



State-Tribal Relations Committee

60th Montana Legislature

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TO: State-Tribal Relations Committee Members
FROM: Jeremy Gersovitz, Staff Attorney

RE: Significance of federal recognition of an Indian tribe, significance of recognition by the State of Montana of an Indian tribe, and comparison between the two

DATE: June 19, 2008

Within the boundaries of the state, there are seven federally recognized Indian tribes and one tribe that has received provisional federal recognition, that being the Little Shell Tribe of Chippewa Indians. The latter is, however, recognized by the State of Montana.

Federally recognized tribes are tribes with which the federal government deals on a government-to-government basis in recognition of their tribal sovereignty. This recognition acknowledges the special relationship existing between the federal government and a tribe, confirms the inherent rights and self-governing powers of the tribe, and confers special benefits and services (such as in the areas of housing, education, and health) on the tribe through various federal laws.

There are three ways for a tribe to secure federal recognition, which correspond to the three branches of the federal government.

The first, "administrative recognition," originates in the executive branch through an application made pursuant to regulations issued by the Department of the Interior's Bureau of Indian Affairs (BIA) and its Office of Federal Acknowledgment. Second, an Indian tribe may seek recognition through an act of Congress. Third, an Indian tribe can seek a judicial determination of its tribal status. Each means of recognition comes with respective strengths and weaknesses.

Some sixteen states--Alabama, California, Connecticut, Delaware, Georgia, Hawaii, Louisiana, Massachusetts, Montana, New Jersey, New York, North Carolina, Ohio, South Carolina, Vermont, and Virginia--now recognize a total of 62 tribes that are not federally recognized.

Kansas, Kentucky, Michigan, Missouri, and Oklahoma have some lesser form of state recognition.

State recognition can also provide tribes with limited state and federal benefits and clarify which tribes are exempt from the purview of state legislation that explicitly excludes "Indians." Consequently, across the country several tribes are now bidding for state recognition and many states are implementing or strengthening processes for acknowledging the tribes within their borders.

In the last few years, states and tribes have increasingly realized that state recognition can serve

as an important, albeit limited, alternative to federal recognition. This is evidenced by the many states that have recently codified their state recognition processes or are planning to implement recognition processes to facilitate communication between state and tribal governments and thus better the condition of tribal members and surrounding communities.

Much like federal recognition, state recognition operates as a means for states to acknowledge the longstanding existence of tribes within their borders and to establish a government-to-government relationship to coordinate and communicate with tribes. State recognition is also a prerequisite to certain federal and state benefits meant to foster and preserve indigenous communities and to facilitate mutually beneficial relationships following centuries of conflict.

While state recognition offers several benefits, the powers granted through state recognition are quite limited. State-recognized tribes do not generally have the same immunities from state law that federal tribes enjoy. Instead, they are endowed only with those sovereign characteristics recognized by that state's laws, legislative resolutions, administrative regulations, and other documents that collectively define the government-to-government relationship. Thus, the rights that tribes do enjoy vary dramatically between states, ranging from powers of self-government, such as the right to operate a police force, to exemptions from paying state and local taxes, to primarily symbolic acknowledgment of a tribe's longstanding presence within a state.

What is presently called the Little Shell Tribe traces its history substantially to the Pembina Band of Chippewa Indians, whose Chief Little Shell (Ase-anse) signed the Treaty of Old Crossing of the Red Lake River, Minnesota, with the Red Lake and Pembina Band of Chippewa. Later some members were on the Turtle Mountain Chippewa Reservation in North Dakota. Other Little Shell ancestors were located elsewhere in North Dakota and Saskatchewan. A group who were disenrolled from the Turtle Mountain Chippewa Reservation in North Dakota in the 1890s were led into Montana at that time by Chief Thomas Little Shell (Ayabewaywetung). Others migrated to Montana between the 1860s and 1930s.

The approximately 4,500 descendants of the Little Shell are spread across the United States, although they are concentrated in North Central Montana. In 1977, they adopted a constitution and by-laws; 2 years later, in 1979, they filed Articles of Incorporation of Little Shell Tribe Cultural Advantage Corporation with the State of Montana. The Articles of Incorporation were apparently filed on the advice of an attorney who believed the filing would give them some state recognition as a tribe. The name of the corporation was later changed to the Little Shell Tribe of Chippewa Indians of Montana. Since the 1930s, the tribe has been seeking recognition by the federal government under the Indian Reorganization Act of 1934.

While the Little Shell Tribe of Chippewa Indians has unsuccessfully sought federal recognition for more than 100 years, state recognition was finally granted in 2006 in a declaration from Governor Brian Schweitzer, as well as through an earlier landmark case decided by the Montana Supreme Court (*Koke v. Little Shell Tribe*, 2003 MT 121). The declaration commits the executive branch of the State to working with the governing body of the Little Shell Chippewa

Tribe.

Montana legislation passed since that time acknowledges the tribe's "recognized" status: Montana has a State-Tribal Economic Development Commission that is tied to the state's Department of Commerce. Members of the commission are to include state representatives, as well as "one member from each of the seven federally recognized tribes in Montana and one member from the Little Shell band of Chippewa Indians." The preamble to the original legislation authorizing the commission elucidates the intent behind the commission's creation: a desire for the state and tribes to work together more closely for state and tribal benefit. The state and tribe are continuing to break ground as they work together to "figure out what state recognition means."

In addition to including the state tribe in most legislation that affects federal tribes within Montana, funds have been earmarked to develop tribal history projects related to the Little Shell Tribe. The Governor has been dedicated to making funds available for tribal history purposes, reflecting the state's intent to "recognize the distinct and unique cultural heritage of the American Indians" and realize the state's commitment in its educational goals "to [aid] the preservation of their cultural integrity." The tribe has also become eligible for economic development grants provided by the state.

As for land, while the state, in House Bill 284, in 2007 provided the opportunity for the use of a building and approximately 6 acres near Great Falls to the tribe, the Little Shell do not have an official reservation. A decision has yet to be made on what to do with the Morony dam site building and land.

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