribes, coupled with the growing involvement of the BIA in managing the daily affairs of the tribes, meant that Congress had effectively delegated—either explicitly or implicitly—much of its authority over Indian matters to the BIA.[19]

Those agencies, however, continued to deal with the tribes in a somewhat desultory fashion. The early principles of administrative recognition were based on a Supreme Court decision which offered a rather vague guide to defining a tribe.[20] In an effort to remedy this disorganization, in 1942 the Solicitor of the BIA, Felix Cohen, first proposed a workable set of criteria designed to provide a uniform framework for tribal recognition.[21] The so-called "Cohen Criteria" considered both the tribal character of the native group and any previous federal actions treating it as a tribe. However, application of the criteria proved to be no less haphazard than the process they replaced.[22] Besides the Cohen criteria, the BIA relied on a patchwork mixture of court opinions, limited statutory guidance, treaty law, and evolving departmental policy and practice.[23] Thus by 1975, faced with a steadily increasing number of groups seeking recognition, the BIA held in abeyance further acknowledgement decisions pending the development of regulations for a systematic and uniform procedure to recognize Indian tribes.

About this same time the congressionally-established American Indian Policy Review Commission (AIPRC) proposed the formation of a firm legal foundation for the establishment and recognition of tribal relationship with the United States, and the adoption of a "valid and consistent set of factors applied to every Indian tribal group * * * "[24] Joining the chorus for standardization was the National Congress of American Indians, which called for a "valid and consistent set of criteria applied to every group which petitions for recognition * * * based on ethnological, historical, legal, and political evidence." Senator James Abourezk, AIPRC's chairman, took the issue of the floor of the Senate, and introduced legislation

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[17] Act of Mar. 3, 1871, c. 120, § 1, 16 Stat. 566 (codified at 25 U.S.C. § 71 (1988)).

[18] Act of June 30, 1919, ch. 4, § 27, 41 Stat. 34 (codified at 43 U.S.C. § 150 (1988)).

[19] During the lengthy debates on Lumbee recognition, and recognition in general, there have been those who have intimated that the FAP process is a usurpation of Congressional authority. See e.g., Joint Cong. Hrg. No. 102–JH1, 102d Cong., 1st Sess. 53 (August 1, 1991) (statement of Mr. Gejdenson of Connecticut); H.R. Hrg. No. 102–79, 102d Cong., 2d Sess. 56 (1992) (statement of Henry Sockbeson). This position is nothing more than a canard. Whether directly or indirectly, we have delegated that authority to the Bureau, see 5 U.S.C. § 301 (1988); 25 U.S.C. §§ 2, 9 (1988); Dep't of Interior, 2 Opinions of the Solicitor, Indian Affairs 1211 (1974) (Power of the Secretary of Delegate Functions to the Heads of Bureaus); United States v. Midwest Oil Co. 236 U.S. 459, 472–73 (1915) ("in determining * * * the existence of a power, weight shall be given to the usage itself, even when the validity of the practice is the subject of investigation"); and no more has seriously sought to challenge that position.

[20] See Montoya v. United States, 180 U.S. 261, 266 (1901) (defining a tribe as a "body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory").

[21] See Felix S. Cohen, Handbook on Federal Indian Law 268–72 (1942) (Michie Co. reprint 1989).

[22] See Note. "The Imprimatur of Recognition: American Indian Tribes and the Federal Acknowledgement Process", 66 Wash. L. Rev. 209, 211 (Jan. 1991).

[23] Id. at 211.

[24] See "Task Force Ten, American Indian Policy Rev. Comm'n, Final Report on Terminated and Nonfederally Recognized Indians," 94th Cong., 2d Sess. (1976).

calling for the establishment of an office in the BIA to handle recognition petitions in a uniform way.[25]

In 1978, the Interior Department, after exhaustive consultations with Indian country, established procedures to provide a uniform approach to the recognition process. Called the Federal Acknowledgment Process (FAP), the regulations set forth seven criteria a petitioning group must meet to be deemed a "recognized" tribe.[26] Under the criteria, based in part on Cohen's model, for a group to be recognized as a tribe it must:

> (a) establish that it has been identified from historical times to the present on a substantially continuous basis as "American Indian" or "aboriginal;" (b) establish that a substantial portion of the group inhabits a specific area or lives in a community viewed as * * * Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which establishes that the group has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present; (d) furnish a copy of the group's present governing document * * * (e) furnish a list of all known members, and show that the membership consists of individuals who have established descendency from a tribe that exist historically or from historical tribes that combined and functioned as a single autonomous entity; (f) establish that the membership is composed principally of persons who are not members of any other North American Indian tribe; (g) establish that neither the group nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship.

The BIA FAP office is staffed by two terms of professionals including historians, genealogists, ethnologists and anthropologists. These teams do exhaustive research on the petitions they receive, and examine such factors as Indian identity and community, as well as political and cultural cohesiveness. Once a petition is received it is reviewed for any obvious deficiencies. These are noted for the tribe, which is given the opportunity to supply additional material to supplement its petition. The petition are then placed on active consideration in the order received.

III. THE POKAGON BAND

S. 1066 seeks to legislatively extend federal recognition to a group of Indians in southern Michigan, completely bypassing the established BIA FAP process. The bill's proponents posit two principal arguments for recognition: first, that the group was previously recognized by the federal government, and that their recognition has simply fallen into abeyance over the years and needs to be "reaffirmed;" and second, that the FAP process is "arbitrary and unworkable" and therefore they are justified in bypassing it. We examine and dispose of their claims *in seriatim.*

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[25] See 123 Cong. Rec. 39277 (Dec. 15, 1977).

[26] See C.F.R. § 83 (1990) (originally promulgated as 25 C.F.R. § 54 (1978)).

A. The "previous recognition" issue

The proponents of S. 1066 posit that theirs is not a recognition bill at all; rather, they contend that it is "reaffirmation" legislation.[27] They argue that there formally existed a government-to-government relationship between the Pokagon band and the United States, but that the relationship—while continuing in law—has not continued in fact due to the actions, or inactions, of the BIA and the federal government.[28] The Pokagon group claims descent from signatories to a series of treaties between the United States and the Potawatomi Nation during the late 1700's and early 1800's.[29] Specifically, the band members claim that they are the descendants of, and political successors to, signatories of the 1821 Treaty of Chicago[30] and the 1832 Treaty of Tippecanoe River.[31] Therefore, they conclude, they are automatically entitled to have their status as "recognized" groups reaffirmed by the federal government.

The Pokagon position, however, rests upon several fatally flawed stylobates. To begin with, we are aware of no precedent in federal Indian law for a concept of congressional "reaffirmation." Traditionally, there are only four statuses available to Indian tribes: recognized, unrecognized, terminated, and restored. Clearly, the last two do not apply here; the Pokagon have never been the subject of congressional termination legislation, the logical prerequisite to both termination and restoration.[32] Just as clearly, the Pokagon band is not now federally recognized; they do not presently receive services from the BIA because of their status as Indians and they do not appear on the Secretary's most recent list of recognized tribes.[33] That leaves the Pokagon only one possible status; unrecognized.

The Pokagon, however, argue that they were recognized in a series of treaties in the early 1800's. They contend that over the intervening years the federal government and BIA allowed that recognition to atrophy to the point of nonexistence. They conclude, therefore, that their recognized status was never terminated but lies dormant, only needing to be reawakened by Congressional "reaffirmation." They are wrong.

The argument that Indian groups benefit from a presumption of continuing tribal existence—and thus federal recognition—on the basis that their ancestors belonged to groups with which the United States signed treaties has been soundly rejected by the federal

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[27] See Testimony of Dr. James M. McClurken Before the Subcommittee on Native American Affairs 1 (September 17, 1993); S. 1066, title, 103d Cong., 2d Sess. (1994).

[28] See, e.g., The Pokagon Band of Potawatomi: Hearings Before the House Subcommittee on Native American Affairs, 103d Cong., 1st Sess. passim (Sept. 17, 1993).

[29] Treaty of Ft. Harmar, Jan. 9, 1789, United States—Wyandot *et al.*, 7 Stat. 28; Treaty of Greenville, Aug. 3, 1795, United States—Wyandots *et al.*, 7 Stat. 49; Treaty of Chicago, Aug. 29, 1821, 7 Stat. 218. For a full recitation of these agreements, see Senate Comm. on Indian Affairs, 2 Indian Laws & Treaties 1089–90 (Charles J. Kappler, ed. 1904).

[30] Treaty of Chicago, supra note 29.

[31] Treaty of Tippecanoe River I, Oct. 20, 1832, United States—Potawatomi Nation, 7 Stat. 378; Treaty of Tippecanoe River II, Oct. 26, 1832, United States—Potawatomi Nation, 7 Stat. 394; Treaty of Tippecanoe River III, Oct. 27, 1832, United States—Potawatomi Nation, 7 Stat 399. See also Treaty of Chicago, Sept. 26, 1833, United States—Chippewa Nation et al., 7 Stat. 431; Supplement, Treaty of Chicago, Sept. 27, 1833, 7 Stat. 442.

[32] Cf. Catawba Termination Act, 73 Stat. 592 (Sept. 21, 1959) (codified at 25 U.S.C. §931 et seq.); Catawba Restoration Act, H.R. 2399, 103d Cong., 1st Sess. (1993) (Pub. L. No. 103–116) (not yet codified).

[33] See 58 Fed. Reg. 54368 (Oct. 21, 1993) (BIA List of Recognition Tribes).

courts.[34] The reason for that rejection is fairly straightforward: Just because a group existed as a federally-recognized Indian entity in the 1800's in no way guarantees that they have continued to exist in that same unaltered condition to the present day.

There are countless Indian groups extant today that cannot meet the federal government's criteria for recognition, notwithstanding the fact that they are descended from treaty signatories. The consummate example are the Miami of Indiana. The Miami are descended from a group that signed a series of treaties with the United States between 1795 and 1867.[35] Yet despite the existence of these treaties, the group was denied recognition by the BIA on August 17, 1992. The Miami were unable to satisfy the second and third FAP criteria; they could not establish that "a substantial portion of the group inhabits a specific area or lives in a community viewed as * * * Indian and distinct from other populations in the area," and they could not show that they "maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present."

The *Washington* decision, and experience with groups such as the Miami, support the responsibility of the BIA to inquire de novo as to the maintenance of a group's tribal existence. Without that maintained, cohesive, existence there can be no federal recognition.

The bill's proponents take great pains to posit that the Pokagon meet all the criteria used by the BIA in determining tribal status. However, while the proponents' remarks on this bill, as well as the majority's report, focus extensively on their highly subjective judgments about whether the Pokagon people meet these criteria, we decline to engage in debate over this emotional topic since it is largely irrelevant in terms of our position on this legislation. We do not argue that the Pokagon are not of Indian descent; moreover, we make no judgments on the question of their tribal status, or the adequacy of their recognition petition. Rather, we believe strongly that neither the members of this Committee, nor of the full House, are in a position to make a rational and informed decision as to whether this group constitutes a federally-recognizable tribe.

True, as the Chairman of this Committee has previously pointed out, "[t]his is not about us being experts. It is about weighing the evidence that the experts have given us. That is our job on this and so many other subjects."[36] However, we have heard from only one of the "experts," and there is not one member of this Committee, nor of our staffs, with the specialized educational background necessary to make an informed decision in this area. Properly done, the process of recognition requires an evaluation of complex and often ambiguous data and issues of ethnohistory, cultural anthropology, and genealogy. Not only do we lack that expertise, but there are precious few members of this Committee with any more than the most superficial knowledge on the subject at all. Such a decision is replete with out-of-the-ordinary complexities which require more than just a simple one-page staff memo to understand

[34] See *United States* v. *Washington*, 641 F.2d 1368, 1372–74 (9th Cir. 1981).

[35] See, e.g., Treaty of Wabash, Nov. 6, 1838, United States—Miami Nation, 7 Stat. 569; Treaty of Wabash (II), Nov. 28, 1840, United States—Miami Nation, 7 Stat. 582; Treaty of Washington, Jun. 5, 1854, United States—Miami Nation, 10 Stat. 1093.

[36] 137 Cong. Rec. H–6902 (Sept. 26, 1991).

fully. Needless to say, if those of us charged with the day-to-day oversight of Indian affairs do not have the necessary expertise—over even knowledge—in this area, how will the balance of our Members appropriately exercise those judgments as they will be called upon to do when this legislation reaches the floor?

Aside from our lack of expertise, other considerations militate against removing the recognition process from the BIA in this case. Foremost among these is the fact that recognition should be based on established principles free from the eddies and currents of partisan politics and influence—this was the reason the FAP criteria were established in the first place. Congress is by nature, however, a highly partisan institution. A single, powerful member in the majority party is perfectly capable of moving a recognition bill through this body with little reference to its actual merits.[37] As one attorney has noted:

> Neither this Committee nor the Senate Committee has adopted any self-policing criteria [to use] to judge the petitions. It has to do with the nature of the arguments that are put forward before [the Committee], the proponents of the legislation bring their historians and anthropologists and say absolutely this is a tribe. The member or sponsor of the bill lobbies the members of the Committee on behalf of his [petitioning] constituent and depending on whether he's persuasive or not perhaps he is successful. Some professional staff pointed out to me one day, what happens the day that Dan Rostenkowski[, Chairman of the House Ways and Means Committee,] goes to George Miller[, Chairman of the House Natural Resources Committee,] and says the [Illini] tribe are alive and living in downtown Chicago. That should not be the way the federal recognition is granted. There has to be some sort of criteria and I think that is the bottom line.[38]

In other words, while we clearly have the power to recognize a tribe, that does not mean that the wisest use of that power is its exercise. In the absence of any discernible criteria by which we judge tribal status, and of any particularized background or knowledge, the Congress should leave the decision up to those best qualified to make it: the BIA.

There is simply no precedent for congressional passage of a bill like S. 1066. Since 1978, the year the BIA promulgated the FAP regulations, Congress has approved eighteen acts pertaining to "recognition" of tribal groups. None of these, however, can be characterized as a recognition bill such as S. 1066. More than half of the cited acts were bills restoring federal recognition to groups that had once been officially recognized, but were terminated by legislation—a status to which the Pokagon cannot lay claim. The rest involved unique circumstances not applicable here.

More than half the bills cited as legislative "recognition" legislation are actually restoration bills—the word "restoration" appears

[37] See, e.g., H.R. 334, 103d Cong., 1st Sess. (1993) (Lumbee Recognition).

[38] H.R. Hrg. No. 102–79, 102d Cong., 2d Sess. 173 (Sept. 15, 1992).

in the title of each act cited.[39] There is a clear legal distinction between a recognition bill, which establishes the government-to-government relationship between the United States and a tribe for the very first time, and a restoration bill, which simply reinstates a relationship which once existed but was expressly terminated by statute or treaty. No amount of obfuscation can turn one into the other. These ten bills, therefore, cannot possibly serve as precedent for the Pokagon case.

Of the eight remaining acts, four were related to the recognition of tribes in the context of eastern land claims.[40] In these bills, Congress extended recognition to several groups as part of settlements of the tribes' legal claims to land in Maine, Connecticut, and Massachusetts. Another act pertained to a tribe that had already been recognized as part of another tribal entity;[41] one acknowledged a band as a subgroup of another recognized tribe;[42] and one act involved a group that was aboriginally indigenous to Mexico and thus specifically excluded from the administrative regulations.[43]

This leaves only one act, the Texas Tiwa legislation. In 1968, Congress transferred responsibility over the Tiwa Tribe (now known as the Ysleta del Sur Pueblo) and their lands to the State of Texas, thereby terminating any federal relationship with the tribe.[44] The Act read, in pertinent part:

> Responsibility, if any, for the Tiwa Indians of Ysleta del Sur is hereby transferred to the State of Texas. Nothing in this Act shall make such tribe or its members eligible for services performed by the United States for Indians because of their status as Indians * * * and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to [them].[45]

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[39] See Pub. L. No. 103–166, 107 Stat. 1118 (Oct. 27, 1993) (codified at 25 U.S.C. §941 (1993 Supp.)) (Catawba Restoration Act); Pub. L. No. 101–484, 104 Stat. 1167 (Oct. 31, 1990) (codified at 25 U.S.C. §983 et seq. (1992 Supp.)) (Ponca Restoration Act); Pub. L. 101–42, 103 Stat. 91 (June 28, 1989) (codified at 25 U.S.C. §715 (1992 Supp.)) (Coquille Restoration Act); Pub. L. No. 100–139, §5(b), 101 Stat. 827 (Oct. 26, 1987) (codified at 25 U.S.C. §712 et seq. (1988)) (Cow Creek Band of Umpqua Restoration Act); Pub. L. No. 100–89, Title II, 101 Stat. 669 (Aug. 18, 1987) (codified at 25 U.S.C. §731 et seq. (1988)) (Coushatta/Alabama Restoration Act); Pub. L. No. 99–398, 100 Stat. 849 (Aug. 27, 1986) (codified at 25 U.S.C. §566 et seq. (1991 Supp.)) (Klamath Restoration Act); Pub. L. 98–481, 98 Stat. 2250 (Oct. 17, 1984) (codified at 25 U.S.C. §714 (1988)) (Confederated Coos, Lower Umpqua, and Siuslaw Restoration Act); Pub. L. 98–165, 97 Stat. 1064 (Nov. 22, 1983) (Confederated Tribes of Grande Ronde Restoration Act); Pub. L. No. 96–227, 94 Stat. 317 (Apr. 3, 1980) (Pointe Restoration Act); Pub. L. No. 95–281, 92 Stat. 246 (May 15, 1978) (Wyandotte, Peoria of Oklahoma, Ottawa of Oklahoma Restoration Act).

[40] Pub. L. No. 102–171, 105 Stat. 1143 (Nov. 26, 1991) (codified at 25 U.S.C.A. §1721 (1993 Supp.)) (Aroostook Band of Micmac); Pub. L. No. 100–95, 101 Stat. 704 (Aug. 18, 1987) (codified at 25 U.S.C. §1771 et seq. (1988)) (Wampanoag); Pub. L. No. 98–134, 97 Stat. 851 (Oct. 18, 1983) (codified at 25 U.S.C. §1751 et seq. (1988)) (Mashantucket Pequot); Pub. L. 96–420, 94 Stat. 1785 (Oct. 10, 1980) (codified at 25 U.S.C. §1721 et seq. (1988 & 1993 Supp.)) (Maine Indian Claims Settlement). Although somewhat different from the above-cited statutes, the Miccosukee Act is sufficiently analogous to include here as a land settlement issue. See Pub. L. No. 97–399, 96 Stat. 2012 (Dec. 31, 1982). This would make the number of land settlement acts five. Interestingly enough, in two of these settlement acts Congress deferred to the administrative recognition process and both groups were later recognized by the Secretary of the Interior.

[41] Pub. L. No. 100–420, 102 Stat. 1577 (Sept. 8, 1988) (codified at 25 U.S.C. §1300h et seq. (1993 Supp.)) (Lac Vieux Desert).

[42] Pub. L. No. 97–429, 96 Stat. 2269 (Jan. 8, 1983) (codified at 25 U.S.C. §1300b–11 et seq. (1988)) (Texas Band of Kickapoo).

[43] Pub. L. No. 95–375, 92 Stat. 712 (Sept. 18, 1978) (Pascua Yaqui) (codified at 25 U.S.C. §1300f et seq. (1988)). The recognition regulations apply only to those tribes indigenous to the continental United States. See 25 C.F.R. §§83.1(f), (g), (n); 83.3(a) (1991).

[44] See Pub. L. No. 90–287, 82 Stat. 93 (Apr. 12, 1968) (not classified in U.S. Code).

[45] Id., §2

Congress later reversed itself, thereby restoring recognition to the Tiwa, when informed by the State that the latter could not legally hold tribal land in trust for the tribe.[46]

Despite previous attempts to characterize the Tiwa Act as recognition legislation,[47] it is not; the Tiwa Act was restoration legislation, a status set forth in the very name of the Act itself.[48] As we have previously noted, recognition and restoration are two completely different legal concepts, and consequently the Tiwa Act (restoration) is not precedentially analogous to the Pokagon case (recognition). Furthermore, no similar transfer of responsibility has ever taken place between the United States and Michigan with regard to the Pokagon, nor has the United States ever held land in trust for this group.

In sum, the Pokagon are not automatically entitled to recognition simply because they are descended from treaty signatories. Given that fact, no amount of verbal obfuscation can transmute this bill into anything other than what it is: recognition legislation. As such, the Pokagon should pass through the same recognition process required of every other tribe in this country, and not exempted by this ill-considered legislation for which there is no congressional precedent.

B. The acknowledgement process

The Pokagon next posit that they are justified in bypassing the FAP because the process is cumbersome and ineffective. The FAP has come under fire over the last few years. There are those who argue—correctly in some instances—that the process takes longer to complete than is provided for in the agency's regulations, costs each group financial resources they do not have, and is subject to the whims of the BIA staff. In limited defense, we point out that because the FAP establishes a permanent government-to-government relationship with a tribe, the BIA is very cautious about its determinations. This kind of exhaustive research takes a lot of time, as does the process of preliminary review, notification to the tribe of deficiencies, and waiting for the tribe to respond to these deficiencies with a supplemental petition. In addition, the FAP teams have been historically underfunded by this Congress and there have never been more than two. Still, the process clearly has its faults.

Regardless, the Pokagon are hardly in a position to complain about the process. Their petition was placed on active consideration on January 28, 1994.[49] Moreover, all of the indications are that the BIA will issue a positive finding on the petition.[50] We cannot com-

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[46] See Pub. L. No. 100–89, Title I, 101 Stat. 666 (Aug. 18, 1987) (codified at 25 U.S.C. § 1300g et seq. (1988)).

[47] See e.g., H.R. Hrg. No. 101–57, 101 Cong., 1st Sess. 15 (1989).

[48] See H.R. Rep. No. 102–215, 102d Cong., 2d Sess. 5 (1992) (citing the "Ysleta del Sur Pueblo Restoration Act").

[49] Branch of Acknowledgement and Research, Bur. of Indian Aff., Detailed Status of Acknowledgement Cases 2 (May 16, 1994) [hereinafter BAR Status Report]. A copy of this document appears as an attachment to this Report.

[50] At a hearing in the Senate on S. 1066, the BIA indicated that it did not object to enactment of this legislation. See S. Rep. No. 103–260, 103d Cong., 2d Sess. 9–10 (1994). Since the BIA routinely opposes recognition bills, it is understood in Indian Country that their lack of opposition to this legislation indicates that they expect the outcome to be the same regardless of which route the band takes.

prehend the Pokagon criticizing a process which they have almost successfully passed.

Furthermore, while we have always agreed that the FAP is in need of repair, it is not as feckless as the bill's proponents would have this Committee believe. For example, we have repeatedly heard Members state that there is a backlog of 120 cases waiting to be processed, and that only eight tribes have made it through the process since its inception.[51] However, those numbers—oft-parroted as the premier example of why the FAP should be bypassed—are patently spurious and unsupported by the record.[52]

There were forty (40) petitions on hand when the FAP office organized in October, 1978, and 110 petitions or related inquiries have been filed since then for a total of 150 cases.[53] Of these, nine (9) groups have been recognized;[54] thirteen (13) have been denied recognition;[55] one (1) was determined to be part of a recognized tribe;[56] one (1) had is status confirmed by the Assistant Secretary for Indian Affairs;[57] one (1) had its status clarified by legislation at the BIA's request;[58] one (1) had its previously-terminated recognition restored;[59] three (3) were legislatively acknowledged;[60] one (1) withdrew its petition and merged with another petitioner;[61] and seven (7) require legislative action to permit processing.[62] This means that a total of thirty-seven (37) cases, not eight as others contend, have been resolved since 1978; twenty-six (26) by the BIA, four (4) by Congress, one (1) of its own accord, and seven (7) because they are precluded from petitioning.

Of the 113 remaining cases, twenty-six (26) are incomplete petitions and thus are not yet eligible for review.[63] A full seventy-four (74) cases are similarly unreviewable because the groups have submitted only letters of intent to petition informing the BIA that at

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[51] See, e.g., 139 Cong. Rec. H–8611 (Oct. 28, 1993) (statement of Mr. Richardson); 137 Cong. Rec., supra note 36, at H–6890 (statement of Mr. Miller of California).

[52] See H.R. Hrg. No. 102–79, 102d Cong., 2d Sess. 32, 33–34, 174 (1992); 139 Cong. Rec., supra note 50, at H–8618 to H–8619; H.R. Rep. No. 103–290, 103d Cong., 1st Sess. 200–02 (Oct. 14, 1993 (dissenting Views).

[53] BAR Status Report, supra note 49, at 1.

[54] BAR Status Report, supra note 49, at 1, 3 (Grand Traverse Ottawa, Jamestown S'Klalam, Tunica-Biloxi, Death Valley Timba-Sha, Narragansett, Poarch Creek, Wampanoag, San Juan Paiute, Mohegan of Connecticut). Some have implied that the small number of groups which have passed muster under the recognition regulations demonstrates an inequity or anti-recognition bias in the process. We point out, however, that when the FAP was in its nascent stages, experts agreed that the number of groups eventually recognized would be relatively small. For example, Senator Abourezk stated: "It is my opinion that rather than doubling or even greatly increasing the Federal Government's tribal service population, only a relatively small number of tribes will eventually meet the specified criteria." 123 Cong. Rec. 39279 (Dec. 15, 1977).

[55] Id. at 13 (Lower Muskogee, Eastern Creeks, Munsee-Thames, United Lumbee, Kaweah, Alabama Creek, Southeastern Cherokee, Wolf Band Cherokee, Red Clay, Tchinouk, Samish, MaChis, Miami). More recently, the Ramapough Indians of New Jersey had a proposed negative finding entered to their petition.

[56] Id. at 7 (Texas Band of Traditional Kickapoos).

[57] BAR Status Report, supra note 49, at 3 (lone Band of Miwok).

[58] Id. at 7 (Lac Vieux Desert Chippewa).

[59] Id. at 7 (Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians).

[60] Id. at 7 (Cow Creek Band of Umpqua, Western Mashantucket Pequot, Aroostok Band of Micmacs).

[61] Id. at 8 (Potowatomi of Indiana and Michigan, merged with Pokagon Potawatomi).

[62] Id. at 7 (Lumbee, Hattaras Tuscarora, Cherokee of Robeson County, Drowning Creek Tuscarora, Waccamaw Siouan, Cherokee of Hoke County, and Tuscarora Nation.)

[63] BAR Status Report, supra note 49, at 1, 5–8 (Piro/Manso/Tiwa, Steilacoom, Mashpee, Wampanoag, Edisto, Maidu, Clifton Choctaw, Little Shell Chippewa, Eastern Pequot, Georgia Cherokee, Idaho Delawares, Haliwa-Saponi, St. Francis Sokoki, Hassanamisco Nimpuc, Chaubunagungamaug Nimpuc, Golden Hill Paugussett, Mariposa, Shasta, Tolowa, Traditional Seminole, North Fork Mono, Hayfork Nor-El-Muk Wintu, Yokayo, Snoqualmoo of Whidbey Island, Indian Canyon Costanoan, Oklewaha Seminole, Wintu)

some unspecified time in the future they will submit their actual petitions.[64]

That leaves us with thirteen (13) cases that could possibly be considered to be "pending." In three (3) of those, the BIA has already completed its review and announced its findings;[65] those findings do not become final for regulatory purposes, however, until the close of a prescribed comment period.[66] Of the remaining ten (10) cases, six are presently under active consideration.[67] That leaves four cases—not 120, but four—that are currently "backed-up" and awaiting review.[68] In simpler terms, only three (3) percent of the total number of cases filed with the BIA are pending BIA action. This is hardly an insuperable barrier justifying congressional redress.

In any event, the logical solution to the problems posed by the FAP process is to correct them. Several bills have been introduced over the past few years to overhaul and streamline the process.[69] Despite the chorus of Democrat complaints about the process, though, the majority has—until last month—never seriously pursued any of these bills in committee, seeming to prefer instead the introduction of a string of ad hoc recognition bills designed to circumvent the process entirely.[70]

Finally this May, the subcommittee chairman introduced H.R. 4462, a bill to radically overhaul the FAP process by, inter alia, extracting it from the BIA entirely. A similar bill exists in the Senate.[71] The Chairman has stated on several occasions that he intends to pass this bill out of the House this Session, Given that we are on the verge of reforming the process and addressing those same concerns which motivate some tribes to seek legislative recognition, we think it makes little logical sense to deracinate a tribe therefrom.

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[64] *Id.* at 5–6 (Shinnecock, Gun Lake, Little Shell of North Dakota, Mono Lake, Washoe-Paiute, Antelope Valley Paiute, Georgia Cherokee, Piscataway-Conoy, Florida Eastern Creek, Delaware-Muncie, Tsimshian, Choctaw-Apache, Coree, Nanticoke, Cane Break Cherokee, Tuscola Cherokee, Warroad Chippewa, Kern Valley, Shawnee, Hattadare, Northeastern Miami, White Oak Santee, Allegheny, Rappahannock, Mattaponi, Consolidated Bahwetig Ojibwa, Brotherton, Coharie, Jackson County Cherokee, Schagticoke, Coastal Chumash, Dunlap Mono, Christian Pembina Chippewa, Cherokee Powhattan, San Luis Rey, Wintu, Wintoon, Chukchansi Yokotch, Northern Cherokees (MO), Chikamauga Cherokee, Northern Cherokee of Old Louisianna Territory, Burt Lake Ottawa, Pahrump Paiutes, Wukchumni, Southeastern Alabama Cherokee, Choinumni, Carmel Mission Coastanoan, Ohlone Muwekma, Paucatuck Pequot, Canoncito, Little Traverse Ottawa, Salinan, Revived Ouachita, Meherrin, Amah Ohlone, Etowah Cherokee, Upper Kispoko, Piqua Phio Shawnee, Little River Ottawa, Lake Superior Chippewa, Nanticoke Lenni-Lenape, Tsnungwe, Mohegan Tribe and Nation, Waccamaw-Siouan, Esselen, Ohlone/Costanoan-Esselen, Colorado Winnebago, Chicora-Siouan, Swan Creek Black River Ojibwa, Chuckchansi Yokotch of Mariposa County, Caddo Adais, Salinan, Gabrieleno/Tongva, Langley Chickamogee Cherokee).

[65] BAR Status Report, supra note 49, at 2 (Snohomish (negative finding), Snoqualmie (proposed positive finding), and Ramapough (proposed negative finding)).

[66] See 25 C.F.R. § 83.9(g) to (h) (1991).

[67] BAR Status Report, supra note 49, at 2 (United Houma, Duwamish, Huron Potawatomi, Jena Choctaw, Pokagon Potawatomi). Of these, it is well known in government circles that both the Jena and Pokagon reviews will result in positive findings and subsequent recognition.

[68] BAR Status Report, supra note 49, at 2 (Mowa Choctaw, Yuchi, Juaneno, Cowlitz).

[69] See, e.g., H.R. 2549, 103d Cong, 1st Sess. (1993); H.R. 3430, 102d Cong., 2d Sess. (1992).

[70] See e.g., H.R. 2376, 103d Cong., 1st Sess. (1993)(Odawa.Ottawa); H.R. 2366, 103d Cong., 1st Sess. (1993)(Jena Choctaw); H.R. 923, 103d Cong., 1st Sess. (1993)(MOWA Choctaw); H.R. 878 103d Cong., 1st Sess. (1993(Pokagon Potawatomi); H.R. 334, 103d Cong., 1st Sess. (1993)(Lumbee). Two other bills dealing with the topic—H.R. 734 and H.R. 2399—are not really recognition legislation and so we do not include them here. *See* H.R. 2399, 103d Cong., 1st Sess. (1993)(Catawba land claim settlement)(restoration of previously recognized tribe); H.R. 734, 103d Cong., 1st Sess. (1993)(Pascua Yaqui)-(modifying previously extended federal recognition).

[71] S. 1644, 103d Cong., 2d Sess. (1994).

Bypassing the process not only ignores the problem, but is unfair to all of the recognized tribes. There exists a formal government-go-government relationship between recognized tribes and the United States. If Congress creates tribes at will, without meaningful uniform criteria or substantial corroborated evidence that the group is indeed a tribe, then we dilute and weaken that relationship. A sizable majority of tribes have objected to similar bills for just this reason. We have received resolutions that support the FAP process and a strict adherence to a systematic procedure from tribes in twelve states, from regional intertribal organizations representing all of the tribes of the Pacific Northwest, Montana and Wyoming, the United South and Eastern Tribes (representing all the tribes of Maine to Florida and west to Louisiana), all of the ten southwestern Pueblo tribes, and twenty-five of the twenty-six tribes of Arizona.[72]

Passage of S. 1066 is also patently unfair to all of the other petitioning groups. If the process is so ineffectual that the Pokagon should be excused from it, then what of the other 100 or so groups presently in the process? If the majority decides to recognize the Pokagon in whole or in part because they deem the FAP process to be necrotic, does not equity require that we immediately put before the House bills to provide for the recognition of all these other groups too? It is sadly ironic that the Pokagon would have us consider this cause unique. Finally, what about those groups that have been denied recognition under this "superfluous" FAP process; do we now open our doors to them and allow them another bite of the recognition apple? I would be patently unfair to require some groups to be judged under the administrative standards and allow other groups to be judged in Congress under no discernible standards simply because they are able to avail themselves of an influential congressional sponsor.

Aside from the obvious inequities to other native groups, we cannot help but consider the effects of a case in which we are wrong in our assessment of a group seeking legislative recognition? As we have repeatedly stressed, we are not equipped to make an informed decision in this area. It has been estimated by one authority that at least fifteen percent of groups currently seeking recognition are essentially bogus Indian groups, or Indian descendent recruitment organizations, composed of predominantly non-Indian persons.[73] If we make a mistake, and recognize a group that should not have been accorded that status, the we sully the relationship with the tribes even further.

Moreover, legislative acknowledgement of the Pokagon in the absence of any established recognition criteria raises serious constitutional questions. Despite our plenary power over Indians,[74] Congress may not arbitrarily confer federal recognition as an Indian tribe on any group claiming to be a tribe.[75] If we act to recognize the Pokagon, or any other group, in the absence of any set guide-

[72] See H.R. Rep. No. 101–57, supra, at 154–74 (reprinting tribal council resolutions opposing legislative recognition of Lumbee); H.R. Rep. No. 103–290, supra at 211–288.

[73] William W. Quinn, Federal Acknowledgement of American Indian Tribes: Authority Judicial Interposition, and 25 C.F.R. §83, 17 Am. Indian L. Rev. 37, 43 n.24 (1992).

[74] See Felix S. Cohen, Handbook of Federal Indian Law 89–98 (1942)(citing cases).

[75] See *United States* v. *Sandoval,* 231 U.S. 28, 46 (1913).

lines, that it seems to us that we act ultra vires—outside the bounds of what is constitutionally permissible.

In conclusion, while the recognition process is in need of repair, it is not as crippled as the majority would have us believe. There is only a backlog of at the most four petitions, not the 120 cases often cited. While we concede that the process is imperfect, the most rational solution is to fix it. Continually seeking to bypass it only ignores the problem and forces us to address it over and over again. In addition it undermines the role of the BIA, is unfair to both the recognized and unrecognized tribes, and raises constitutional concerns.

VI. CONCLUSION

The Committee must decide if it will continue to support the utilization of an equitable and standardized method of determining which Indian groups should be recognized by the federal government, or it will return us to the pre-1978 days of piecemeal and arbitrary recognition through individual bills such as S. 1066. While it is clearly within our power to recognize Indian tribes, we have tried our hand at it before. Because we did it so badly and so politically, however, leaders from both parties on this Committee and from throughout Indian country insisted on a better way—the administrative FAP process of the BIA. Passage of bills like S. 1066 is contrary to the recommendations of the American Indian Policy Review Commission, opposed by the overwhelming majority of tribes, and contrary to logic. We have seen that passage by the House of the Lumbee Recognition bill late last Session has opened the floodgates of recognition legislation. S. 1066 can only serve to undermine future an already beleaguered recognition process, to encourage other groups to circumvent that process, and to place recognition in an arena where emotional arguments, influential sponsors, and the partisan nature of Congress replace merit and fact. For these reasons, we strongly oppose passage of S. 1066.

SUMMARY STATUS OF ACKNOWLEDGMENT CASES

[As of May 16, 1994]

Petitions on Active Status (petitions on active). Total: 9.
  BAR's action items: 6
    Proposed findings in progress: 6
    Final determination pending: 0
  Petitioner's action items: 3
    Commenting on proposed finding: 3
Petitions Ready for Active (petitions ready). Total: 4.
Other Petitions (other petitions). Total: 100.
  Incomplete petitions (not ready). 26
  Letters of intent to petition: 74
In Litigation (cases being litigated). Total: 2.
Cases Resolved (cases resolved). Total: 30.
  By Department: 25
    Through Acknowledgment process: 22
      Acknowledged: 9
      Denied Acknowledgment: 13
    Status clarified by legislation at Department's request: 1

Status clarified by other means: 2
By Congress: 4
Legislative restoration: 1
Legislative recognition: 3
By other means: 1
Merged with another petitioner. 1
Legislative Action Required (cases requiring legislation). Total: 7. (to permit processing under 25 CFR 83)
Historical Note:
Petitions on hand when Acknowledgment staff organized Oct. 1978: 40
New petitioners since Oct. 1978: 110
Total petitions received to date includes 8 groups that initially petitioned as part of other groups but have since split off to petition separately): 150

PETITIONS ACTIVE, READY, OR IN LITIGATION

[As of May 16, 1994]

Active Status:
Proposed Finding in Progress: 6
Members:
17616: United Houma Nation, Inc., LA (#56) (Active 5/20/91; in draft)
356: Duwamish Indian Tribe, WA (#25) (Active 5/1/92; in draft)
c250: Huron Potawatomi Band, MI (#9) (Active 7/27/93)
313: Jena Band of Choctaws, LA (#45) (Active 7/27/93); Chinook Indian Tribe, Inc., WA (#57) (Active 1/28/94)
c2500: Pokagon Potawatomi Indians of Indiana & Michigan, IN (#75/78) (Active 1/28/94)
Petitioner Commenting on Proposed Finding: 3
836: Snohomish Tribe of Indians, WA (#12) (Active 1/7/81); proposed negative finding pub'd 4/11/83; edited staff notes provided 3/25/91; comment period reopened 12/1/91, extended indefinitely at petitioner's request pending resolution of Samish litigation)
313: Snoqualmie Indian Tribe, WA (#20) (Active 5/21/90; proposed positive finding pub'd 5/6/93; comment period extended to 9/30/94)
c2500: Ramapough Mountain Indians, Inc., NJ (#58) (Active 7/14/92; proposed negative finding pub'd 12/8/93, comment period extended to 10/7/94)
Final Determination Pending: 0
Ready Status:
Ready, Waiting for Active Consideration: 4

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

Ready date and Name of petitioner:
11/19/91: MOWA Band of Choctaw, AL (#86) (doc'n recv'd 4/28/88; OD ltr 2/15/90; rspns recv'd 11/8/91; complete 11/19/91)

4/23/93: Yuchi Tribal Organization, OK (#121) (doc'n recv'd 9/9/91; OD ltr 9/14/92; partial rspns 3/23/93; complete 4/23/93)
9/24/93: Juaneno Band of Mission Indians, CA (#84) (doc'n recv'd 2/24/88; OD ltr 1/25/90; rspn recv'd 9/24/93, complete)
4/04/94: Cowlitz Tribe of Indians, WA (#16) (doc'n recv'd 2/1/83; OD ltr 6/15/83; rspn recv'd 2/10/87; 2nd OD ltr 10/21/88; rspns recv'd 2/24/94, complete)
In Litigation:
Samish Indian Tribe, WA (#14) (Denied Acknowledgement eff. 5/6/87)
Miami Nation of Indians of IN (#66) (Denied Acknowledgment eff. 8/17/92)

PETITIONS RESOLVED

[As of May 16, 1994]

RESOLVED BY DEPARTMENT: 25

Acknowledged through 25 CFR 83: 9
Members:
297: Grand Traverse Band of Ottawa & Chippewa, MI (#3) (eff. 5/27/80)
175: Jamestown Clallam Tribe, WA (#19) (eff. 2/10/81)
200: Tunica-Biloxi Indian Tribe, LA (#1) (eff. 9/25/81)
199: Death Valley Timbi-Sha Shoshone Band, CA (#51) (eff. 1/3/83)
1170: Narragansett Indian Tribe, RI (#59) (eff. 4/11/83)
1470: Poarch Band of Creeks, AL (#13) (eff. 8/10/84)
521: Wampanoag Tribal Council of Gay Head, MA (#76) (eff. 4/11/87)
188: San Juan Southern Paiute Tribe, AZ (#71) (eff. 3/28/90)
972: Mohegan Indian Tribe, CT (#38) (eff. 5/14/94)
Denied acknowledgment through 25 CFR 83: 13
1041: Lower Muskogee Creek Tribe-East of the MS, GA (#8) (eff. 12/21/81)
2696: Creeks East of the Mississippi, FL (#10) (eff. 12/21/81)
34: Munsee-Thames River Delaware, CO (#26) (eff. 1/3/83)
324: Principal Creek Indian Nation, AL (#7) (eff. 6/10/85)
1530: Kaweah Indian Nation, CA (#70a) (eff. 6/10/85)
1321: United Lumbee Nation of NC and America, CA (#70) (eff. 7/2/85)
823: Southeastern Cherokee Confederacy (SECC), GA (#29) (eff. 11/25/85)
609: Northwest Cherokee Wolf Band, SECC, OR (#29a) (eff. 11/25/85)
87: Red Clay Inter-tribal Indian Band, SECC, TN (#29b) (eff. 11/25/85)
304: Tchinouk Indians, OR (#52) (eff. 3/17/86)
590: Samish Indian Tribe, Inc., WA (#14) (eff. 5/6/87)
275: MaChis Lower AL Creek Indian Tribe, AL (#87) (eff. 8/22/88)
4381: Miami Nation of Indians of IN, Inc., IN (#66) (eff. 8/17/92)
Status Clarified by Legislation at Department's Request: 1
c224: Lac Vieux Desert Band of Lake Superior Chippewa Indians, MI (#6) (legis clarification of recog'n status 9/8/88)

Status Clarified by Other Means: 2

650: Texas Band of Traditional Kickapoos, TX (#54) (Determined part of recognized tribe 9/14/81; petition withdrawn)

32: Ione Band of Miwok Indians, CA (#2) (Status confirmed by Assistant Secretary 3/22/94)

RESOLVED BY CONGRESS: 4

Legislative Restoration: 1

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

Legislative Recognition: 3

651: Cow Creek Band of Umpqua Indians, OR (#72) (legis recog'n 12/29/82)

55: Western (Mashantucket) Pequot Tribe, CT (#42) (legis recog'n 10/18/83 in association with eastern land claims suit)

611: Aroostook Band of Micmacs, ME (#103) (legis recog'n 11/26/91)

RESOLVED BY OTHER MEANS: 1

Petition withdrawn (merged with another petition): 1

Potawatomi Indians of IN & MI, Inc., MI (#75) and Potawatomi Indian Nation, Inc. (Pokagon), MI (#78) merged; now Pokagon, (#78)

LEGISLATIVE ACTION REQUIRED

Cases requiring legislation to permit processing under 25 CFR 83: 7

Lumbee Regional Development Association (LRDA/Lumbee) (#65)
Hatteras Tuscarora Indians, NC (#34)
Cherokee Indians of Robeson and Adjoining Counties, NC (#44)
Tuscarora Indian Tribe, Drowning Creek Res., NC (#73)
Waccamaw Siouan Development Association, Inc., NC (#88)
Cherokee Indians of Hoke County, Inc., NC (#91)
Tuscarora Nation of North Carolina, NC (#102)

Historical Note:

Petitions on hand when Acknowledgment staff organized Oct 1978: 40

New petitioners since Oct 1978: 110

Total Petitions received to date (as of 4/29/94) (includes 8 groups that initially petitioned as part of other groups but have since split off to petition independently): 150

REGISTER OF DOCUMENTED, READY PETITIONS

[As of May 16, 1994]

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

Date ready	Name of petitioner	Date active
11/19/1991	MOWA Band of Choctaw, AL (#86)	
4/23/1993	Yuchi Tribal Organization, OK (#121)	

Date ready	Name of petitioner	Date active
9/24/1993	Juaneno Band of Mission Indians, CA (#84)	
4/04/1994	Cowlitz Tribe of Indians, WA (#16)	

REGISTER OF INCOMPLETE PETITIONS AND LETTERS OF INTENT TO PETITION

[As of May 16, 1994]

Administrative Note:

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

Priority number and Name of petitioner:

4[1] Shinnecock Tribe, NY (2/8/78)
5 Piro/Manso/Tiwa Indian Tribe of the Pueblo of San Juan de Guadalupe (formerly Tiwa Indian Tribe), NM (doc'n recv'd 3/24/92; OD ltr 8/25/93)
9a[1] Gunlake Village Band & Ottawa Colony Band of Grand River Ottawa Indians, MI (6/24/92)
11 Steilacoom Tribe, WA (doc'n recv'd 10/27/84; OD ltr 11/30/87; response 3/25/94)
15 Mashpee Wampanoag, MA (doc'n recv'd 8/16/90; OD ltr 7/30/91)
18[1] Little Shell Band of North Dakota, ND (#18, 11/11/75)
21[1] Mono Lake Indian Community, CA (7/9/76)
22[1] Washo/Paiute of Antelope Valley, CA (7/9/76)
22a[1] Antelope Valley Paiute Tribe, CA (7/9/76)
23 Four Hole Indian Orgn/Edisto Tribe, SC (partial doc'n recv'd 1983) Maidu Nation, CA (partial doc'n recv'd 5/30/90)
24 Maidu Nation, CA (partial doc'n recv'd 5/30/90)
27[1] Cherokee Indians of Georgia, Inc., GA (8/8/77)
28[1] Piscataway-Conoy Confederacy & Sub-Tribes, Inc., MD (2/22/78)
30 Clifton Choctaw, LA (doc'n recv'd c.9/28/90; OD ltr 8/13/91)
31 Little Shell Tribe of Chippewa Indians of MT (OD ltr 4/18/85; partial response 11/2/87, 10/26/89; "not ready" 8/17/90)
32[1] Florida Tribe of Eastern Creek Indians, FL (6/2/78)
33[1] Delaware—Muncie, KS (#33, 6/19/78)
35 Eastern Pequot Indians of Connecticut, CT (doc'n recv'd 5/5/89; OD ltr 3/13/90)
36[1] Tsimshian Tribal Council, AK (7/2/78)
37[1] Choctaw-Apache Community of Ebarb, LA (7/2/78)
39[1] Coree [aka Faircloth] Indians, NC (8/5/78)
40[1] Nanticoke Indian Association, DE (8/8/78)
41 Georgia Tribe of Eastern Cherokees, Inc. (aka Dahlonega), GA (doc'n recv'd 2/5/80; OD ltr 8/22/80)

[1] Letter of Intent only.

41a[1] Cane Break Band of Eastern Cherokees, GA (1/9/79)
43 [1] Tuscola United Cherokee Tribe of FL & AL, Inc., FL (1/19/79)
46 [1] Kah-Bay-Kah-Nong (Warroad Chippewa), MN (2/12/79)
47 [1] Kern Valley Indian Community, CA (2/27/79)
48 [1] Shawnee Nation U.K.B., IN (formerly Shawnee Nation, United Remnant Band, OH] (3/13/79)
49 [1] Hattadare Indian Nation, NC (3/16/79)
50 [1] North Eastern U.S. Miami Inter-Tribal Council, OH (4/9/79)
53 [1] Santee Tribe, White Oak Indian Community, SC (6/4/79)
55 Delaware of Idaho (doc'n recv'd 6/14/79; OD ltr 9/24/79; partial response 12/10/79)
60 [1] Alleghenny Nation (Ohio Band), OH (11/3/79)
61 [1] United Rappahannock Tribe, Inc., VA (11/16/79)
62 [1] Upper Mattaponi Indian Tribal Association, Inc., VA (11/26/79)
63 Haliwa-Saponi, NC (doc'n recv'd 10/19/89; OD ltr 4/20/90)
64 [1] Consolidated Bahwetig Ojibwas and Mackinac Tribe, MI (12/4/79)
67 [1] Brotherton Indians of Wisconsin, WI (4/15/80)
68 St. Francis/Sokoki Band of Abenakis of VT (OD ltr 6/14/83; "ready" 8/1/86; petitioner says "not ready" 9/18/90)
69a Nipmuc Tribal Council of MA (Hassanamisco Band) (doc'n recv'd 7/20/84; OD ltr 3/1/85; response 6/12/87; 2nd OD ltr 2/5/88)
69b Nipmuc Tribal Council of MA (Chaubunagungamaug Band) (doc'n recv'd 7/20/84; OD ltr 3/1/85; response 6/12/87; 2nd OD ltr 2/5/88)
74 [1] Coharie Intra-Tribal Council, Inc., NC (3/13/81)
77 [1] Cherokees of Jackson County, Alabama, AL (9/23/81)
79 [1] Schaghticoke Indian Tribe, CT (12/14/81)
80 [1] Coastal Band of Chumash Indians, CA (3/25/82)
81 Golden Hill Paugussett Tribe, CT (doc'n recv'd 4/12/93; OD ltr 8/26/93; response 4/1/94)
82 American Indian Council of Mariposa County (aka Yosemite), CA (doc'n recv'd 4/19/84; OD ltr 5/1/85; rspn 12/12/86/ 2nd OD ltr 4/11/88)
83 Shasta Nation, CA (doc'n recv'd 7/24/84; OD ltr 5/30/85; response 6/8/86; 2nd OD ltr 10/22/87)
85 Tolowa Nation, CA (doc'n recv'd 5/12/86; OD ltr 4/6/88)
89 Seminole Nation of FL (aka Traditional Seminole) (doc'n recv'd 11/10/82; OD ltr 10/5/83, lacks genealogy; prtl rspn 12/7/83)
90 North Fork Band of Mono Indians, CA (doc'n recv'd 5/15/90; OD ltr 10/28/91)
92 [1] Dunlap Band of Mono Indians, CA (1/4/84)
93 Hayfork Band of Nor-El-Muk Wintu Indians, CA (doc'n recv'd 9/27/88; OD ltr 2/26/90)
94 [1] Christian Pembina Chippewa Indians, ND (6/26/84)
95 [1] Cherokee-Powhattan Indian Association, NC (9/7/84)
96 [1] San Luis Rey Band of Mission Indians, CA (10/18/94)
97 [1] Wintu Indians of Central Valley, California, CA (10/26/84)
98 [1] Wintoon Indians, CA (10/26/84)
99 [1] Chukchansi Yokotch Tribe of Coarsegold, CA (5/9/85
100 [1] Northern Cherokee Tribe of Indians, MO (7/26/85)

100a[1] Chickamauga Cherokee Indian Nation of AR & MO (9/5/91)
100b[1] Northern Cherokee Nation of old Louisiana Terr, MO (2/19/92)
101[1] Burt Lake Band of Ottawa & Chippewa Indians, Inc., MI (9/12/85)
104 Yokayo, CA (doc'n recv'd 3/9/87; OD ltr 4/25/88)
105[1] Pahrump Band of Paiutes, NV (11/9/87)
106[1] Wukchumni Council, CA (2/22/88)
107[1] Cherokees of SE Alabama, AL (5/17/88)
108 Snoqualmoo of Whidbey Island, WA (doc'n recv'd 4/16/91; OD ltr 8/13/92)
109[1] Choinumni Council, CA (7/14/88)
110[1] Coastanoan Band of Carmel Mission Indians, CA (9/16/88)
111[1] Ohlone/Coastanoan Muwekma Tribe, CA (5/9/89)
112 Indian Canyon Band of Coastanoan/Mutsun Indians of CA (doc'n recv'd 7/27/90; OD ltr 8/23/91)
113[1] Paucatuck Eastern Pequot Indians of CT (6/20/89)
114[1] Canoncito Band of Navajos, NM (7/31/89)
115[1] Little Traverse Bay Bands of Odawa Indians, MI (9/27/89)
116[1] Salinan Nation, CA (10/10/89)
117 Oklewaha Band of Seminole Indians, FL (doc'n recv'd 2/12/90; OD ltr 4/24/90)
118[1] Revived Ouachita Indians of AR & America (4/25/90)
119[1] Meherrin Indian Tribe, NC (8/2/90)
120[1] Amah Band of Ohlone/Coastanoan Indians, CA (9/18/90)
122[1] Etowah Cherokee Nation, TN (1/2/91)
123[1] Upper Kispoko Band of the Shawnee Nation, IN (4/10/91)
124[1] Piqua Sept of Phio Shawnee Indians, OH (4/16/91)
125[1] Little River Band of Ottawa Indians, MI (6/4/91)
126[1] Lake Superior Chippewa of Marquette, Inc., MI (12/31/91)
127[1] Nanticoke Lenni-Lenape Indians, NJ (1/3/92)
128[1] Tsnungwe Council, CA (9/22/92)
129[1] Mohegan Tribe and Nation, CT (10/6/92)
130[1] Waccamaw-Siouan Indian Association, SC (10/16/92)
131[1] Esselen Tribe of Monterey County, CA (11/16/92)
132[1] Ohlone/Costanoan-Esselen Nation, CA (12/3/92)
133[1] Council for the Benefit of Colorado Winnebagos, CO (1/26/93)
134[1] Chicora-Siouan-Indian-People, SC (2/10/93)
135[1] Swan Creek Black River Confederated Ojibwa Tribes, MI (5/4/93)
136[1] Chukchansi Yokotch Tribe of Mariposa, CA (5/25/93)
137 Wintu Tribe, CA (doc'n recv'd 8/25/93; OD ltr 12/8/93)
138[1] Caddo Adais Indians, Inc., LA (9/13/93)
139[1] Salinan Tribe of Monterey County, CA (11/15/93)
140[1] Gabrielino/Tongva Tribal Council, CA (3/21/94)
141[1] Langley Band of the Chickamogee Cherokee Indians of the Southeastern U.S., AL (4/15/94)

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