

TESTIMONY OF THE HON. JOHN BARNETT, CHAIRMAN

THE COWLITZ INDIAN TRIBE OF  
WASHINGTON

SENATE COMMITTEE ON INDIAN AFFAIRS  
OVERSIGHT HEARING ON FEDERAL RECOGNITION

MAY 11, 2005

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Chairman McCain, Vice-Chairman Dorgan, and distinguished members of the Senate Committee on Indian Affairs, I thank you for the opportunity to testify this morning. To our friend Senator Maria Cantwell, I bring you warm greetings from your Cowlitz constituents at home in Washington State.

My name is John Barnett, and I am the Chairman of the 3,200-member Cowlitz Indian Tribe. I have served as the Chairman of our Tribe for 24 years, and I have made it my personal objective to right the historical wrongs that have been committed against my people. By so doing, I hope to provide a brighter future for our next generations.

The Cowlitz Tribe was recognized through the Federal Acknowledgment Process on January 4, 2002, and as such we are a federal recognition success story. We made it through the Bureau of Indian Affairs' Federal Acknowledgment Process using only donations from hard working tribal members to pay for the anthropological, genealogical and historical work necessary to show that we met the Bureau's seven criteria for recognition. It was the commitment, cohesiveness and self-sacrifice of my people that got us through the recognition process without the benefit of funds from outside developers. It has been out of my own pocket that I have traveled to Washington, D.C. more than fifty times to advocate on my Tribe's behalf during the recognition process. Indeed, I sat before this Committee at another recognition hearing in 1991, fully eleven years before we finally received federal recognition in 2002.

Today I wish to comment briefly on the Federal Acknowledgment Process, on our experience with that Process, and on how the public debate on Indian gaming has negatively impacted unrecognized and newly recognized tribes.

**Federal Recognition Process and the Cowlitz Tribe**

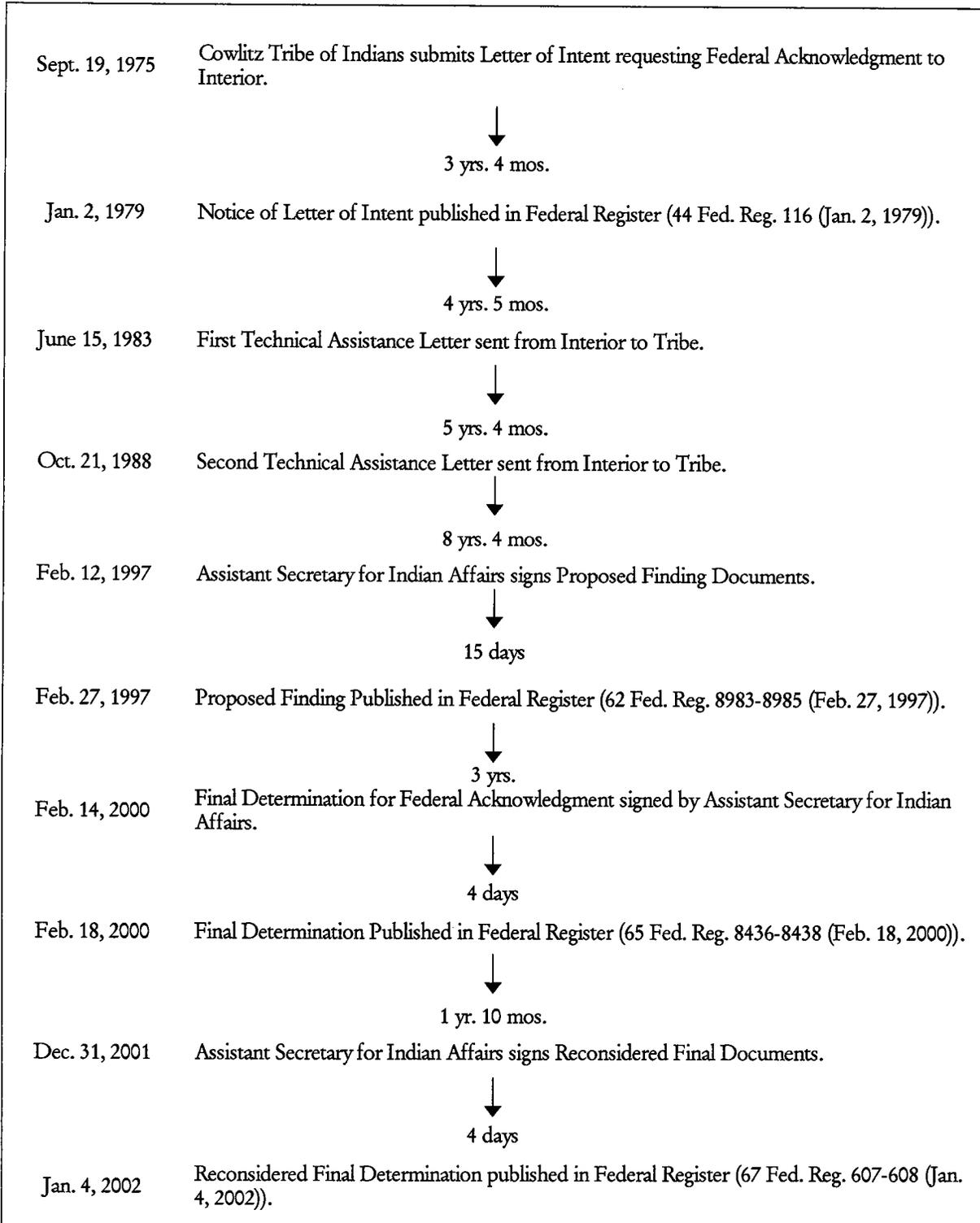
I believe it is entirely appropriate that unrecognized tribes should meet tough, objective standards before achieving federal acknowledgment. To take a contrary position would undermine the credibility of other federally recognized tribes, and would fuel the efforts of unscrupulous

developers looking to “create” tribes for no other reason than to create a new Indian gaming deal. But let me also underscore that the recognition process is expensive and time consuming, and that it has been made more so by the efforts of gaming interests – Indian and non-Indian – which will spare no expense to block a legitimate tribe’s efforts to achieve recognition in order to block a potential gaming competitor.

The Federal Acknowledgment Process must be streamlined. In our case we had to wait more than three years between when we filed our Notice of Intent and when it was published in the Federal Register; we had to wait another four and a half years from publication of the NOI until BIA sent us our first technical assistance letter; we waited another five years after that until we got our second technical assistance letter; we waited another five and a half years until we were placed on the “ready” list; and then we waited approximately three years after that before BAR issued Proposed Findings of Fact in 1997. We did not receive a Final Determination until 2000, and then another tribe challenged the Bureau’s Final Determination before the Interior Board of Indian Appeals, thereby delaying implementation of BIA’s decision another two years until a Reconsidered Final Determination was issued in 2002. From start to finish, a quarter of a century. (*Sæ* table below.)

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## COWLITZ FAP TIMELINE



The glacial pace at which recognition petitions are reviewed and processed causes unwarranted hardships on tribes already suffering from years of neglect by the federal government. Unrecognized tribes have little or no access to federal programs or economic development opportunities, leaving them vulnerable to eventual extinction. This glacial pace is also troubling because it so clearly contributes to unrecognized tribes' desperate need to find alternative funding sources. More specifically, the inability of the Bureau of Indian Affairs to move applications through the Process in a more streamlined way effectively allows gaming to play too great a role in the Federal Acknowledgment Process. That role is being played out on both sides, both for and against applicant tribes. The only way to remove the unwanted influence of gaming on federal recognition is to give the Bureau of Indian Affairs the resources it needs to provide tribes with much more substantial assistance so that they are not forced to find outside sources of funding.

### **Newly Recognized Tribes and Landlessness**

Because most of us who survive the Federal Acknowledgment Process emerge as landless tribes, the controversial politics of Indian gaming continue to haunt us. Without access to federal funding or economic development opportunities, and having spent whatever money we had on the recognition process, we are financially destitute. Acquiring land costs money. The substantial work needed to construct a fee-to-trust application also costs money. And recently the Bureau of Indian Affairs began to require that tribes pay for the development of an extensive Environmental Impact Statement as a prerequisite to a fee-to-trust application. The Cowlitz EIS is typical, and it will cost my tribe more than a million dollars. Where is a newly recognized, landless tribe supposed to find that kind of money?

Mr. Chairman, there is a world of difference between the greedy, marauding "reservation shopping" portrayed by the press, and the sincere, sometimes desperate efforts of newly recognized tribes to find a piece of land on which to start rebuilding our futures. We are trying to get back on our feet after a century or more of not-so-benign neglect. We are trying to build homes, government buildings, schools and health clinics. We are looking for access to the same economic development opportunities already afforded other tribes that were lucky enough to have a land base on October 17, 1988.

The Cowlitz Tribe has strong historical and modern connections to the land we would like to make our initial reservation. We have been fortunate in that we have found in Indian Country a partner to help us get on our feet. We are proud to be working with, and learning from, the Mohegan Tribe of Connecticut. In 1994, the Mohegan Tribe also successfully emerged from the Federal Acknowledgment Process as a newly-recognized, landless tribe. Today the Mohegan Tribe is reinvesting in Indian country, helping their Cowlitz cousins from across the continent, and for that we will be forever grateful.

### **History of the Cowlitz Indian Tribe**

I believe that much of the public debate surrounding federal recognition, land acquisition and gaming fails to acknowledge the historical circumstances of how unrecognized and landless tribes came to be unrecognized and landless in the first place. Indeed, I believe that the very real connection between recognition and landlessness is not understood by the press or even sometimes by federal policy makers. The history of the Cowlitz Tribe is illustrative.

The United States acquired the Oregon Territory from Great Britain pursuant to the Oregon Treaty in 1846. *See* Oregon Treaty, July 17, 1846, 9 Stat. 869. The Washington Territory in turn was carved from the Oregon Territory soon thereafter in 1853. Within a year of the creation of the Washington Territory, the United States began to survey the Indian populations in western Washington in order to obtain land cessions from them. In 1854, Acting Commissioner of Indian Affairs (Charles E. Mix) instructed Washington territorial Governor Isaac Stevens to commence treaty negotiation with the Washington tribes. Soon thereafter, in February 1855, Governor Stevens convened treaty negotiations with the Cowlitz and other tribes at the Chehalis River Treaty Council. The purpose of these negotiations was to obtain large land cessions from these tribes and to consolidate multiple tribes onto a smaller number of reservations.

The Cowlitz agreed to cede lands to the United States, but treaty negotiations broke down because the Cowlitz refused to accept a reservation outside of its traditional territory. Hence the Cowlitz, unlike most other Washington State tribes, were left without a reserved land base. As a result, when in 1863 an Executive Order opened up all of southwestern Washington to non-Indian settlement, the Cowlitz lost possession to all of its traditional lands -- despite the fact the Tribe had not signed a treaty ceding those lands, despite the fact that Indian title had never been extinguished by Congress, and despite the fact that the Cowlitz were not compensated for those lands. Within a short period of time the Cowlitz Tribe became entirely landless and its members came to be scattered throughout Washington and Oregon.

There were a few efforts to establish a reservation for my ancestors in the late nineteenth century, but by the early twentieth century the Bureau of Indian Affairs came to view itself as having no fiduciary obligations to my tribe because we held no reservation lands. Within a short time, the United States began overtly to disavow any government-to-government relationship with the Cowlitz Tribe.

Nevertheless, in the early 1900s my tribe reorganized, elected a governing body, and initiated a series of efforts to seek compensation and lands to replace our lost aboriginal territory. Several congressional bills were introduced in the 1920s and 30s that would have given the Court of Claims jurisdiction to hear the Tribe's claims against the United States. One was passed by the House and Senate, but was vetoed by President Calvin Coolidge. It was not until 1946, when Congress set up the Indian Claims Commission (ICC) to hear tribal claims against the United States, that the Cowlitz Tribe had a forum in which to pursue our claims. In 1969, the ICC determined that we historically had *exclusive* use and occupation of a particular area of southwest Washington. It also acknowledged that we had strong historical connections to other lands, but because we shared those lands with other tribes we were not compensated for the loss of those lands. In 1973, pursuant to a settlement agreement between the Cowlitz and the United States, the ICC awarded the Tribe \$1,500,000 to compensate us for the taking of these exclusively-used lands. (This amounted to approximately ninety cents per acre.)

My Tribe insisted that federal legislation authorizing the ICC award include a provision setting aside money for tribal land acquisition so that we could buy back land. But the Department of the Interior consistently and over many years opposed various versions of the settlement legislation, because it opposed the use of any settlement funds for land acquisition because the Cowlitz Tribe was not a federally recognized tribe. Rather, the Department would only support distribution of our ICC award on a per capita basis. It was not until 2004, two years after we achieved recognition in 2002, and some twenty-one years after the ICC awarded us compensation

for our lost lands, that Interior withdrew its objection to the settlement award legislation and allowed the bill to move forward. The Cowlitz Indian Tribe Distribution of Judgment Funds Act, Pub. L. 108-222, 118 Stat. 621, was signed by President Bush on April 30, 2004.

I recount this history because it highlights the irony and the pain unrecognized and newly-recognized landless tribes have suffered. In our case, the United States refused to establish a reservation because we refused to leave our aboriginal territory. The Department of the Interior States refused thereafter to view us as “recognized” because we had no reservation. When we finally got paid for our lost land, Interior took the position that we could not use that money to acquire land because we were unrecognized. Now that we have been recognized through the Federal Acknowledgment Process, we are subject to the onerous and expensive land acquisition requirements imposed by Interior.

I am a strong believer that strong processes are necessary and in the better interest of Indian people. But these processes must be fair, transparent, and conducted within reasonable time frames. These processes must also accommodate the fact that unrecognized and newly-recognized tribes simply do not have significant financial resources.

### **Closing Remarks**

I would like to thank the State of Washington for its support of the Federal Acknowledgment Process. The State traditionally has declined to weigh in on the federal question of whether a tribe should be recognized, choosing instead to defer to those with specialized expertise to make such decisions. Once a tribe is recognized, however, the State is very quick to extend its hand to establish a government-to-government relationship with the newly recognized tribe. We appreciate the integrity of the State’s actions and the respect the State has shown us.

In closing, I am here to ask you, the Senate Indian Affairs Committee and the United States Congress as the primary and perhaps most important protector of Indian people, to ensure that the public debate about federal recognition NOT be driven by the convenient and controversial politics of Indian gaming. I am asking that you help frame federal Indian policy in a way that recognizes the real hardships suffered by unrecognized and landless tribes, that honorably addresses the historical wrongs suffered by our people and that does not deny deserving tribes federal recognition or a reservation simply as a means of avoiding the hard politics of Indian gaming.

I thank you again for giving me an opportunity to speak to this Committee on these issues so vital to some of the first Americans.