

**TESTIMONY OF
JOHN TAHSUDA
PRINCIPAL DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
H.R. 3535**

SEPTEMBER 26, 2017

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee – my name is John Tahsuda, I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department or Interior). Thank you for the opportunity to present testimony on behalf of the Department regarding H.R. 3535, the Ruffey Rancheria Restoration Act of 2017. Interior welcomes the opportunity to assist the sponsor on a number of technical recommendations.

The Ruffeys Rancheria, as it is historically known, was one of several tribes terminated by Congress under the California Rancheria Act of 1958 (Act) of August 18, 1958 (Public Law 85-671, as amended; 72 Stat. 619). Although Ruffeys Rancheria was a member of the plaintiff class in *Hardwick v. United States*, its claims were ultimately dismissed without prejudice. H.R. 3535 would restore federal recognition to Ruffeys Rancheria. Congress has legislatively restored three other Rancherias that were terminated under the Act. H.R. 3535 is largely identical to legislation that restored recognition to the Graton Rancheria in California, except for language regarding gaming and fee-to-trust.

Given that Ruffeys Rancheria was terminated at the direction of Congress, one remedy is to petition Congress for Federal recognition or restoration. Congress maintains plenary power over Indian affairs and, as such, has the authority to recognize tribes and restore the Federal relationship with tribes it has terminated. Congress has exercised that power by recognizing entities as Indian tribes for purposes of Federal law, thereby initiating or restoring a government-to-government relationship with terminated tribes.

H.R. 3535

The land in question for Ruffeys Rancheria was acquired in 1907 under the authority of the Act of June 21, 1906 (34 Stat. 333), which appropriated funds for the purpose of purchasing lands for California Indians. According to the Ruffey Rancheria Plan for Distribution, published in the Federal Register April 11, 1961, 26 FR 3073, there were four distributees. Traditionally, when assisting the tribes terminated under the Termination Act of 1958 the Department would refer back to the distributees and their descendants to formally organize.

Section 4 in H.R. 3535 provides broader enrollment criteria than what has been used in the past when a terminated tribe has been legislatively restored. Without further clarification of the individuals eligible for enrollment, complications may arise in determining who is eligible for

enrollment in the tribe. We would appreciate an opportunity to work with the sponsor on this language.

Section 3 of H.R. 3535 relates to the acquisition of trust land for the Ruffeys Rancheria. Subsection 3(a) authorizes the Secretary to accept “not more than 441 acres” of land in Siskiyou County, California, in trust for the Tribe. Subsection 3(c) provides that any lands taken into trust for the Tribe pursuant to the Act shall be deemed part of the Tribe’s reservation. Subsection 3(b) describes lands in the Tribe’s former reservation eligible for trust acquisition. These include “Indian owned” fee lands held by distributees or dependent members listed on the distribution plan prepared for the Ruffeys Rancheria’s termination, or their Indian heirs or successors in interest.

Section 3(a) provides statutory authority for the trust acquisition of up to 441 acres within a specified geographic area. While the Department has supported land acquisition provisions in other restoration acts in the past, we would like to further examine as to whether H.R. 3535, precludes trust acquisitions other than the specified 441 acres under other authority.

Section 6(a) sets forth an election process for the purpose of ratifying a final constitution for the Tribe. We suggest that Section 6(a) also include a reference to the Secretarial election process outlined in 25 C.F.R. Part 81.

Section 7 of H.R. 3535 prohibits gaming conducted pursuant to certain exceptions under Section 20 of the Indian Gaming Regulatory Act (IGRA) on lands taken into trust for the Ruffeys Rancheria under any authority unless the Secretary also determines that the Ruffeys Rancheria has shown substantial and direct “modern” and “aboriginal” connections to the land. Before being considered eligible for gaming pursuant to IGRA’s restored lands exception under H.R. 3535, the Ruffeys Rancheria would therefore need to comply with two sets of “restored land” criteria: those found in 25 C.F.R. Part 292, and those set out in Section 8(8)-(9) of H.R.3535. The Department supports the goals of these provisions and looks forward to working with the sponsor and members of this Subcommittee on this legislative proposal.

Conclusion

The Department of the Interior appreciates the sponsor’s work on this issue and welcomes further opportunities to engage the cosponsors, this Committee, and the Congress on H.R. 3535, the Ruffey Rancheria Restoration Act of 2017.

Thank you for the opportunity to testify today. I look forward to answering your questions.

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H.R. 3650**

SEPTEMBER 26, 2017

Chairman LaMalfa, Ranking Member Torres, and members of the Subcommittee – my name is John Tahsuda, I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department or Interior). Thank you for the opportunity to provide the Department's testimony on H.R. 3650, the Lumbee Recognition Act.

While the Department acknowledges that Congress does not have exclusive authority over the federal recognition of Indian tribes, the Department is conscious of Congress' authority to recognize individual tribes through legislation. Given the extensive process Interior currently uses for tribal recognition, working through the Congressional process may be desirable. If H.R. 3650 is the more direct route for recognition, Interior recommends the addition of language to clarify the role the Department will play in the process, should the Lumbee receive acknowledgement. We welcome the opportunity to assist the sponsor on these technical changes.

Under Article 1, Section 8, Clause 3 of the Constitution, the Congress has the authority to recognize a 'distinctly Indian community' as an Indian tribe. Federal acknowledgment, whether completed by the Department, the Congress, or the courts, establishes a government-to-government relationship between the United States and the tribe, enabling participation in certain Federal programs and recognition of certain legal rights under Federal law.

H.R. 3650

H.R. 3650, the Lumbee Recognition Act, extends Federal recognition to the Lumbee Tribe of North Carolina. The legislation also permits any other group of Indians in Robeson and its adjoining counties whose members are not enrolled in the Lumbee Tribe to petition under the Department's existing acknowledgment regulations.

Prior to 2015, the Department's Office of Federal Acknowledgment received letters of intent to petition from multiple groups including the Lumbee Tribe named in this bill. There is a potential these claims and memberships may overlap. We believe it would be helpful for the sponsor and Congress to clarify the Lumbee group that would be granted recognition as a Tribe under this bill by specifying the current membership list, the group's governing document, and ensuring the governing document includes clear enrollment requirements and procedures. The Department welcomes the opportunity to work with the sponsor and the Committee to address these recommendations.

Under H.R. 3650, the State of North Carolina has jurisdiction over criminal offenses and civil actions on lands within North Carolina owned by the Lumbee Tribe or ‘any dependent Indian community of the Tribe.’ The Secretary of the Interior is authorized to accept a transfer of jurisdiction over those offenses and actions from the State of North Carolina, after consulting with the Attorney General of the United States and pursuant to an agreement between the Lumbee Tribe and the State of North Carolina. Such transfer may not take effect until two years after the effective date of such agreement. Criminal and civil jurisdiction in Indian country often presents complex issues. We would like to work with the sponsor to further clarify which lands currently and in the future may be intended to be included in the jurisdictional agreement contemplated in the bill.

We believe the provision requiring the Secretary to verify the tribal membership and then develop a determination of needs and budget to provide Federal services to the Lumbee group’s eligible members may require additional time beyond two years. Verifying a tribal roll is involved and complex, but we understand the need to examine this critical information expeditiously. We would like to work with the sponsor to establish a time period for all parties to succeed.

Lastly, we would appreciate an opportunity to further discuss the supportive role the Department will play, should the Lumbee receive acknowledgement legislatively. We stand ready and able to work with you.

Conclusion

The Department of the Interior appreciates the sponsor’s continued work on this issue and welcomes any further opportunities to engage with the cosponsors, this Committee, and the Congress on H.R. 3650, the Lumbee Recognition Act.

Thank you for the opportunity to testify today. I look forward to answering your questions.

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H.R. 3744
SEPTEMBER 26, 2017

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee – my name is John Tahsuda, I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department or Interior). Thank you for the opportunity to provide the Department’s views on Chairman Bishop’s bill, H.R. 3744, the Tribal Recognition Act of 2017. This bill revises the existing Federal administrative acknowledgment process, requiring any petitioning Indian tribe to be formally recognized by an Act of Congress.

Currently, there are three main ways for an Indian group to gain federal recognition. First and foremost, groups may seek recognition by the Congress through the legislative process. Second, Interior presently has the statutory authority to recognize groups with its Office of Federal Acknowledgement through the formal Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83 or Part 83), Federal Acknowledgment of American Indian Tribes process, which were revised in 2015. Lastly, in limited circumstances, tribal recognition may occur through the federal courts. Historically, federal recognition of Indian tribes was not grounded solely in delegated authority from Congress.

The Department believes Congress has the authority to revise and amend the federal administrative recognition process. The Department thus does not take issue with Congress’s decision to set criteria for the recognition of Indian tribes when recognition occurs through a process created by authorizing legislation, and supports those provisions of H.R. 3744. We welcome the opportunity to engage this Committee in ways to improve the transparency, efficiency, and accountability of the overall process.

H.R. 3744

H.R. 3744, the Tribal Recognition Act of 2017, replaces the current Part 83 process for the Department’s recognition of Indian tribes, placing the primary decision-making authority in the hands of Congress rather than the Department. The Secretary of the Interior would no longer have the authority to recognize a tribe under Part 83, unless expressly authorized by Congress, and the Part 83 process would no longer result in a federal recognition decision.

Interior’s role, per the legislation, would be to assist in determining tribal status by continuing to provide its historical and technical expertise. The Assistant Secretary for Indian Affairs (AS-IA) would maintain the important function of notification and review, as is laid out in Section 6 of

the legislation. The AS-IA's duties primarily focus on the implementation of guidelines for the preparation of documented petitions. Notification of the group in question, as well as states, local Tribes, and the public would occur, as well as conducting preliminary reviews of petitions and notifying the group of any deficiencies or omissions. The AS-IA would then review individual petitions and request additional research conducted on behalf of the petitioner before delivering the completed petition to Congress. Once the findings are delivered, it is the duty of the Committees of jurisdiction to commence the process for formal recognition.

We recognize that there have been frustrations with implementing the existing rules. The Department believes there is great merit in examining the overall federal acknowledgement process and identifying ways to bring increased transparency and consistency to the current standards. Congress may authorize and codify revised standards and criteria to resolve the broader questions surrounding the Part 83 process. It is the Department's current position that affirmative Congressional recognition more directly aligns the formal recognition of tribes with the assignment of rights derived by the recognition decision.

The Department would like to work with the Committee to address a concern with language in the bill suggesting that Congress has exclusive authority over Indian affairs. We look forward to further conversations with this Committee about the Tribal Recognition Act of 2017 and other legislative proposals specific to Indian country.

Conclusion

The Department of the Interior appreciates the Chairman's work on this important issue and supports the goals of improving the overall administrative recognition process as reflected in H.R. 3744. As indicated above, we welcome any further opportunities to engage this Committee and the Congress on ways to improve the transparency, efficiency, and accountability of the federal administrative recognition process. We stand ready and able to work with you.

Thank you for the opportunity to testify today. I look forward to answering your questions.