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REPORT
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LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS AND THE LITTLE RIVER BAND OF OTTAWA INDIANS ACT

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. 1357]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the Act (S. 1357) to reaffirm and clarify the Federal relationships of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the Act do pass.

PURPOSE

The purpose of S. 1357 is to reaffirm and clarify the Federal relationships of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes, and for other purposes.

BACKGROUND

1. The Three Fires

According to tradition, long before the Europeans came to North America, the Odawa (which was anglicized as Ottawa) and their kin the Ojibwa and Potawatomi migrated from the Northern Atlantic coast. The tribes formed an alliance known as the "Three Fires".

The Ottawa/Odawa settled on the eastern shore of Lake Huron at what are now called the Bruce Peninsula and Manitoulin Island. In 1615, the Ottawa/Odawa formed a fur trading alliance with the French. Because of this alliance, the Iroquois of New York, threatened to destroy the Ottawa/Odawa by war in 1650. To avoid war, the Ottawa/Odawa moved to the Straits of Mackinac in Michigan, then farther west to Wisconsin. Most Ottawa/Odawa ended up settling around the Straits of Mackinac around 1671 when the Iroquois power diminished. Between 1671 and 1812, proceeds from trade and successful wars made the Ottawa/Odawa affluent by Indian standards of the day.

During the war of 1812, Ottawa/Odawa warriors allied with the British and fought Americans along the Wabash River in Indiana and in skirmishes on the Niagara Peninsula in New York. The Ottawa/Odawa allied with Tecumseh at the Battle of Moraviantown, Ontario. The British surrendered all claims to what is now Michigan and other U.S. land in 1814.

The United States made a series of treaties with the tribes of the "Three Fires" between 1795 and 1864. The treaties provided that the tribes would relinquish rights to their lands in return for cash annuities, tools and instruction in American-style agriculture. The U.S. promised to send teachers to instruct Ottawa/Odawa children in arithmetic, and reading and writing English—skills needed to remain in Michigan under U.S. jurisdiction.

2. The treaties

By the treaties of 1795 and 1805, the Ottawa/Odawa relinquished any claims they had to southern territories outside the range of their hunting, fishing and gathering range. In 1820, the Ottawa/Odawa ceded some of their smaller islands to the United States. In 1821, Ottawa/Odawa hunting and trapping territories between Kalamazoo and Grand Rivers were ceded, the southernmost portion of their tribal estate.

At the negotiations of the 1836 Treaty of Washington, the Ottawa/Odawa made a treaty that allowed them to stay in Michigan. The document created reservations that preserved their towns and vital resources. The reservations were to be permanent and provide the Indians with sufficient natural resources to allow their entry into Michigan's economy. Government negotiators hoped the Ottawa/Odawa locations were far enough north to allow them to live without fear of dispossession by American squatters. However, there were changes before the Treaty of 1836 was ratified. Wrangling between President Andrew Jackson and the Congress lead to an amendment which provided that the Ottawa/Odawa tenure on their reservations was limited to five years, or so long as the President allowed them to remain in Michigan. At the end of that time, the Ottawa/Odawa could move west of the Mississippi River or could remain in Michigan under state laws. The Ottawa/Odawa ceded all of their land based on this insecure promise of land tenure and an uncertain political future. However, the 1830's were a time of Indian removal a policy which Ottawa/Odawa were undoubtedly aware of.

The Ottawa/Odawa leaders pressed the Federal government for a new treaty that ended the removal threat from 1837 until 1855.

The 1855 Treaty guaranteed that the United States would not force the Ottawa/Odawa to leave their Michigan homes. The document reconfirmed the boundaries of the 1836 reservations, or where the lands were taken, created new ones.

The 1855 Treaty of Detroit was among the earliest "allotment" treaties between an Indian tribe and the United States. The reservations established in the 1855 Treaty were to be held in common for five years. By the end of that time, the land was to be divided into individually owned parcels that would resemble American farms. The parcels were to be protected from alienation or sale for ten years or for so long as the President deemed necessary and proper. In spite of the good intentions, this allotment provision was used, through mismanagement and fraud, to take most Ottawa/Odawa land. By the end of the 1800's, all that remained of the reservations were the treaty boundaries and isolated Ottawa/Odawa homesteads.

Ambiguous language in the 1855 Treaty of Detroit caused the Ottawa/Odawa problems for generations. The 1836 Treaty had created a legal fiction creating the "Ottawa and Chippewa Tribe." In 1855, both tribes insisted that the fiction end. The ambiguous provision read:

> The tribal organization of said Ottawa and Chippewa Indians, except as so far as may be necessary for the purpose of carrying into effect the provisions of this agreement, is hereby dissolved. (Appendix A, Treaty 1855)

Generations of Bureau of Indian Affairs officials utilized this ambiguity to claim the Ottawa/Odawa tribe was "terminated." The Committee notes that historians have shown that the recorded minutes of the treaty negotiation clearly show the intention of the clause which was to correct the legal fiction created in 1836 and emphasize that there were two distinctly different tribal governments signing the 1855 Treaty. This interpretation was affirmed by the Federal District Court for the Western District of Michigan in *United States* v. *Michigan,* 471 F. Supp 192, 264–65 (1979), which held that the 1855 Treaty did not terminate the tribal status of the Ottawa/Odawa bands.

3. Assimilation and the 1905 lawsuit

The Dawes Act with its assimilationist intentions ended United States' attempts to protect the Ottawa/Odawa. In the 1890's, the Ottawa/Odawa who addressed their grievances to the United States received little help. They were informed that they were citizens and subject to Michigan laws. Federal and state officials alike espoused a theory that when title to reservation lands passed from Indian hands to those of American citizens, the Ottawa/Odawa somehow lost jurisdiction on their reservations and the United States in some mysterious way was released from the treaty-mandated trust relationship with the tribe. The all-pervasive land frauds that occurred in Michigan assured that the Ottawa/Odawa had little trust land. For most of the early twentieth century, Bureau of Indian Affairs officials told the Ottawa/Odawa time and again that no trust land remained on their reservations and that the United States was no longer liable for their welfare. Docu-

mentation in the United States National Archives, however, shows that while the Bureau made this pronouncement, they administered trust lands which were only sold in the 1950's. Indeed, the Bureau of Indian Affairs was still purchasing lands within boundary reservations for the Little River Ottawas in the 1930's. So total was the Bureau effort to sever their relationship and responsibility that even today, the Bureau is not aware of what lands it holds in trust for the Ottawa/Odawa.

The declared end of the federal trust relationship between the United States and the Ottawa/Odawa was arbitrary and unilateral. The Ottawa/Odawa found the pronouncements unacceptable and continued to press their interests in Washington. Although Bureau officials regularly declared that the federal government administered no Ottawa/Odawa property and proclaimed the end of their trust, Ottawa/Odawa leaders hired attorneys to examine their treaties and prepare suits on the behalf of their people. After ten years of work, the Ottawa/Odawa filed their first suit against the United States, not for land, but for cash due them under their treaty provisions. In 1905 they won their claim in *Petoskey, Abraham, Kewakendo, et al.,* v. *the United States.* They received a cash award of $131,000 to be divided among the members of their tribe. An agent was sent from Washington to Michigan to determine the people eligible for payment and to list their names. Federal officials believed that this job would require only a short time, since they believed that there were few Indians in Michigan and that there was no tribal organization. The federal agent who came to Michigan was overwhelmed to find not a few hundred Indians but thousands of them. Seventy-five percent of the people they found were full-blooded Indians. The Ottawa/Odawa continued to live in discrete settlements with headmen selected by band consent, the traditional form of Ottawa/Odawa political organization. The payroll preparation took two agents two years to prepare and was not completed until 1907. People living today received payment from the award of the lawsuit. The payroll document itself is recognized by the Bureau of Indian Affairs as the historical base for determining Ottawa/Odawa tribal membership and eligibility for federal, health and education services.

4. Wheeler-Howard: The Indian Reorganization Act

The Wheeler-Howard Act was subtitled "An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes." Although the Michigan Ottawa-Odawa did not have reservations currently administered by the Bureau of Indian Affairs, these people were clearly the descendants of treaty signatories, lived in the towns that their grandparents founded after the Americans came to their home territory, and indeed, in all instances these Indians lived within the external boundaries of the reservations established in the 1836 Treaty of Washington and 1855 Treaty of Detroit. They continued their own system of political representation that they had been confirmed by federal officials as recently as 1907 with the development of the Durant Roll and the

1910 payment of treaty claims due the tribe. They and many of the federal officials they worked with in the mid-1930's believed that the Wheeler-Howard Act aimed to extend its benefits to people such as the Ottawa/Odawa.

Federal correspondence between 1934 and 1935 show that Bureau of Indian Affairs officials intended to include the Little Traverse Odawa and the Little River Ottawa under the provisions of this bill. As early as December 1934, Bureau officials acknowledged the Ottawa/Odawa right to reorganize the bill's provisions. Frank Christy, Superintendent of Tomah Indian School was placed in charge of reorganization efforts in Michigan. On December 6, 1934, he reported to Dr. W. Carson Ryan that:

> If the Indian Re-Organization Act is to fulfill its primary purpose, the rehabilitation of the Indians in need of such rehabilitation, its provisions should be extended to Indians such as these Ottawas and Chippewas. Certainly there are none in more urgent need of economic rehabilitation. (McClurken Testimony, p. 9)

Christy was so certain that the Michigan tribes were eligible for reorganization that he secured options to purchase 7,000 acres of land in Emmet County to reestablish a land base to be held in trust by the Ottawa/Odawa. However, the decision on whether the Ottawa/Odawa could organize under the IRA was ultimately not based on the merits, their history or their need. It came down to a matter of funding. Commissioner of Indian Affairs John Collier personally responded to Senator Wheeler on the matter of acknowledging the Grand River Ottawa, including the Little River Ottawa Band. He said:

> This particular group presents an unusual problem. While they have rights under the Indian Reorganization Act when and if organized, they have for years been dealt with by the State authorities as have other citizens, receiving direct relief, employment relief health and educational facilities etc. For the Indian Service to go among these people with inadequate funds and to attempt to take over functions and services which they are now receiving from the State and thereby disturb a definite social order in the community presents a real problem. It is a situation which we hesitate to disturb.
>
> This letter does not mean that we have made a final decision but at the same time the funds available and the demands made upon them by the Indians whom we really consider our responsibility, we are not disposed to take any action at this time (McClurken Testimony, p. 12).

The recommended cooperation between the Bureau of Indian Affairs and the local, state, and federal agencies to find work and support services for Michigan Indians became policy. In 1939 the Bureau commissioned a study which aimed to justify the new policy. The recommendations met the Bureau's needs to jettison their obligations to the Ottawa/Odawa communities. They recommended:

> 1. That the present understanding and arrangements between the Federal Government and the State of Michigan, relating to the general welfare and education of Indian children

be continued, except that the sponsorship of the Federal Government may be diminished gradually as the State agencies extend their responsibilities of the common welfare of all citizens.

2. That the Indian Office shall not attempt to set up any additional or supplementary educational or welfare agencies for the Indians of lower Michigan that in any way tend to recognize Indians as a separate group of citizens.

3. That there be no further extension of organization under the Indian Reorganization Act in Michigan.

4. That steps be taken to abolish the prohibition on the sale of liquor to Indians of lower Michigan. (McClurken Testimony, p. 13)

When the Bureau of Indian Affairs made these recommendations their policy, officials there attempted to administratively sever the Ottawa/Odawa from their trust relationship with the United States. They ignored the treaty relationship between the Indians and the federal government in favor of a fast administrative remedy for difficult economic straits.

5. Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians

The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians are descendants of, and political successors to, the tribes who were the signatories to the 1836 Treaty of Washington and the 1855 Treaty of Detroit. Three other tribal governments who are the descendants of the same signatories have been recognized by the federal government as distinct Indian tribes.

The Odawa/Ottawa continued their work for reaffirmation of their treaty-based relationship with the United States even after their hopes of reorganization under the Indian Reorganization Act were dashed by another BIA administrative decision. Following World War II, the Odawa/Ottawa bands formed a new coalition and established a business committee called the Northern Michigan Ottawa Association (NMOA). From 1948 to roughly 1980, the NMOA served as a vehicle for pursuing claims in the Indian Claims Commission and acted as the tribal government for the Odawa/Ottawa and Chippewa in western Michigan. The business of the NMOA was carried out by the local representatives elected to the business committee by the individual Odawa/Ottawa Bands from various localities, including the Little Traverse Bay Bands and Little River Ottawa.

Although BIA Central Office personnel maintained that the Odawa/Ottawa tribal entities had been terminated in 1855, pursuant to the Treaty of Detroit, the Minneapolis Area Office and Great Lakes Agency continued to work with the NMOA leadership and provide services to members of the bands into the 1980s. This tacit recognition of both tribes was noted by Commissioner of Indian Affairs, Morris Thompson as recently as 1976. Commissioner Thompson acknowledged in a Memorandum to the Solicitor that the NMOA and Grand River Band Descendant's Committee, whose membership included the Grand River Bands comprising the Little River Band, were "functioning as or at least are accepted as tribal

political entities by the Minneapolis Area and Great Lakes Agency."

The Little Traverse Bay Bands and Little River Band has submitted extensive documentation to the Committee to demonstrate how inequitable historical treatment by the federal government and wide fluctuations in federal Indian policy account for their present day unacknowledged status. The Bureau of Indian Affairs and its predecessors have treated these tribes as if they had been legislatively terminated by the Congress through its ratification of Article 5 of the 1855 Treaty of Detroit.

The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians have continued to exist as distinct communities residing within their traditional homelands in Michigan's Lower Peninsula along the shore of Lake Michigan from treaty times to the present. The Little Traverse Bay Bands of Odawa are located near their traditional villages in Emmet, Delta and Charlevoix counties. These traditional sites were recognized and reserved in the 1836 Treaty of Washington and 1855 Treaty of Detroit. The Little River Band of Ottawa is located within their traditional territories, which are now known as Manistee and Mason counties, Michigan, as recognized in the Manistee Reservation in the 1836 Treaty of Washington and Mason County portion of the Grand River Bands' Reservation in the 1855 Treaty of Detroit.

The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians are members of the Confederated Historic Tribes of Michigan, Inc. and acknowledged as distinct Indian tribal governments by the State of Michigan Commission on Indian Affairs as well as the seven federally recognized tribes in Michigan through the Michigan Intertribal Council. Both tribes participate in programs sponsored by the Michigan State Commission on Indian Affairs. The leadership and membership of both tribes have actively worked with and received support from the State, local and tribal governments. The Bands have received resolutions of support from the Michigan State Senate and House of Representatives, the Michigan Commission on Indian Affairs, members of the Michigan Intertribal Council and numerous county, municipal, and township governments.

In oral and written testimony before the Committee, the Little Traverse Bay Bands and Little River Ottawa confirmed their distinct social and cultural tribal communities. The Little Traverse Bay Bands and the Little River Ottawa remain culturally distinct communities, acknowledged as such by other Indians and non-Indians alike. They have a high blood quantum, which physically distinguishes them from their neighbors. The majority of the members of both tribes possess one half or higher degree of Indian blood.

There are at least 1,000 members of the Little Traverse Bay Bands of Odawa Indians, and there are at least 500 members of the Little River Band of Ottawa Indians.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 cites the short title as the "Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act."

Section 2. Findings

Section 2 sets forth the findings of the Congress including: the two Bands are the political successors of treaty tribes; in 1935 the Bands filed for reorganization under the Indian Reorganization Act and were deemed eligible by federal officials; and the Bands have maintained governmental functions.

Section 3. Definitions

Section 3 provides definitions for terms in the Act.

Section 4. Federal recognition

Subsection (a) provides for the federal recognition of the two Bands and provides that laws applicable to Indian tribes generally shall apply to the Bands.

Subsection (b) provides that the Bands will be eligible for Federal Indian benefits and services.

Section 5. Reaffirmation of rights

Subsection (a) provides that all rights and privileges of the Bands are reaffirmed.

Subsection (b) provides that nothing in the Act is to be construed as diminishing any right or privilege of the Bands, or of their members, that existed prior to the date of enactment of the Act.

Section 6. Transfer of land for the benefit of the bands

Subsection (a) provides that the Secretary is to acquire property in two counties for the benefit of the Little Traverse Bay Bands provided there are no adverse legal claims to the property.

Subsection (b) provides that the Secretary may acquire land in two counties for the benefit of the Little River Band provided there are no adverse legal claims to the property.

Subsection (c) provides that the Secretary may accept additional land in the Band's service area.

Subsection (d) provides that lands transferred to the Bands shall be part of their reservation.

Section 7. Membership

Section 7 provides that within 18 months of enactment, the Bands shall submit to the Secretary membership rolls which the Secretary is to publish in the Federal Register.

Section 8. Constitution and governing body

Subsection (a) provides for (1) the adoption of a constitution within 24 months of enactment pursuant to the Indian Reorganization Act and (2) until adoption of the constitution, the interim governing documents of the Bands shall govern.

Subsection (b) provides for (1) the election of Band officials within 6 months of adopting the constitution and (2) until the election, the interim governmental officials at the time of enactment shall govern.

LEGISLATIVE HISTORY

H.R. 2376 was introduced by Representatives Kildee, Camp and Hoeksta on June 10, 1993. The Subcommittee held a hearing on H.R. 2376 on September 17, 1993. H.R. 2376 was reported without amendment out of the Subcommittee on November 8, 1993 by voice vote.

The companion bill, S. 1357, was introduced by Senators Levin and Riegle on August 4, 1993. The Senate Committee on Indian Affairs held a hearing on February 10, 1994. S. 1357 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 May 25, 1994, as amended on the Senate floor.

S. 1357 was referred to the Committee on Natural Resources on June 23, 1994. S. 1357 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. 1357 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. 1357 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. 1357 will have no inflationary impact on the national economy and will not result in significant costs. The estimate 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. 1357, the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act, as ordered reported by the House Committee on Natural Resources on May 25, 1994. CBO estimates that S. 1357 could result in additional costs to the federal government of $35 million to $40 million over the next five years, assuming appropriation of the necessary funds. En-

actment of S. 1357 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply. Also, enactment of S. 1357 would result in no significant cost to state or local governments.

S. 1357 would grant federal recognition to the Little Traverse Bay Bands of Odawa Indians as well as to the Little River Band of Ottawa Indians, both of which reside in the state of Michigan. The act would make each tribe and its 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 2,400, we estimate that S. 1357 could result in costs to the federal government of about $8 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 each band to document and maintain lists of members and to adopt a constitution and by-laws. The Bureau of Indian Affairs (BIA) would assist the bands in this effort. Based on information from the BIA, we expect that the cost of providing such services to the two newly recognized tribes, which would include assisting in the development of the membership rolls and conducting elections, would total about $2.5 million over the 1995–1997 period.

Finally, the act would require the Secretary to acquire real property for the benefit of the Little Traverse Bay Bands in Emmet and Charlevoix Counties and for the Little River Band in Manistee and Mason Counties. The Secretary also may accept certain real property in each of the band's service areas. These properties would be held in trust for the bands and become a part of each band's reservation. The provision would allow the Secretary to purchase property over an indefinite period of time on behalf of the two bands. Average annual appropriations to purchase land over the 1992–1994 period were about $1.1 million. CBO has no basis for estimating the value of the land that the bands would request the Secretary to purchase in the future. Nonetheless, we expect 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.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

DISSENTING VIEWS

S. 1357 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 Little Traverse Bay Band and Little River of Odawa[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. 1357, 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 to Indian tribes,[4] for most federal purposes it is not enough that an individual simply be an Indian to receive the protections, 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] The spelling "Ottawa" is usual in the United States and in Canadian government usage, while "Odawa" is preferred by Canadian Indians and some United States Bands. See Smithsonian Inst., 15 "Handbook of North American Indians" 785 (1978). Since the spelling "Odawa" more closely approximates the actual pronunciation of the term, we have chosen to use it. See James M. McClurken, "Gah-Baeh-Jhagwah-Buk: The Way it Happened" 3 n.1 (1991).

[3] See, e.g., H.R. 2958, 103d Cong., 1st Sess. (1991).

[4] U.S. Const., art. 1, § 8, cl. 3; cf. U.S. Const., art. II, § 2, cl. 2.

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

[6] Nonrecognized Native American groups of 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. 1 (1968). 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.

Continued

"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]

See, e.g., 50 Fed. 38047 (1985) (Northwest Cherokee Wolf Band; Red Clay Intertribal Indian Band); 50 Fed. Reg. 18746 (1985) (Tchinouk Indians of Oregon).

[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., 25 CFR § 20(1990) (Financial Assistance and Social Services Program); 25 C.F.R. § 101 (1990) (Loans to Indians Program); 25 C.F.R. § 256 (1990) (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 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.

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

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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 to 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 one 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).

the issue to the floor of the Senate, and introduced legislation 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 historically inhabited a specific area; (c) furnish a statement of facts 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 existed 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; (a) 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 teams 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 petitions are then placed on active consideration in the order received.

III. THE ODAWA BANDS

S. 1357 seeks to legislatively extend federal recognition to two groups of Indians in the State Michigan, completely bypassing the established BIA FAP process. The bill's proponents posit two principal arguments for recognition: first, that the groups were 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

[25] See 123 Cong. Rec. 39277 (Dec. 15, 1977).
[26] See 25 C.F.R. § 83 (1990) (originally promulgated as 25 C.F.R. § 54 (1978)).

and unworkable" and therefore they are justified in bypassing it. We examine and dispose of their claims in seriatim.

A. THE "PREVIOUS RECOGNITION" ISSUE

The proponents of S. 1537 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 these two bands of Odawa 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] Both Odawa groups claim descent from signatories to a series of treaties between the United States and several Odawa and Chippewa bands during the early 1800's.[29] Specifically, the bands claim that they are the descendants of, and political successors to, signatories of the 1836 Treaty of Washington[30] and the 1855 Treaty of Detroit.[31] Therefore, they conclude, they are automatically entitled to have their status as "recognized" groups reaffirmed by the federal government.

The Odawa 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 Odawa have never been the subject of congressional termination legislation, the logical prerequisite to both termination and restoration.[32] Just as clearly, the Odawa bands are 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 bands only one possible status: unrecognized.

The bands, 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.

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[27] See "Testimony of Congressman Dale Kildee Before the Committee on Natural Resources" 1 (September 17, 1993); H.R. 2376, title, 103 Cong., 1st Sess. (1993).

[28] See, e.g., "Federal Acknowledgment of Various Indian Groups: Hearing Before the Committee on Interior and Insular Affairs," 102d Cong., 2d Sess 61–67, 70–74, 79–90 (1992) (Serial No. 102–78).

[29] Treaty of Greenville, Aug. 3, 1795, United States—Wyandots, et al., 7 Stat. 49; Treaty of Ft. Industry, Jul. 4, 1805, United States—Wyandot et al., 7 Stat. 87; Treaty of Chicago, Aug. 29, 1821, united States—Ottawa *et. al.*, 7 Stat. 218 Treaty of Washington, Mar. 28, 1836, United States—Ottawa & Chippewa Nations, 7 Stat. 491; Treaty of Detroit, Jul. 31, 1855, United States—Ottawa & Chippewa Nations, 11 Stat. 621. For a full recitation of these agreements, see Senate Comm. on Indian Affairs, 2 "Indian Laws & Treaties" 1088 (Charles J. Kappler, ed. 1904).

[30] Treaty of Washington, Mar. 28, 1836, United states—Ottawa & Chippewa Nations, 7 Stat. 491.

[31] Treaty of Detroit, Jul. 31, 1855, United States—Ottawa & Chippewa Nations, 11 Stat. 621.

[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, 103 Cong., 1st Sess. (1993) (Pub. L. No. 103–116) (not yet codified).

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

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 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 the 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 Odawa 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 Odawa 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 Odawa 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

[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).

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 fully. Needless to say, if those of us charged with the day-to-day oversight of Indian affairs do not have the necessary expertise—or 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 selfpolicing 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. 1357. 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. 1357. 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 Odawa cannot lay claim. The rest involved unique circumstances not applicable here.

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[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).

More than half the bills cited as legislative "recognition" legislation are actually restoration bills—the word "restoration" appears 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 possible serve as precedent for the Odawa 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 stat-

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[39] *See* Pub. L. 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) (Paiute 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 Sup.)) (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).

> utes of the United States which affect Indians because of their status as Indians shall be applicable to [them].[45]

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 Odawa case (recognition). Furthermore, no similar transfer of responsibility has ever taken place between the United States and Michigan with regard to the Odawa, nor has the United States ever held land in trust for this group.

In sum, the Odawa 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 Odawa 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 Odawa 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 Odawa are hardly in a position to complain about the process. The Little Traverse Bay Band has only submitted a letter of intent to petition, and that in 1989.[49] Likewise, the Little River Band has done no more than submit a similar letter of intent

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[45] Id., § 2.

[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" 7 (May 16, 1994) [hereinafter "BAR Status Report"]. A copy of this document appears as an attachment to this Report.

in 1991. We cannot comprehend the Odawa criticizing a process in which they have taken no more than a minimal part.

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.[50] However, those numbers—oft-parroted as the premier example of why the FAP should be bypassed—are patently spurious and unsupported by the record.[51]

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.[52] Of these, nine (9) groups have been recognized;[53] thirteen (13) have been denied recognition;[54] one (1) was determined to be part of a recognized tribe;[55] one (1) had its status confirmed by the Assistant Secretary for Indian Affairs;[56] one (1) had its status clarified by legislation at the BIA's request;[57] one (1) had its previously-terminated recognition restored;[58] three (3) were legislatively acknowledged;[59] one (1) withdrew its petition and merged with another petitioner;[60] and seven (7) require legislative action to permit processing.[61] 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.[62] 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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[50] 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).

[51] 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).

[52] "BAR Status Report," supra note, at 1.

[53] "BAR Status Report," supra note 49, at 1, 3 (Grand Traverse Ottawa, Jamestown S'Klallam, Tunica-Biloxi, Death Valley Timba-Sha, Narragansett, Poarch Creek, Wampanoag, Sa 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).

[54] 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.

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

[56] "BAR Status Report," supra not 49, at 3 (Ione Band of Miwok).

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

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

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

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

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

[62] "BAR Status Report," supra not 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.[63]

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;[64] those findings do not become final for regulatory purposes, however, until the close of a prescribed comment period.[65] Of the remaining ten (10) cases, six are presently under active consideration.[66] That leave four cases—not 120, but four—that are currently "backed-up" and awaiting review.[67] 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 steamline the process.[68] 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.[69]

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.[70] 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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[63] 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, Alleghenny, 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, Southeasterh 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 Shanee, 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).

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

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

[66] "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.

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

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

[69] 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).

[70] 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-to-government relationship between the 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, them 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 the tribes of the Pacific Northwest, Montana and Wyoming, the United South and Eastern Tribes (representing all the tribes from Maine to Florida and west to Louisiana), all of the ten southwestern Pueblo tribes, and twenty-five of the twenty-six tribes of Arizona.[71]

Passage of S. 1357 is also patently unfair to all of the other petitioning groups. If the process is so ineffectual that the Odawa 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 Odawa 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 Odawa would have us consider their 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? It 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.[72] If we make a mistake, and recognize a group that should not have been accorded that status, then we sully the relationship with the tribes even further.

Moreover, legislative acknowledgement of the Odawa in the absence of any established recognition criteria raises serious constitutional questions. Despite our plenary power over Indians,[73] Congress may not arbitrarily confer federal recognition as an Indian tribe on any group claiming to be a tribe.[74] If we act to recognize the Odawa, or any other group, in the absence of any set guide-

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[71] 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 211–228.

[72] 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).

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

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

lines, then 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

This 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, of if it will return us to the pre-1978 days of piecemeal and arbitrary recognition through individual bills such as S. 1357. 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. 1357 in its present form 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 last Session has opened the floodgates of recognition legislation. S. 1357 can only serve to undermine further 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. 1357.

SUMMARY STATUS OF ACKNOWLEDGEMENT 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 Determinations 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 recogition: 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 Acknowledgement 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 Acknowledgment eff. 5/6/87)
Miami Nation of Indians of IN (#66) (Denied Acknowledgment eff. 8/17/92)

PETITIONS RESOLVED

[As of May 16, 1994]

RESOLVED BY DEPARTMENT: 25

Acknowledged through 25 CFR 83: 9
Members:
297: Grand Traverse Band of Ottawa & Chippewa, MI (#3) (eff. 5/27/80)
175: Jamestown Clallam Tribe, WA (#19) (eff. 2/10/81)
200: Tunica-Biloxi Indian Tribe, LA (#1) (eff. 9/25/81)
199: Death Valley Timbi-Sha Shoshone Band, (#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, OR72 (#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 11/26/82)

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)
Indians Hatteras Tuscarora, 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)	.....

Date ready	Name of petitioner	Date active
4/23/1993	Yuchi Tribal Organization, OK (#121)	
9/24/1993	Juaneno Band of Mission Indians, CA (#84)	
4/04/1994	Cowlitz Tribe of Indians, WA (#16)	

REGISTER OF INCOMPLETE PETITIONS 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 numberical 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] Washoe/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)
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)

[1] Letter of Intent only.

41 Georgia Tribe of Eastern Cherokees, Inc. (aka Dahlonega), GA (doc'n recv'd 2/5/80; OD ltr 8/22/80)
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 Remnat 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 Delawares 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 recvd 4/12/93; OD ltr 8/26/93; response 4/1/94)
82 American Indian Council of Mariposa County (aka Yosemite), CA (doc'n recv'd 4/19/84; OD ltr 5/1/85; rspn 12/12/86; 2nd OD ltr 4/11/88)
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 (10/18/84)
97[1] Wintu Indians of Central Valley, California, CA (10/26/84)

[1]Letter of Intent only.

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)
110b[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 (5/27/88)
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)

[1] Letter of Intent only

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)

DON YOUNG.
JAY DICKEY.
WAYNE ALLARD.
BOB SMITH (OR).
RICHARD POMBO.
CRAIG THOMAS.
JAMES V. HANSEN.
KEN CALVERT.
JOHN T. DOLITTLE.
JOHN J. DUNCAN, Jr.

[1]Letter of Intent only.

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