

STATEMENT OF CECILE MAXWELL-HANSEN ON BEHALF OF THE DUWAMISH TRIBE  
BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS

HEARINGS ON S.1392, A BILL TO ESTABLISH PROCEDURES FOR THE BUREAU OF  
INDIAN AFFAIRS OF THE DEPARTMENT OF THE INTERIOR WITH RESPECT TO TRIBAL  
RECOGNITION AND S.1393, A BILL TO PROVIDE GRANTS TO ENSURE FULL AND FAIR  
PARTICIPATION IN CERTAIN DECISIONMAKING PROCESSES AT THE BUREAU OF  
INDIAN AFFAIRS

SEPTEMBER 17, 2002

Good morning, Mr. Chairman and distinguished members of the Committee. My name is Cecile Maxwell-Hansen. I am the great great great niece of Chief Si'ahl, for whom the city of Seattle is named. I appreciate the opportunity to submit testimony on S. 1392, a bill to establish procedures for the Bureau of Indian Affairs (the "BIA") with respect to tribal recognition and S. 1393, a bill to provide grants to eligible Indian groups and local governments to participate in certain decision making processes of the BIA.

Fourteen years ago I testified before this Committee on the federal acknowledgment process. Now I am appearing before the Committee again on the same subject. It seems as if nothing has changed. Our experience with the federal acknowledgment procedures has been bitterly disappointing and disheartening. The Duwamish people were the first indigenous people of the Seattle, Washington area having lived there for more than 1,000 years before the arrival of the European-Americans in 1851. In 1855, the Duwamish Tribe was the first signatory on the Treaty of Point Elliot, which guaranteed fishing rights and reservations to all the signatory tribes. The Duwamish signatory to the 1855 Treaty was our Chief, Chief Si'ahl. In 1859, the Treaty of Point Elliot was ratified by Congress, but the promises made by the United States in the Treaty were never fulfilled to my people.

We first submitted a petition for federal acknowledgment in 1976 before the promulgation of the acknowledgment regulations in 1978. In 1988, we submitted a completed petition to the Branch of Acknowledgment and Research and eight years later received a preliminary decision against acknowledgment. The preliminary decision concluded that we met four of the seven mandatory criteria, but there were some deficiencies with respect to criteria 83.7(a) (identification

as an American Indian entity), and (b) (community) and (c) (political authority or influence).

We worked diligently over the next two years to address the deficiencies, and believed we had succeeded when we were advised that the Acting Assistant Secretary-Indian Affairs had issued a final determination in favor of acknowledgment on January 19, 2001. One day later, President Bush issued an order imposing a moratorium on all substantive decisions made during the final days of the Clinton administration, including the Duwamish Tribe's positive final determination in favor of federal acknowledgment. On September 26, 2001, the new Assistant Secretary-Indian Affairs issued a new final determination declining to acknowledge the Duwamish Tribe. Our subsequent administrative appeals have been unsuccessful. Nearly 150 years after the Duwamish Tribe signed the Point Elliot Treaty, my people are still struggling for the recognition that was promised when that Treaty was signed and ratified.

The Duwamish Tribe believes that there are severe problems with the federal acknowledgment process, but not of the type stated by other witnesses. We're the Duwamish Tribe. We signed the Point Elliott Treaty and gave up our lands and other rights. From treaty times to the present, the Duwamish people have maintained an independent identity as a tribe with elected leaders and the preservation of our culture. Until the 1970's, we were receiving federal Indian services and exercising our Indian treaty fishing rights. We have never been terminated by Congress. Now the Bureau of Indian Affairs is telling us that we are not federally recognized. This is a grave injustice to the

Duwamish people and other treaty tribes like us. We recommend that if changes are made to the federal acknowledgment process, that at minimum, tribes that were signatories to treaties and gave up their land or other rights, should be presumptively federally recognized. In the acknowledgment process, the Secretary of Interior should bear the burden of proving that we are *not* a federally recognized tribe, not the other way around.

Now the BIA also says that there are breaks in the cultural and political continuity of our Tribe and this is further proof that we should not be a federally recognized tribe. We believe that what undoubtedly started out as a common-sense acknowledgment requirement is now turned on its head. It ignores the sweep of U.S. history and federal policy that systematically destroyed tribal governments. The Indian treaties were part of this policy. The Indian allotment acts also contributed to weakening tribal governments. The force assimilation of our children in federal Indian schools and the termination policies in the 1950's also played a role in undermining Indian tribes. The hard edged implementation of this tribal continuity requirement punishes tribes a second time because they may not have been able to withstand the heavy hand of the federal government every day for 150 years.

S. 1392 essential codifies the existing federal acknowledgment regulations found in 25 C.F.R. Part 83, including the seven mandatory criteria. The bill incorporates some, but not all, of the definitions found in the existing acknowledgment regulations. For example, the bill does not define “community”, “political influence” and “sustained contact”, “interested party” and “informed party”. These definitions are fundamentally important in understanding the criteria or identifying who may participate in the acknowledgment process.

Section 14 of the bill establishes a new hearing requirement in addition to the existing BIA

acknowledgment process. If requested by an interested party and if the Secretary of the Interior (the (“Secretary”) determines that there is good cause shown, the Secretary must conduct a formal hearing. A formal hearing would allow all interested parties to present evidence, call witnesses, cross-examine witnesses and rebut evidence in the record. The transcript of the hearing would be made part of the administrative record.

We are not convinced that a formal hearing is an appropriate or necessary addition to the acknowledgment process. The existing regulations allow interested parties to participate in the process by submitting their own evidence and comments on the proposed findings, requesting and receiving technical assistance from the BAR and appealing a decision they do not agree with. A formal hearing would only cause further delays in an overly long process.

Section 19 authorizes the appropriation of \$10 million for federal acknowledgement activities. This represents a significant increase in the BAR’s existing budget. We support increased funding for federal acknowledgment activities.

S. 1393 would provide grants to Indian tribes, Indian groups seeking federal acknowledgment and local governments in order to participate in Department of the Interior processes concerning federal acknowledgment, fee to trust land acquisition requests, land claims and other actions affecting local governments. We support a grant program for Indian tribes and groups who lack the financial resources to pursue federal acknowledgment and other actions. We do not agree that federal

funds should be made available to local governments to essential fight Indian groups seeking federal acknowledgment and Indian tribes seeking to acquire trust land. Under the bill, a local government could receive a federal grant to challenge decisions of the Secretary of the Interior to acknowledge a tribe or acquire land in trust. To us, this is unsound public policy.

I thank the Committee for providing me with an opportunity to present the views of the Duwamish Tribe.