

Excerpt from an article in Indian Country Today - June 2011 by Gale Toensing

Picture of Schaghticoke Tribal Nation Chief Richard Velky and the 40,000+ pages of documents that granted the STN their legitimate and merited Federal Recognition on Jan 29th, 2004



STN's 40,000-plus-document petition

Velky, who says the nation will continue its quest to restore its federal acknowledgement although he was not prepared to discuss the steps the council is taking. "What they did to us was attempted cultural genocide," he says.

Many people agree. Mention STN's case to almost anyone involved in Indian affairs and they scoff that what happened was a flagrant disregard for a process that's supposed to be straightforward. "You put in facts, you compare facts to rules and you determine if the facts fit the rules," says a Washington lobbyist who asked not to be named so as to not jeopardize his relationship with BIA. ***"Well, they changed the rules after the fact and made it a political process."***

Aurene Martin, a former deputy assistant secretary-Indian affairs who issued the final determination recognizing STN, stands by her decision. ***"I think it was a good decision. When I made the decision I had the advice of the staff at the Office of Federal Acknowledgement and I felt the Schaghticoke petition was a very strong one, so it was a good decision and I'm sad it got overturned later on,"*** Martin said recently.

In reversing the recognition, Interior Associate Deputy Secretary James Cason trashed a policy decision made after a deliberative process by former Interior Secretary Gale

Norton and the BIA staff that concluded the tribe's hundreds of years of state recognition merited important consideration as a matter of "constitutional principles of federalism."

Martin maintains that state recognition should be given weight in determining a tribe's federal status. "I especially think the use of state recognition as evidence of a tribe's political existence is a completely solid legal basis to make that determination on, and so, yes, I would stand by that decision," she says.

Martin declined to discuss what happened at the Interior Department regarding the decision to reverse STN's recognition, but said the recognition process needs to be revised. "I think the regulations have become so set in stone that they fail to account for the vagaries of history."

Michael Rossetti, Norton's former general councilor who left Interior a month after STN received federal recognition, said the secretary's decision should have spoken for itself. "There was a presentation made by career staff to political appointees, including me, and the recommendation [to acknowledge the STN] was made on what we understood to be the career peoples' comfort level with doing it," he says. "And recommendations were made up the line consistent with that recommendation. Now, it might have been reversed a year later, but at the time when the decision was made, career people in the department appeared to be comfortable with it," Rossetti is now at the law firm of Akin Gump.

Most attorneys and lobbyists who deal with Indian affairs will only speak anonymously because of ongoing interactions with the Interior Department. One lawyer who asked not to be named said, "**The Schaghticoke decision is the shameful example of all that's wrong with the recognition process. The tribe put 20 years into answering all the questions it was required to answer only to have the rules change after the last minute to deprive them of their positive finding.**"

STN's appeal pointed out several instances of what it called the BIA's "capricious and arbitrary" rule changes. In one example, the BIA advised the tribe to encourage un-enrolled members to join STN. In its positive decision recognizing the tribe, the BIA interpreted the un-enrolled members as part of a factional rivalry that provided evidence of continuous community. But in its reversal, the agency said the few members who remained un-enrolled indicated a lack of continuous community.

Several lawyers and lobbyists say that entrenched bureaucrats at Interior have an inordinate amount of power to decide which tribes receive federal acknowledgement.

The good news for tribes—and perhaps the STN—is that the Interior Department appears to be getting the message that the federal recognition process needs an overhaul. George Skibine, Interior deputy assistant secretary-management, said recently that the acknowledgment regulations are being revised. Among the proposed changes are a shortening of the process (STN filed its letter of intent to petition for federal acknowledgement in 1981) and the creation of an independent administrative forum to

review petitions before final decisions are rendered. “I think some of the groups that are petitioning feel it’s not a fair process or necessarily impartial,” Skibine said.

It’s not clear if tribes who were denied recognition will have another shot under the revised rules. *The Schaghticoke nation is in the unique position of being the only contemporary tribe to have its federal recognition terminated since the end of the termination era in the 1970s.*

Velky says he will continue to seek justice for his people. “We followed all the rules, while our opponents were talking to the Interior decision-makers, the governor, the White House, the judge, the Interior Board of Indian Appeals, the Senate Committee on Indian Affairs. Everyone was having discussions but us. We had to wait to exhaust the process. Now we’re no longer under any court oversight and we’re looking to see what options we have as a tribe that was federally recognized based on the merits of our petition.”

“We know it’s not an easy reversal to overcome. But Schaghticoke had the dubious honor of being the first tribe to have its federal recognition reversed by the BIA. We think we’ll set the stage for another, more-positive first—the first tribe to have its recognition restored.”