

**TESTIMONY
OF
KEVIN K. WASHBURN
ASSISTANT SECRETARY - INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR**

**BEFORE THE
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
HOUSE NATURAL RESOURCES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES**

**ON
H.R. 286, “LITTLE SHELL TRIBE OF CHIPPEWA INDIANS RESTORATION ACT OF 2015”**

SEPTEMBER 29, 2015

Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee, my name is Kevin K. Washburn and I am the Assistant Secretary of Indian Affairs at the Department of the Interior. Thank you for the opportunity to present the Department of the Interior’s (Department) views on H.R. 286, a bill to extend Federal recognition to the Little Shell Tribe of Chippewa Indians of Montana (“Little Shell”), and for other purposes.

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities of the United States. Under the United States Constitution, Congress has the authority to recognize a “distinctly Indian community” as an Indian tribe. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and recognizes certain legal rights under federal law. The executive branch also has the authority to acknowledge an Indian tribe and this power has been delegated to the Secretary of the Interior to act in appropriate cases.

The Department established a formal process for acknowledgement in 25 CFR Part 83 in 1978, including a comprehensive set of regulations, with rigorous criteria, administered through an office staffed by professional historians, anthropologists and genealogists. Since 1978, the Department has utilized these regulations to grant formal acknowledgment to 18 tribes and denied acknowledgment to 34 petitioners.

In recent years, the rigorous process established in 1978, has been criticized, in part, because of the time required to process petitions for acknowledgment. As this Committee is well aware, the Department undertook a reform effort to address those concerns. On July 1, 2015, the Department of the Interior issued a final rule amending 25 CFR Part 83 (2015 regulations). The 2015 regulations became effective on July 31, 2015. The new regulations endeavor to make the acknowledgement process more fair, transparent, flexible and efficient, while preserving the high standards set forth in the longstanding criteria. The Department of the Interior has also published policy guidance which concluded that any group within the contiguous 48 states seeking Federal acknowledgment by the Department must petition exclusively under 25 CFR Part 83.

Despite these recent reform efforts, the Department's acknowledgment process is necessarily lengthy and time-consuming. When complete, each petition is reviewed by a team of individuals consisting of a professional genealogist, a historian and an anthropologist. This work is painstaking and involves individual genealogical research on each member of the petitioning group, usually consisting of hundreds of members. When the first team's research is complete, a second team of similar composition conducts peer review of the first team's work. Such rigor is justified by the need to earn the public's trust in the outcomes of acknowledgement decisions.

H.R. 286, the Little Shell Tribe of Chippewa Indians Restoration Act of 2015 would acknowledge the Little Shell Tribe of Chippewa Indians of Montana. This group, Petitioner #31 in the Department's Federal acknowledgment process, submitted its letter of intent to the Department in 1978, and completed documenting its petition in 1995. Although the Department issued a Proposed Finding for Little Shell that was positive, the Department ultimately issued a Final Determination against Acknowledgment of Little Shell. This decision was issued on October 27, 2009, and published in the Federal Register on November 3, 2009, 74 Fed Reg. 56861. The negative decision is not yet final and effective because the Little Shell sought reconsideration of this decision before the Interior Board of Indian Appeals (IBIA) on February 1, 2010. On June 12, 2013, the IBIA affirmed the Determination against acknowledgment and referred several issues outside of its jurisdiction to the Secretary. On September 16, 2013, the Secretary referred those issues to the Assistant Secretary as possible grounds for reconsideration of the determination. Because the Department was engaged in reform at that time, Little Shell was allowed to suspend the reconsideration process pending resolution of the reforms. Now that the 2015 regulations are final and effective, Little Shell has been asked how it wishes to proceed in the reconsideration process in light of the implementation of these new regulations. At this point, it is unclear if the new regulations will produce any different outcome for Little Shell.

However, Little Shell's experience informed the reform effort. During the public comment period, advocates for Little Shell complained that it was unfair that Little Shell had received a positive proposed finding and, despite the Department receiving no substantive evidence after that time, the final determination issued by the Department was negative. To address this issue, the Department provided in the 2015 regulation that a proposed positive finding that draws no negative evidence during the public comment period will automatically become a final positive determination. On the other hand, a proposed negative finding will entitle the petitioner to a hearing before an administrative law judge to challenge the veracity of the finding in a neutral and objective forum. These new provisions are designed to insure due process to petitioners.

As we noted above, under the United States Constitution, Congress has the authority to recognize American Indian groups as Indian tribes with a government-to-government relationship with the United States. For this reason, we do not oppose enactment of H.R. 286. Thank you for the opportunity to present the Department's views on this legislation. I will be happy to answer any questions the Subcommittee may have.

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SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
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ON
H.R. 872, “THOMASINA E. JORDAN INDIAN TRIBES OF VIRGINIA FEDERAL RECOGNITION ACT
OF 2015.”

SEPTEMBER 29, 2015

Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee, my name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior. Thank you for the opportunity to present the Department of the Interior’s (Department) views on H.R. 872, a bill to extend Federal recognition to the Chickahominy Indian Tribe, the Chickahominy Indian Tribe - Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe.

The acknowledgment of the continued existence of another sovereign is one of the most solemn and important responsibilities of the United States. Under the United States Constitution, Congress has the authority to recognize a “distinctly Indian community” as an Indian tribe. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and recognizes certain legal rights under federal law. The executive branch also has the authority to acknowledge an Indian tribe and this power has been delegated to the Secretary of the Interior to act in appropriate cases.

H.R. 872 would provide Federal recognition as Indian tribes to six Virginia groups: the Chickahominy Indian Tribe, the Chickahominy Indian Tribe – Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, Inc., the Monacan Indian Nation, and the Nansemond Indian Tribe, all of which have been petitioners in the Department’s Federal acknowledgment process under the 1994 regulations of 25 CFR Part 83. Under those regulations, each of these six groups has submitted a letter of intent and partial documentation to petition for Federal acknowledgment as an Indian tribe. To date, however, none of these petitioning groups has submitted completed documented petitions to demonstrate their ability to meet all seven mandatory criteria.

On July 1, 2015, the Department of the Interior issued a final rule amending 25 CFR Part 83 (2015 regulations). The 2015 regulations became effective on July 31, 2015. The new regulations endeavor to make the acknowledgement process more fair, transparent, flexible and efficient, while preserving the high standards set forth in the longstanding criteria. Despite the reform effort, the Department’s acknowledgment process is a lengthy and time-consuming, primarily because of the desire to have a rigorous process that earns the public trust. Also, on July 1, 2015,

the Department of the Interior published policy guidance which concluded that any group within the contiguous 48 states seeking Federal acknowledgment by the Department must petition under 25 CFR Part 83.

The Department stands ready to review petitions by any of the Virginia petitioners. Given that we are awaiting additional evidence and documented petitions under the 2015 regulations and, therefore, have not concluded our own review as to the merits of acknowledgment for these six groups, we decline to take a position as to the merits of the petitioner's recognition efforts. We have no objection to action by the Congress in using its own authority to acknowledge a group or groups as an Indian tribe.

We note that, on July 8, 2015, the Department of the Interior issued a final determination to acknowledge a Virginia group, the Pamunkey Indian Tribe, as an Indian tribe within the meaning of Federal law. The Pamunkey petitioner submitted more than sufficient evidence to satisfy each of the seven mandatory criteria for acknowledgment set forth in 25 CFR Part 83, and therefore meets the requirements for a government-to-government relationship with the United States. The Pamunkey determination is final and will become effective on October 6, 2015, unless the petitioner or interested party files a request for reconsideration under the 1994 regulations. The Pamunkey Tribe now constitutes the first and only federally-recognized tribe in the Commonwealth of Virginia.

Thank you for the opportunity to present the Department's views on this legislation. I will be happy to answer any questions the Subcommittee may have.