Testimony of Chairman Robert Martin
Morongo Band Of Mission Indians

House Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs
December 8, 2015

H.R. 3764
"The Tribal Recognition Act"

MORONGO BAND OF MISSION INDIANS

A SOVEREIGN NATION

Mr. Chairman, Doctor Ruiz and members of the subcommittee, thank you for providing the Morongo Tribe with this opportunity to again testify before you on the issue of tribal recognition. As you may recall, I was before this panel in April to address what was then a proposal by the Administration to amend the federal acknowledgement regulations.

At that time our tribe believed the proposed regulation would relax the then-existing rigorous standards without addressing some of the core, underlying problems with the process itself. While Morongo fully understands and appreciates the changes that were made before the regulations became final, we remain concerned the new regulations undermine the political relationship between federally acknowledged tribes and the United States. Furthermore, we believe the new regulations will do little to address the inherent problems associated with government bureaucracy and the inconsistency with which the Department of the Interior has executed this function. Given this view, Morongo believes Congress must act to put the more rigorous original standards into law.

As we testified earlier, this issue is fundamental to all of Indian Country; it is the standard by which the United States determines which groups of native peoples should be treated as sovereign governments. Establishing a standard that is too restrictive potentially denies legitimate groups the unique rights and status provided to a sovereign government. Conversely, setting the bar too low undermines the political relationship between federally acknowledged tribes and the United States by blurring the distinction between a truly sovereign political entity and a mere aggregation of individuals who may have some common ancestry.

After having reviewed the changes to Part 83, it appears the Department of Interior has only partially hit the target.

In April, we raised five specific concerns with the proposed regulations.

Our primary concern was and still is that the Department could allow a petitioner to become a federally recognized tribe even if there is no historical evidence that the

tribe existed before the formation of the United States. Instead, the Department proposed using an arbitrary date as the benchmark. While the Department did modify the final rule to redefine "historical" as meaning the year 1900, rather than 1934, as had been proposed, the Department seems to have missed our point.

We strongly believe that tribal sovereignty is based on the fact that tribes and their governments pre-existed the Constitution and first contacts with Europeans. That is why the pre-July 1st Federal regulations required a demonstration of tribal existence from the founding of the U.S. in 1789, or first sustained contact. This pre-July 1st standard is maintained in H.R. 3764.

Our second major concern was the potential watering down of the requirements for external identification. Under the pre-July 1st rules, petitioners must provide evidence of identification by external sources since 1900. This helps the government differentiate historic tribes from groups that only recently assert tribal heritage. This requirement was largely addressed in the Final Rule and is also maintained in H.R. 3764.

Third, we were greatly concerned that the Department's proposal would allow for evidentiary gaps of 20 years or more. This is a far cry from the more rigorous pre-July 1st requirement of "substantially continuous existence". Fortunately, the Department agreed and largely maintained the existing evidentiary standard. H.R. 3764 also incorporates this requirement.

Fourth, Morongo shares the Assistant Secretary's view that "reaffirmation" by the Department is not a viable form of acknowledgment. While we appreciate the policy memo that accompanied the new regulations, the July 1st Rules would have been stronger if the Department categorically prohibited petitioners from using this made-up process in the regulation itself.

Our fifth and final area of concern was whether previously denied petitioners can re-petition under the newer, more lenient standards. On its face, we were concerned that such a provision would create two classes of tribes: those that can meet the exacting standards, and those that cannot. As this committee knows, creating two classes of tribal governments is a recipe for disaster in Indian Country.

Based on the Department's testimony and press releases, we believed that the Final Rule removed the avenue to re-petition, rightly preserving the original determinations and avoiding the creation of two classes of tribes.

But we have since learned that this is not the case. Thanks to the diligent work of this committee, we now know that despite a March 16, 2011 press release from the Department of the Interior stating that "Assistant Secretary–Indian Affairs Larry Echo Hawk today issued a final determination not to acknowledge [a] petitioner," that same petitioner was re-invited to seek federal acknowledgement under the new regulations on August 31 of this year.

We recognize that the specific historical documentation requirements have become of secondary interest to the committee, given the more fundamental changes proposed by H.R. 3764. The foundational shift that would occur, should this bill be enacted, is that the Secretary would no longer have the ability to recognize tribal governments. That power would rest exclusively with Congress.

The Morongo Tribal Council has discussed this issue at length, and we concluded that such a change is necessary. While we appreciate the fact that many of the proposed changes to the Part 83 regulations ultimately were not incorporated in the final regulations, we simply believe the current process is inherently flawed and subject to influence by those who have the best relationships within the Executive Branch. The lack of consistency on issues such as reaffirmation and re-petitioning has convinced us that Congress should be directly involved in the acknowledgement process. While we are not so naïve as to believe that Congress is immune to political influence, we have more faith in our locally elected representatives than in an untold number of bureaucrats that have no connection or direct accountability to our communities.

However, our support for Congressional involvement in the process does not mean that there is not still room for improvement.

The Morongo Tribe encourages Congress to identify a process for the timely consideration of reports submitted by the Assistant Secretary. While we understand that not taking action on an issue is one way Congress can state its opinion, a petitioning group should not be stuck in perpetual limbo. Therefore, the report presented by the Assistant Secretary deserves a timely and substantive response from Congress. Fundamentally, we believe timely consideration of any report the Administration submits to Congress will assure greater integrity of the process. We hope changes to this effect can be included prior to enactment.

In addition to the foregoing concerns, we are concerned about the provision in Section 11 of the bill that states that the legislation shall not affect the status of any Indian tribe that was **lawfully** federally acknowledged. As now worded, this language could be construed as calling into question whether the Secretary has ever had the legitimate authority to acknowledge tribes, potentially creating a legal quagmire for many tribes. We would prefer that this language be clarified by, for example, incorporating the language used in Section 83.12(a) of the final rule that explicitly confirms the recognized status of any Tribe for which lands have been taken into trust pursuant to an Act of Congress, whether or not that Act specifically named the Tribe as a beneficiary of such lands. This would be particularly appropriate in California, where Congress authorized the establishment of reservations or Rancherias without necessarily identifying the Tribe or Tribes for which the reservation or Rancheria would be created.

Thank you for your consideration of our views.