House Committee on Natural Resource

Sub-Committee on Indian and Alaska Native Affairs Oversight Hearing on *"Authorization, Standards and Procedures for Whether, How and When Tribes Should Be Newly Recognized by the Federal Government."*

June 27, 2012
Testimony of Chief Framon Weaver
MOWA Band of Choctaw Indians

It is clear that our tribe the MOWA Band of Choctaw Indians are the literal poster child for the structural failures evident in the federal recognition process. As the only tribe in the nation to have exhausted all three remedies made available for the granting of federal status (OFA, federal lawsuit, Congressional Bills), we are well aware of the inherent bias, political corruption, and highly financed campaigns waged against legitimate, historic "non-federal" tribes. We are the second longest petitioning tribe in the nation. Only the Lumbee in North Carolina have petitioned longer. Our initial attempts at federal recognition began in the early 1900's with our mass community attempt to be admitted to the Miller Roll. With numerous appeals through BAR/OFA, twelve Congressional bills, and a federal lawsuit thrown out on a statute of limitations argument, we clearly understand that the current process is only open to those who ally themselves with gaming backers who can invest tens of millions of dollars in their petitions. We have chosen throughout our long, arduous journey in the process not to ally ourselves with numerous gaming suitors. Some may call this ignorant to the realities of the process. We choose to call it what it is; integrity. The need to align with gaming backers compromises every aspect of the process and makes it completely illegitimate.

The only avenue for defining the federal to federal relationship is via the United States Congress. OFA has no place in this process and the integrity of the leadership in this organization is not something that can be fixed. Lawsuits have no place in this process. Like the OFA process, they are economically prohibitive for most petitioning tribes. Congress must make determinations based on facts and facts only. No political influence. No backdoor letters from federal tribes attempting to defend gaming zones from perceived competition. Congress must act.

There exist numerous keys that define legitimate tribal communities, but due to extreme time constraints for presenters, we will discuss only a small number here.

1. Tribes who have attended Indian boarding schools and can clearly document this attendance should be placed on the federal register in immediacy. Attendance at Indian boarding schools is a clear indicator of continuous acknowledgement from governmental, political, and social sources. Boarding schools such as Haskell, Bacone, Carlisle, Hampton, Cherokee, Choctaw Central, Chilocco, and others, educated members of historic, "non-federal" tribes for many generations. These schools were exclusive to

Indians and there exists historic "non-federal" tribes who have had numerous members of their tribes attending such institutions at times when most required blood quantum of ¼ or more Indian ancestry for attendance as a basic requirement. For copies of yearbook photos, campus newspaper articles, grade reports, contemporary interviews, etc. of these attendees and their tribes, please go to www.helphaskell.com

2. Tribes who live on long standing, historic colonial and/or state recognized Indian reservations should be placed on the federal register in immediacy. As Ojibwa academic and scholar David Treuer remarks in his book *Rez Life*, published in 2012 by Atlantic Monthly Press, "Some Indians don't have reservations, but all reservations have Indians…" The idea that Indians who have lived on their Indian reservations for generations, are suddenly to be considered as "non-Indians" is fundamentally absurd. The maintenance of tribal lands from the historic period to contemporary times is a simple, clear, and irrefutable identifier of Indian existence. The majority of the oldest Indian reservations in the United States are inhabited by historic "non-federal" tribes.

3. Language is irrefutable proof of tribal existence. If a tribal community has maintained their tribal language into the contemporary period and can document such, there is simply no need to go through any other form of recognition criteria. There does not exist a singular community of "non-Indians" in this country who speak an Indian language. This is a social impossibility. This requires no further explanation.

4. Unique regional history is highly important in determinations. There is no way to objectively determine the granting of federal recognition via one set of proposed regulations. The current seven criteria being used by OFA have never been used in any consistent form to this stage anyway, and so they are simply proof positive of the disaster of complete inconsistency and attempting to fit circular objects into square pegs.

5. Racial bias towards tribal communities in the East and South in particular must be abolished completely. Two examples are cited here:

In 1978 Terry Anderson and Kirke Kickingbird were hired by NCAI to research this issue of federal recognition and present a paper on their findings to the National Conference on Federal Recognition which was being held in Nashville, Tennessee. Their paper, *"An Historical Perspective on the Issue of Federal Recognition and Non-recognition"* closed with the following statement,

"The reasons that are usually presented to withhold recognition from tribes are 1) that they are racially tainted with the blood of African tribes-men or 2) greed, for newly recognized tribes will share in the appropriations for services given to the Bureau of Indian Affairs. The names of justice, mercy, sanity, common sense, fiscal responsibility, and rationality can be presented just as easily on the side of those advocating recognition."

Thirty-four years later there has been no change in these two factors being used as reasons to deny/work against federal recognition of petitioning tribes.

Professor Don Rankin from Samford University in Birmingham, Alabama has recounted by letter a disturbing incident occurring during a June 1995 Genealogy Seminar conducted by Sharon Scholars Brown at Samford University. His letter states,

"Someone brought up the MOWA Choctaw and their attempt at federal recognition. At this stage, several people had gathered around as we were talking. Ms. Brown responded in an even professional tone of voice that she felt that they would not be successful. When asked why, she responded that they had black ancestors and in her opinion were not Indian. Mr. Lee Flemming, who was at the time the Tribal Registrar for the Western Band of Cherokees and one of the lecturers, agreed with her. I was shocked at their statements."

6. Genealogical "evidence" being used as the *primary* factor for recognition process review is absolute nonsense and must be dismissed as a primary factor in federal recognition decisions. Tribal communities are based on social realities including generational intermarriage, land tenure or relationships to land, identification as unique functioning communities, cultural communality, separate schooling, and other related factors. Census records, especially in Eastern and Southern states, are consistently inefficient as determiners of racial identity due to inherent bias from registrars in the past who viewed identity in a black and white racial binary. Indian identification on governmental records was expressly prohibited in many states.

7. Tribes who began petitioning prior to the gaming era should not have any gaming tribes being able to comment on their petition in any form. They should be barred from any testimonials or comment periods. USET (United South and Eastern Tribes), which has opposed tribes petitioning Congress as opposed to going through the OFA process, is composed of a majority of tribes who they themselves were recognized by the U.S. Congress. These petitioning tribes should never be viewed through the lense of "wanting to gain federal recognition for the purposes of gaming" as their petitions predate the advent of gaming.

8. The Congress needs to appoint an independent board of approximately ten to twenty individuals with an evenly distributed mix of predominantly federal and historic "non-federal" tribal members with expertise in various academic and research areas. These individuals must have shown clear records of unbiased research methodology, a strong knowledge of issues concerning Indian identity, history, and both social and political realities. Each member must independently review the petitions and make recommendations which result in a final group decision reached via consensus. Timeframes are not to exceed two years.

9. After a brief overview of petitioning tribes, the ones who meet one or more the following criteria should be moved to the "front of the line" for consideration. All tribes who were formerly denied recognition, but can show an association with any of these nine criteria should be re-evaluated.

There exist nine initial keys to federal recognition review that would expedite the process in an efficient and fair manner as per government regulations and burden of proof regarding separate status as Indian people. While we do not personally feel that these are the sole defining aspects of tribal identity, they are strong indicators which the Bureau of Indian Affairs and U.S. Congress cannot refute or downplay. The listing of them is not meant to create any division or place tribes above or below one another. It is meant to show the cohesive similarities between historic tribal communities, while giving reviewers peace of mind that they can proceed with more in-depth reviews of highly likely tribal communities. Unfortunately, it has become clear that our historic "non-federal" tribal communities must show our commonalities in opposition to newly created groups claiming Indian status and predominantly racially white descendant federally recognized tribes who have become along with regional gaming tribes, the primary groups lobbying against petitioning tribes.

NINE KEYS:

1. Indian boarding school attendance (automatic recognition)
2. Reservations/mission lands (automatic recognition)
3. Language retention (automatic recognition)
4. BIA/OIA funded school in community during any era (automatic recognition)
5. Pre-1970 state recognition
6. Prohibition from area white and black schools
7. Substantial intermarriage with federal tribes and other historic "non-federal" tribes
8. Long standing petitions for recognition which occurred at the beginning of the new process in 1978 and prior to this time period.
9. Have received ten or more letters of support for federal recognition from other federal tribes and national Indian organizations such as NCAI. A maximum of three letters towards the minimum ten letter total may have been received from professionals in the fields of anthropology, linguistics, ethnology, or genealogy.

The MOWA Band of Choctaw Indians meet criteria 1,2,3,4,6,7,8, and 9 (though we also feel that we meet criteria #5 as well, but received renewed state recognition in 1979) of the "nine keys", yet we have been denied federal recognition to this day. Former Assistant Secretary of Indian Affairs Kevin Gover (Pawnee Nation of Oklahoma), who denied our petition at the recommendation of Lee Fleming, clearly illustrates in his 2004 testimony that we and others were wronged in the process and should be reconsidered. "Testimony of Kevin Gover before the Committee on Indian Affairs, United States Senate, concerning S. 297, April 21, 2004," http://www.senate.gov/~scia/2004hrgs/042104hrg/gover.pdf.

Each time MOWA Choctaw came up for consideration the rules were changed by BAR/OFA. The genealogical expedited review was created as OFA knew our tribe would easily pass the other 6 criteria and so OFA would not be embarrassed, they said that genealogy "failure" (i.e. your people were listed as mulatto, etc. on records; while OFA conveniently dodged numerous federal documents such as military records which listed us as Indian) would make it so the other 6 criteria didn't need to be considered.

Language tapes and Indian boarding school records were said to have been "received out of time" and not able to be considered in the final determination. Our federal lawsuit was said to have been filed beyond the statute of limitations by a conservative, white, Republican judge who was quickly ushered into position to hear the case, replacing a Democratic, minority judge.

An overview of previous case law shows that our tribe is the only "non-federal" tribe to be viewed as a federal tribe for the purposes of ICWA. Overview of Indian Child Welfare Act 68 FR 68180 (shows MOWA Choctaw are considered as a federal tribe)

Our twelve Congressional Bills, including 1994's Auburn Restoration Act, which passed both the House and Senate before we were stricken from the Bill, have been another level of continued futility in our quest for federal recognition.

The number of support letters our tribe has received over the years from the likes of the National Congress of American Indians, noted Indian academic scholars such as Vine Deloria, Jr., federal tribes, anthropologists, etc. fills many binders.

Our tribe has a complete research library dedicated specifically to the federal recognition process and issues related to lobbyists, gaming, identity policing, historical revisionism, etc. which have severely impacted our historic "non-federal" tribes. This library is available to all areas of government, as well as tribal leadership and academic inquiry in order to provide access to the history of the process. We have reviews of numerous federal petitions, as well as large numbers of books and articles published on these specific areas. There is also large sections of government correspondence and compact histories of historic "non-federal" tribes.

We are just one case example in an every growing narrative of legitimate tribal communities denied. We have no intention of resting until justice is served.

Chiyakokeli (I thank you),

Chief Framon Weaver
MOWA Band of Choctaw Indians