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# Congress of the United States

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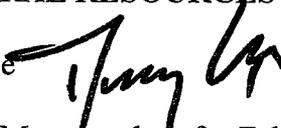
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February 4, 2002

### MEMORANDUM FOR MEMBERS OF THE SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

FROM: Doug Ose 

SUBJECT: Briefing Memorandum for February 7, 2002 Hearing  
Recognizing a Problem – A Hearing on Federal Tribal Recognition

On Thursday, February 7, 2002, at 10 a.m., in Room 2154 Rayburn House Office Building, the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a hearing on the Department of the Interior (DOI) Bureau of Indian Affairs' (BIA) tribal recognition process.

There are more than 550 federally-recognized tribes in the United States, speaking more than 185 languages. These tribes come in a variety of shapes and sizes, from large tribes, such as the Navajo and Cherokee nations with hundreds of thousands of members each, to tiny tribes, with a handful of members. One tribe in California, the Augustine Band of Cahuilla Mission Indians, consists of one adult and seven children. And, each tribe has its own political and cultural history.

The Federal recognition of an Indian tribe can have a tremendous effect not only on the tribe but also on the surrounding communities and the Federal government. Recognition establishes a formal government to government relationship between the United States and a tribe. This special relationship also confers a unique type of sovereignty upon Indian tribes. This sovereign status exempts tribal land from many State and local laws, such as sales taxes and gambling regulations.

#### The Administrative Recognition Process

In 1978, BIA established a regulatory process intended to provide a uniform and objective approach to recognizing tribes. BIA's regulations (25 C.F.R. § 83.7) include seven mandatory

criteria. For each of these, the petitioning group must establish “a reasonable likelihood of the validity of the facts relating to that criterion” (25 C.F.R. § 83.6(d)).

### Criteria for Tribal Recognition

- The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
- A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times to the present.
- The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.
- A copy of the group's present governing documents, including its membership criteria.
- The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity.
- The membership of the petitioning group is composed primarily of persons who are not members of an acknowledged North American Indian tribe.
- Neither the petitioner nor its members are the subject of Congressional legislation that has expressly terminated or forbidden the Federal relationship.

In 1994, BIA revised its regulations to clarify what evidence was needed to support the requirements for recognition. BIA further updated its guidelines and clarified its procedures in 1997, and again in 2000. As of November 16, 2001, there were more than 200 groups at various stages of the recognition process.

While BIA has received more than 250 petitions for recognition, many of these are only letters. Of these petitions only 55 have reached a stage where they are complete and ready for active consideration. Of these 55 completed petitions, BIA has issued decisions on 32, resulting in the recognition of 14 tribes, denial of recognition for 15, and 3 are pending final resolution.

There are 23 completed petitions awaiting decisions by BIA. Although numerous petitions are inactive, BIA continues to receive letters of intent to petition. And, if recent statistics are indicative, the number of completed petitions is likely to increase in the coming years.

A recent General Accounting Office (GAO) Report, “Indian Issues: Improvements Needed in Tribal Recognition Process” (November 2001), recommended that DOI improve its responsiveness and develop transparent guidelines for interpreting the main criteria under the recognition procedures.

Four bills have been introduced in the 107th Congress to reform the recognition process: S. 504 (Senator Campbell), S. 1392 (Senator Dodd), H.R. 1175 (Rep Faleomavaega), and H.R. 3548 (Rep. Simmons). In addition to bills reforming the recognition process, a number of bills have been introduced to recognize specific groups as Indian tribes.

The invited witnesses for the hearing include: Representative Rob Simmons (CT-02); Neal McCaleb, Assistant Secretary for Indian Affairs, DOI; Barry T. Hill, Director, Natural Resources and Environment Division, GAO; and Tracy Toulou, Director, Office of Tribal Justice, Department of Justice.