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Testimony in Support of The Little Shell Tribe of Chippewa Indians

Restoration Act of 2015 (H.R.286)

Presented by The Hon. Gerald Gray

On Behalf of The Little Shell Tribe of Chippewa Indians of Montana

House Subcommittee on Indian, Insular and Alaska Native Affairs Hearing

on Federal Recognition Extension

September 29, 2015

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Introduction

Chairman Young, Ranking Member Ruiz, Representative Zinke, and distinguished Members of the Subcommittee, on behalf of the Little Shell Tribe of Montana, I thank you for the opportunity to testify in support of Representative Zinke's legislation that would confirm the federal relationship between the Little Shell Tribe of Chippewa Indians of Montana ("Tribe" or "Little Shell") and the United States.

My name is Gerald Gray, and I am the elected Chairman of the Little Shell Tribe of Chippewa Indians. On behalf of the Little Shell Tribe, I urge Congress to enact The Little Shell Tribe of Indians Restoration Act of 2015, H.R.286. Further, I ask that this written testimony be included in the record of this hearing.

Summary of H.R.286

The proposed Little Shell Tribe of Chippewa Indians Restoration Act of 2015 would afford my people the federal recognition that has long been promised to us. H.R.286 provides that we will be a duly recognized tribe just like our sister tribes in Montana and across the United States. The Act instructs the Secretary of the Interior to acquire 200 acres in trust so that we can finally have a tribal land base.

Previous Congressional Efforts to Confirm the Federal Status of the Little Shell Tribe

Congress has been aware of the Little Shell Tribe's dilemma for years and several times has voiced its desire to legislate a solution for us. In 1934, 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,

from which an official enumeration of our people was made, in preparation for receiving a reservation. 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 Tribe and our tribal members by bringing us 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 groups who may rightfully make claims 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 (emphasis added). Even though the appropriation of funds for the Little Shell people was clear acknowledgment of our status as a tribe, one desperately in need of the federal protection extended to other tribes, 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 (MT) 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 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, despite Congress' clear intent to recognize our people, the funds were never appropriated and our people's status was not resolved.

Procedural History of the Tribe's Participation in BIA's Federal Acknowledgment Process

Our lack of federal recognition led us to participate in the administrative federal acknowledgment process. The Little Shell Tribe of Chippewa Indians of Montana has been involved in this process since 1978, the year the process began. To put that into perspective, the Tribe has been in the process for all or parts of five decades. On July 14, 2000, twenty-two years after starting the process, Kevin Gover, the Assistant Secretary-Indian Affairs ("AS-IA"), signed a "Proposed Finding for Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana." 65 Fed. Reg. 45,394 (July 21, 2000) ("PF" or "Proposed Finding"). After summarizing the evidence under each of the criteria, the Assistant Secretary concluded, *"the petitioner should be acknowledged to exist as an Indian tribe*."[1] *Id*. at 45,396 (emphasis added). However, on November 3, 2009, after an administration change, the Acting Principal Deputy, Assistant Secretary-Indian Affairs reversed course and issued a Final Determination (FD) against recognition of the Little Shell Tribe of Chippewa Indians of Montana (Tribe), thereby reversing the favorable proposed finding. 74 Fed. Reg. 56,861. The Acting Principal Deputy reversed

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[1] Relying largely on the summary under the proposed findings, the Montana Supreme Court held that the Little Shell Tribe met the criteria of *Montoya v. United States*, 180 U.S. 261 (1901) for common law recognition as a Tribe. *Koke v. Little Shell Tribe of Chippewa Indians of Montana, Inc.*, 315 Mont. 510, 68 P.3d 814 (2003).

Assistant Secretary Gover's Proposed Finding despite the fact that in the interim *no negative comments were received* on the PF*,* and despite that fact that *the State of Montana, all affected local governments, and all Montana Tribes, as well as others, expressly supported Little Shell's recognition*.[2]

The Tribe appealed to the Interior Board of Indian Appeals (IBIA) on several grounds within its jurisdiction, as set forth in 25 C.F.R § 83.11 (d)(9). On June 12, 2013, the IBIA rejected the Tribe's arguments based on those grounds. The Tribe also raised arguments outside the jurisdiction of the IBIA that were referred to the Secretary of the Interior under §§ 83.11 (f)(2) and (g)(2). 25 C.F. R. § 83.11 (f) (2) which provides that the Secretary has the "discretion to request that the Assistant Secretary reconsider the final determination on [the] grounds" referred by the IBIA. On September 16, 2013, the Secretary of the Interior granted the Tribe's request on all grounds and referred five serious questions to the Assistant-Secretary, stating: "Based on the nature of the five alleged grounds, particularly with regard to the due process concerns and questions regarding burdens of proof, I am exercising my discretion to request that you reconsider the Little Shell Final Determination." (Exhibit A attached). The Secretary concluded that "The allegations in these grounds suggest that further review by your office would ensure that the Department's final decision in this matter benefits from a full analysis and comports with notions of a full and fair evaluation of the Little Shell petition."

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[2] Two third party comments were received. One was moot and the other comment simply requested explanation of certain matters. George T. Skibine, "Summary under the Criteria and Evidence for Final Determination Against the Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana," 15-16, (Oct. 27, 2009) ("FD").

Prior to the referral of these questions to the Secretary, the Assistant Secretary for Indian Affairs made an important announcement of "Consideration of Revisions to Federal Acknowledgment Regulations" in 2013. (Copy attached as Exhibit B). Because the Little Shell FD was not yet final agency action, the Tribe requested that it be provided the same opportunity to suspend further consideration of its petition until the revised regulations were promulgated. This request was also addressed by the Secretary who concluded that, "In addition to addressing the five matters referred by the IBIA, please consider the petitioner's request that the Department suspend consideration of the petition pending the enactment of revised acknowledgment regulations." The Assistant Secretary granted the Tribe's request to suspend consideration of its petition pending adoption of new acknowledgment regulations.

Final revisions to the acknowledgment regulations were published in the Federal Register in July 2015. The Tribe has advised the Department that it intends to seek review under the new regulations. We will submit our formal request in November of this year at which point the Department will have 120 days to act. However, because the mechanics of transitioning from the old to the new regulations are largely unknown, the Tribe doesn't know how the process will work. We have been in this process for almost forty years as it stands and the uncertainty is a source of real concern.

Congressional Action is Necessary

The United States owes an obligation to the Little Shell Tribe and its people, and that obligation already has been too long overdue in its fulfillment. Accordingly, the Little Shell Tribe respectfully urges the United States Congress to exercise its constitutional power to restore federal recognition to our Tribe, and finally to deliver us from the misery that for five decades

has been our lot with the previous version of the Bureau of Indian Affair's federal acknowledgment process.

Congress has the final power and authority to recognize or terminate a relationship with a tribe. Congress can and should act for the Little Shell since the administrative process has failed us despite decades of trying. That is what the Little Shell people ask this body to do now through H.R.286.

Congress has enacted similar legislation for other tribes, which like Little Shell have a history of congressional efforts to reorganize the tribe. Since 1960 it has exercised this power to recognize 17 tribes. Congress enacted such legislation for tribes such as the Little Traverse Bay Band of Odawa Indians and the Little River Band -- tribes, like us, whom the Department attempted to recognize in the 1930s but because of the lack of appropriations, recognition was never completed. The Department of the Interior noted this unique history, even in its Final Determination against federal acknowledgment:

> Congress has plenary power over Indian Affairs and, considering two historical factors, could recognize this petitioner as an Indian Tribe. First, the Department initiated action under the Indian Reorganization Act of 1934 that affected the ancestors of a significant majority of the petitioner's members. And second, Congress passed the Act of December 31, 1982 (96 Stat. 2022), conditionally allocating certain trust funds to "the Little Shell Tribe of Chippewa Indians of Montana" petitioner.

Notice of Final Determination, 74 Fed. Reg. 56861 (Nov. 3, 2009). The Department went on to note that more than $3 million remains in trust under the allocation act (for the Little Shell's inclusion along with three other federally recognized tribes in the Pembina and McCumber settlements) and offered that "Congress could direct that they be used to purchase land for the group, as contemplated in the 1930's, should Congress choose to recognize the Little Shell petitioner." *Id.*

The existence of this judgment fund is another circumstance unique to Little Shell. As the Department noted, Congress allocated a portion of the settlement to the Little Shell Tribe. Some of these funds were distributed to our tribal members but roughly $3 million is still held in trust by the Secretary of the Interior pending possible federal recognition of our Tribe. The existence of this fund means that money is finally appropriated and available to purchase land for the Little Shell and the only thing that is needed is Congressional direction and permission to do so. One benefit of restoring the Tribe's recognition through legislation rather than through the Administrative process is that the legislation provides specific guidance from Congress as to where, and how much, land will be acquired as part of the Tribe's initial reservation. The Administrative process leaves these questions unanswered.

It is also important to note that the proposed Congressional action to confirm federal recognition of the Little Shell Tribe enjoys broad support in Montana. My people enjoy the support of all the federally recognized tribes in Montana. I'm proud to state that not one negative substantive comment was received after the Department issued their initial proposed finding in favor of recognition of my Tribe. The support of the other tribes in Montana is indicative of the merits of our recognition. Our sister tribes in Montana have intimate knowledge of our culture and history that spans the many years that we have resided in the same territory as them.

We are also grateful to have the support of the State of Montana. Governor Bullock and the Montana State Legislature, by Joint Resolution, have expressed their support for our federal recognition. Hill, Cascade, Glacier, and Blaine counties as well as the City of Great Falls, the local governments most directly impacted by our recognition, have expressed their support of legislation to recognize the Little Shell Tribe. In fact, the State of Montana provided us with

land from which we can provide essential governmental services -- something the federal government had promised to do throughout the twentieth century but has yet to accomplish.

Our neighbors, both Indian and non-Indian alike, have all recognized that we are a "tribe." Many of them have petitioned Washington in support of our cause over the last century. They still stand with us today. Congressional recognition of our Tribe would not stir local animosity nor would it provoke strong sentiments against our cause. It would provide a sense of relief and closure for my people and for our friends in Montana who have tirelessly supported our cause and watched our plight over the past century.

CONCLUSION

For too long we have been refugees without a homeland in our own aboriginal territory, unable to provide proper schools for our children or healthcare for our elders. Throughout this ordeal, I have watched as tribal members have passed away without realizing our dream of recognition and I have seen new tribal members born without the protections that federal recognition entails.

The Little Shell Tribe of Chippewa Indians applauds Assistant Secretary Kevin Washburn for finally addressing the serious, long-identified flaws and failures of the previous administrative federal acknowledgment process, a process that repeatedly was criticized by the House Committee on Natural Resources as broken. The previous regulations and their misapplication, subjected the Tribe to a continuing, serious miscarriage of justice that stretched over five decades. The arguments the Tribe has made as to the defects in the system were vindicated to some extent in the new regulations, but it remains to be seen exactly how the new regulations will be applied. It is a somewhat new and still uncertain ballgame.

However, the Tribe already has suffered too long from the brutalizing effects of the Bureau of Indian Affairs' administrative recognition process -- and forcing it to wait any longer only prolongs the historical injustices already endured by a Tribe that has no federally protected land base on which it can protect its heritage and culture, and provide desperately needed services and housing for its people. Again, the Little Shell Tribe of Indians respectfully urges Congress to end the Tribe's ordeal by extending federal recognition to the Little Shell Tribe through enactment of the Little Shell Tribe of Chippewa Indians Restoration Act of 2015.

I thank you for your time and for your consideration of H.R. 286. I am happy to answer any questions from the Subcommittee.

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FEDERAL GOVERNMENT TO ACT TO RESTORE FEDERAL RECOGNITION TO THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA.

WHEREAS, the Little Shell Tribe of Chippewa Indians of Montana has been waiting for more than 100 years for its federal recognition to be restored; and

WHEREAS, in 2001, the 57th Legislature passed House Joint Resolution 11 expressing its support for federal recognition of the Little Shell Tribe and calling on the federal government to act; and

WHEREAS, the federal government has still not acted to restore federal recognition to the Little Shell Tribe; and

WHEREAS, federal recognition of the Little Shell Tribe has broad support within the state of Montana, including the support of the Governor, the Montana Congressional Delegation, the local jurisdictions where the Little Shell Tribe resides, and the other tribes of Montana; and

WHEREAS, federal recognition will restore the Little Shell Tribe to its rightful place among other federally recognized tribes; and

WHEREAS, the Montana Congressional Delegation has made efforts to restore the Little Shell Tribe's federal recognition; and

WHEREAS, Senator Tester and Senator Daines have introduced the Little Shell Tribe of Chippewa Indians Restoration Act of 2015, Senate Bill 35, 114th Congress, and Congressman Zinke has introduced a companion bill in the United States House of Representatives, House of Representatives Bill 286, 114th Congress; and

WHEREAS, the United States Department of the Interior is reviewing the Little Shell Tribe's appeal for federal recognition.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature urges the federal government to restore federal recognition to the Little Shell Tribe of Chippewa Indians.

BE IT FURTHER RESOLVED, that the Montana Legislature applauds the Montana Congressional Delegation's legislative efforts to restore federal recognition to the Little Shell Tribe and calls on the United States Congress to pass Senate Bill 35 and House of Representatives Bill 286.

BE IT FURTHER RESOLVED, that the Montana Legislature calls on the Department of the Interior to administratively restore the Little Shell Tribe's federal recognition.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to:

(1) the members of the Montana Congressional Delegation;

(2) the Secretary of the Department of the Interior;

(3) the Assistant Secretary for Indian Affairs for the Department of the Interior; and

(4) the Little Shell Tribal Council.

- END -

I hereby certify that the within joint resolution,

HJ 0015, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this 20th day

of March, 2015.

President of the Senate

Signed this 23rd day

of March, 2015.

HOUSE JOINT RESOLUTION NO. 15

INTRODUCED BY M. TROPILA, E. BUTTREY, G. KIPP, G. MEYERS, C. PEASE-LOPEZ, R. PEPPERS, B. SMITH, S. STEWART-PEREGOY, S. WEBBER, L. WHITFORD, J. WINDY BOY

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FEDERAL GOVERNMENT TO ACT TO RESTORE FEDERAL RECOGNITION TO THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA.

STATE OF MONTANA

FILED

March 24th, 2015

Secretary of State

By Shannon H. Stevens