

**TESTIMONY OF THE HON. JOHN SINCLAIR, PRESIDENT
ON BEHALF OF
THE LITTLE SHELL TRIBE OF CHIPPEWA
INDIANS OF MONTANA**

**HOUSE NATURAL RESOURCES COMMITTEE
HEARING ON H.R. 3120**

July 15, 2009

Chairman Rahall, Vice Chairman Hastings, our friend Congressman Rehberg, and honorable members of this Committee on Indian Affairs, on behalf of the Little Shell Tribe of Montana, I thank you for the opportunity to testify in support of legislation that would confirm the federal relationship between the Little Shell Tribe of Chippewa Indians of Montana and the United States, and to address related issues.

My name is John Sinclair and I have the honor of serving as President of the Little Shell Tribe. Before me, my father and my grandfather also served our Tribe and also worked to confirm our federal recognition. The legislation introduced by Congressman Rehberg would accomplish this long sought goal for the Tribe. H.R. 3120 is consistent with Congress' and the Department of the Interior's historical commitments to acknowledge our people and establish a land base for us. While we always have advocated for it, the need for congressional action has become all the more necessary in the wake of the Supreme Court's ruling earlier this year in *Carcieri v. Salazar*. As discussed below, legislation is needed to make absolutely clear that the Little Shell Tribe is eligible for the benefits of the Indian Reorganization Act.

BACKGROUND: THE HISTORY OF THE LITTLE SHELL TRIBE

The Little Shell Tribe of Chippewa Indians is the successor in interest to the Pembina Band of Chippewa Indians in North Dakota. We were buffalo hunters who lived and hunted around the Red River and the Turtle Mountains in North Dakota in the early 1800s. The Pembina Band was recognized by the United States in an 1863 treaty that was ratified by the Senate. *See* Treaty of October 2, 1863, 13 Stat. 667. After the treaty, some members of the Pembina Band settled on reservations in Minnesota but our ancestors followed the buffalo herds into western North Dakota and Montana, eventually settling in Montana and in the Turtle Mountains of North Dakota.

In 1892, the United States authorized the creation of a commission to negotiate for a cession of land from the Turtle Mountain Chippewa and provide for their removal. Chief Little Shell and his followers walked out on the negotiations and refused to accept the terms of the eventual agreement. Some of Little Shell's followers moved to Montana and joined

with other members of the Pembina Band who had settled in Montana; accordingly our collective Pembina ancestors came to be known as the “Little Shell Band.” When our traditional means of livelihood died with the buffalo herds, our ancestors were left to eke out an existence in a number of shantytowns across Montana. We became known as “the trash-can Indian,” or “the landless Indians.” Forced to live in communities which did not welcome us, our people faced severe racism and discrimination throughout Montana, some of which continues today.

For one hundred years now, Congress has been aware of, and has attempted to address, the plight of the Little Shell people. In 1908, Congress first appropriated funds to settle our people on a land base. *See* 35 Stat. 84. In 1914 Congress again appropriated funds for this purpose, and continued to do so every year thereafter until 1925 – always to provide a reservation land base on which to settle the “homeless Indians in the State of Montana.” Unfortunately, no land was ever acquired with these appropriated funds and accordingly, because we had no land base, the Department of the Interior failed to treat us as a formally recognized tribe.

In the 1920s, newspaper articles chronicled our plight, and our leaders pleaded for help for the destitute Little Shell people. Tribal leader Joseph Dussome asked Congress, “Are we not entitled to a Reservation and allotments of land in our own Country, just the same as other Indians are?” Two weeks later, the Department of the Interior rejected our leader’s plea:

The Indians referred to are Chippewas of the Turtle Mountain Band. They were under the leadership of Little Shell who became dissatisfied with the treaties of the United States and the Turtle Mountain Band of Chippewas. He accordingly refused to accede thereto...The disaffected band, by its failure to accede to the terms of the treaty and remove to the reservation is now unable to obtain any rights thereon for the reason that the lands of this band are all disposed of, and the rolls became final[.] ... There is now no law which will authorize the enrollment of any of those people with the Turtle Mountain band for the purposes of permitting them to obtain either land or money.

Letter of Asst. Secretary Scattergood, dated December 14, 1931. Three years later, however, Congress enacted the Indian Reorganization Act (IRA), which provided a mechanism for groups of Indians like ours to organize and apply for land. In December 1935, the Commissioner of Indian Affairs took steps to organize our people under the IRA. The Commissioner proposed a form to enroll our people, stating:

It is very important that the enrollment of homeless Indians in the State of Montana be instituted immediately, and it is proposed to use this form in the determination of Indians who are entitled to the benefits of the Indian Reorganization Act.

BIA Letter, December 23, 1935. This effort resulted in the Roe Cloud Roll, named after Dr. Henry Roe Cloud, an Interior official who played a large part in the project. Once the roll was complete, the Field Administrator clearly stated that the purpose of the roll was to settle our people and bring them under active federal supervision:

The landless Indians whom we are proposing to enroll and settle on newly purchased land belong to this same stock, and their history in recent years is but a continuation of the history of wandering and starvation which formerly the Rocky Boy's band had endured.

Out of the land purchase funds authorized by the Indian Reorganization Act, we are now purchasing about 34,000 acres for the settlement of these Indians and also to provide irrigated hay land for the Indians now enrolled on Rocky Boy's Reservation. The new land, if devoted wholly to that purpose, would take care of only a fraction of the homeless Indians, but it is our intention to continue this program through the years until something like adequate subsistence is provided for those who cannot provide for themselves. The first step in the programs is to recognize those Indians of the group who may rightfully make claim of being one-half degree, which is the occasion for presenting the attached applications. The fact of these people being Indian and being entitled to the benefits intended by Congress has not been questioned.

Roe Cloud Roll applications, 1937. Even though the appropriation of funds for the Little Shell people constituted clear acknowledgment of our status as a tribe, the Department of the Interior was never able to fulfill this promise. The limited resources available to acquire land were expended for tribes already recognized. In 1940, Senator James Murray formally requested that the Department fulfill the federal government's promise to acquire land for the Little Shell Band. Assistant Commissioner Zimmerman responded that his office was "keenly aware of the pressing need of the landless Chippewa Cree Indians of Montana. The problem thus far has been dealt with only in a very small way. I sincerely hope that additional funds will be provided for future purchases in order that the larger problem remaining can be dealt with in a more adequate manner." Unfortunately, the federal government's efforts to assist the Little Shell Tribe gave way during the termination era of the 1950s, and, as a result, the land promised for our people was never forthcoming.

OUR EFFORTS TO OBTAIN RESTORATION OF ACKNOWLEDGMENT THROUGH THE ADMINISTRATIVE FEDERAL ACKNOWLEDGMENT PROCESS (FAP)

When the Department of the Interior adopted regulations establishing an administrative process to acknowledge Indian tribes in 1978, once again the Little Shell people had hope. We hoped that the Department's process would finally bring to conclusion the Tribe's long effort to restore its federal recognition and to obtain a reservation for its people. Unfortunately, we have been subject to that process for more than *thirty years*. We have testified at great length in the past about the difficulty, expense, and enormous amount of time that process has consumed. I will not belabor the history of our experience with that process again here (I have testified at length about it in the past), but I must underscore a few major points. On July 24, 2000 (about twenty years after we originally filed our petition for acknowledgment), the Bureau of Indian Affairs finally issued the proposed positive finding on the Tribe's petition. The proposed finding found that the Tribe had met all the seven mandatory criteria and should be recognized. Since that time, the Tribe has submitted approximately 1000 pages of *additional* reports and appendices supported by several boxes of documentation. Finally, it is important to underscore in our

efforts to have recognition restored to us that we have enjoyed the full support of our sister tribes in Montana, of the Governor, and potentially affected local governments. In other words, there is no real opposition to our recognition.

The last time I testified, we believed we would receive a final determination from the Department on January 28, 2009, but since that time the Department extended the determination date to July 27, 2009. While that date is near, for the reasons discussed below, we think it is vitally important that Congress nevertheless act on legislation for the Tribe. Without such legislation, the impact on the Tribe of the Supreme Court's recent ruling *Carcieri v. Salazar* decision may remain unclear for years, and ultimately may be devastating.

THE PROPOSED LEGISLATION

The proposed legislation does more than simply confirm our federal recognition. It addresses many of the issues newly recognized tribes and local communities struggle with for decades after formal federal recognition – the establishment of a land base and a tribal service area. It is well documented that it takes years and sometimes more than a decade for the Department of the Interior to take land into trust for newly recognized tribes. For example, it took eight years after the Jena Band of Choctaw Indians was recognized before Interior took that Tribe's cemetery and governmental offices into trust. Similarly, seven years after the Cowlitz Tribe was recognized, it still has no trust land and no reservation. Thus, even when the Department of the Interior issues its final determination on recognition, without legislation the Tribe will be forced to endure many additional years of landlessness as it struggles to establish a land base and service area. The legislation addresses these issues. It directs the Secretary to acquire trust title to 200 acres located within the service area (an area explicitly defined in the bill) to be used as a tribal land base, which will ensure that we will not have to wait seven or eight years before we have a reservation. With these terms, the Little Shell people are brought much closer to the actual delivery of federal Indian trust services and benefits.

Perhaps most importantly, however, the legislation directly addresses the uncertainty recently created by the Supreme Court's ruling in *Carcieri v. Salazar*. In that case the Court ruled that tribes that were not "under federal jurisdiction" when the Indian Reorganization Act was passed in 1934 are not eligible for the benefits of that statute. As you know, this means that tribes not "under federal jurisdiction" in 1934 will not be able to benefit from the discretionary land acquisition authority Congress gave the Secretary of the Interior in Section 5 of the Indian Reorganization Act. It remains to be seen how the phrase "under federal jurisdiction" will be defined and implemented by the Department of the Interior and the courts. The proposed legislation will protect the Little Shell Tribe in two ways. First, in Section 4, it explicitly makes the Little Shell Tribe subject to the Indian Reorganization Act, so there will be no need for analysis of currently-unknown factors as to whether the Tribe was under federal jurisdiction in 1934. Second, in Section 8, Congress provides land acquisition authority for the Little Shell Tribe that will exist independently of the Indian Reorganization Act. Conversely, if Congress allows the Little Shell Tribe to be recognized only through the administrative Federal Acknowledgment Process, then no provision will have been made to ensure that the Tribe will be eligible for the Secretary's authority to acquire land in trust under Section 5 of the IRA. The end result could be that the Little Shell Tribe *finally* achieves restoration of its federal recognition, but may be deemed ineligible

for Section 5 of the IRA and accordingly remain entirely landless. Surely this is not the result intended by Congress for this Tribe.

For this reason I ask you to consider enactment of legislation even though our FAP decision date is so near. Without this legislation, we face the prospect of being doomed to a future of continued landlessness even after formal federal recognition. As you must know, a Tribe's land base is central to its ability to exercise its sovereignty over its people. It also is central to its ability to access most federal programs, services and funding for Indian tribes. Without a land base, the Little Shell Tribe, even if recognized, will not be put on a level playing field with its sister tribes. This legislation is absolutely necessary to ensure that does not happen.

CONCLUSION

The Little Shell people are persistent and patient. But long ago I have ceased being able to explain to my people why we still remain unrecognized even though the Department of the Interior issued a favorable proposed finding on the Tribe's petition in 2000. We have waited for federal action to rectify our situation for one hundred years. We urge – we implore – Congress to act *now* to ensure that we finally obtain recognition, a reservation, and general eligibility for the Indian Reorganization Act.

I thank this Committee for its time and for its consideration of our plight. The Little Shell people put our trust in you to help us move forward to a brighter future.