

**THE GRAND RIVER BANDS OF
OTTAWA INDIANS**
(PETITIONER #146)

**RESPONSE TO PROPOSED FINDING
AGAINST ACKNOWLEDGMENT**

February 26, 2024

Submitted by
The Grand River Band of Ottawa Indians

(Grand River Band of Ottawa Indians, Inc - Petitioner #146)

1316 Front Ave., NW

Grand Rapids, Michigan 49504

Prepared by
Fletcher Law, PLLC
University Place
333 Albert Ave., Suite 631
East Lansing, Michigan 48823

FOREWORD.....	3
REQUESTED RELIEF	4
PROCEDURAL HISTORY (30 YEARS)	5
ADDITIONAL CONTEXT ON PROCEDURAL HISTORY	6
TIMELINE	8
OVERVIEW OF THE PROPOSED FINDING	11
ONE CRITERION FINDING	11
UNAMBIGUOUS PREVIOUS FEDERAL ACKNOWLEDGMENT DETERMINATION	11
SUMMARY UNDER THE CRITERION	14
HISTORICAL BACKGROUND	15
CONCLUSIONS UNDER CRITERION § 83.7(B).....	15
OVERVIEW OF RESPONSE.....	16
STANDARD OF REVIEW	17
APPLICATION OF STANDARD	22
RESPONSE TO THE PROPOSED FINDING	28
INTRODUCTION	28
1855 TO 1908.....	33
<i>The Perplexing Allotment Process under the Treaty of 1855</i>	<i>33</i>
<i>GRB Community and the Court of Claims</i>	<i>45</i>
1909 TO 1947.....	49
<i>Demonstration of Community – Durant Roll</i>	<i>49</i>
<i>GRB Petitions for Treaty Enforcement and Organization under the IRA</i>	<i>57</i>
1948 TO 1983.....	67
<i>Creation of GRB Units under the Northern Michigan Ottawa Association</i>	<i>68</i>
<i>GRB Units and Docket 40-K</i>	<i>74</i>
1984 TO 2024.....	97
<i>Government-to-Government Relationship with other Michigan Anishinaabek Bands</i>	<i>97</i>
<i>The Department set GRB on this path.....</i>	<i>99</i>
<i>GRB Community Entities – Dysfunction as Evidence of Community</i>	<i>101</i>
<i>Congressional Recognition of Pokagon, LTBB, and LRB and Enactment of MILCSA</i>	<i>106</i>
<i>Tribal Recognition in Michigan and Marriage Context.....</i>	<i>108</i>
<i>Today’s GRB</i>	<i>111</i>
SUMMARY /LEGAL ANALYSIS	113
CONCLUSION.....	119
ADDITIONAL ARUGMENTS OF THE GRAND RIVER BANDS OF OTTAWA INDIANS.....	120
REVERSAL OF THE TECHNICAL ASSISTANCE LETTER’S DETERMINATION ON § 83.8	121
UNJUSTIFIED DENIAL OF ACCESS TO DOCKET 40-K ROLL.....	124
LOSS OF ACCESS TO GRB’S GENEALOGY DATABASE	129
ALDO SALERNO	132
2008 CARL ARTMAN GUIDANCE	134
25 C.F.R. § 83.3(C)	136
SOURCES CITED.....	137
APPENDIX A - GRAND RIVER BANDS - DURANT ROLL LOCATION LIST	144
APPENDIX B - GRAND RIVER BANDS – 1965 NMOA MEETING GRB BREAKDOWN	146
APPENDIX C - 1974 DOI DOCKET 40-K MEETING GRB BREAKDOWN	147

FOREWORD

On February 22, 2023, the Office of the Assistant Secretary-Indian Affairs (“AS-IA”) within the Department of the Interior (“DOI” or “Department”), via the Principal Deputy Assistant Secretary (“PDAS”), issued a “*Proposed Finding Against Acknowledgment of the Grand River Bands of Ottawa Indians, Petitioner #146*” (“PF” or “Proposed Finding”). The Grand River Bands of Ottawa¹ Indians (“Petitioner,” “GRB,” “Grand River Bands,” “us,” “we” or “our”) has sought Federal Acknowledgment as a recognized tribal entity pursuant to 25 C.F.R. Part 83 (1994)² (the “Regulations”) since 1994. This constitutes the Petitioner’s response to the Proposed Finding amongst other relief requested (“Response”).³

¹ In addition to “Ottawa” we may refer to the other iterations of our people including “*Odawa*.” In the case of “Chippewa” it may also be referred to as “Ojibwe” or “Ojibwas.” With “Pottawatomi” it may be “Potawatomi” or “Bodewadomi.” And all three, “Ottawa” “Chippewa” and “Pottawatomi” may be referred individually as “*Anishinaabe*,” or collectively as “*Anishinaabek*.”

² *Procedures for Establishing That an American Indian Group Exists as an Indian Tribe*, 59 Fed. Reg. 9280 (February 25, 1994), codified at 25 C.F.R. Part 83.

³ “New” evidence not previously submitted by GRB will be notated in the footnotes as “***New Evidence***.”

REQUESTED RELIEF

By this Response and the justification provided herein, the Indian Canons of Construction, in addition to fundamental notions of justice and fairness, the Grand River Bands petitions the Assistant-Secretary Indian Affairs/Principal Deputy Assistant Secretary take the following action (listed in order of preference):

(1) GRB requests the United States, through the Department of the Interior, Assistant Secretary – Indian Affairs (or PDAS), to recognize the government-to-government relationship between the Grand River Bands of Ottawa Indians and the United States as promised in our treaties, and add GRB to the “*Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*” list outside the scope of the Regulations⁴; or

(2) The PDAS rescinds the PF in its entirety and issues a Final Determination on all mandatory criteria in favor of GRB’s acknowledgment based on GRB satisfying the elements of unambiguous Previous Federal Acknowledgment pursuant to 25 C.F.R. § 83.8 and contemporary community provisions pursuant 25 C.F.R. § 83.8(d)(2); or

(3) AS-IA/PDAS finds that GRB is a previously acknowledged tribe, one that is not obligated to establish all seven mandatory criteria for the entire historical period; further, ASIA reverses the PF on the contemporary community, based on new evidence, and directs OFA to proceed to examine the other criteria for previously acknowledged tribes, after giving GRB an opportunity address the criteria in section 83.8 in a supplement to our Petition; or

(4) GRB’s final request, if none of the above are granted, we request the Department/PDAS permit GRB to withdraw our Petition.⁵

⁴ As the late, former “MILS” Director, Jim Keedy stated to Congress (*see* footnote 325), nothing in the Part 83 regulations prohibits the Department, from recognition of a tribal entity outside of the Part 83 process in the manner GRB is requesting. The Department, in fact, has a legal obligation to right this wrong by rescinding the past **ILLEGAL** action of the Department terminating GRB’s relationship with the U.S. in 1872.

⁵ Another Michigan based petitioner, the *Burt Lake Band*, is embroiled in litigation with the Department over the ability to re-petition after a negative final determination. GRB’s stance on “re-petitioning” under the 2015 regulations can be derived from the comments in “ADDITIONAL CONTEXT ON PROCEDURAL HISTORY.”

PROCEDURAL HISTORY (30 YEARS)

The GRB issued its Letter of intent to DOI in 1994, and GRB finalized and submitted its Petition on December 8, 2000, to the Office of Federal Acknowledgment (“OFA”). GRB submitted supplemental materials in 2004. OFA issued a Technical Assistance letter (the “TA Letter”) on January 26, 2005. The Petitioner provided a formal response which was received by OFA/DOI on June 9, 2006, and placed on the “ready” for active consideration list on March 29, 2007. Approximately 7 years later, in 2013, GRB’s Petition was elevated to active consideration. Over a decade later after being placed on the active consideration list, and in unabashed violation of numerous of the Department’s own regulations for 8 ½ years, DOI issued the PF based on only one of seven of the mandatory criteria outlined in 25 C.F.R. § 87.3 for determining whether GRB is an Indian tribe.⁶ And the grounds the Department referenced repeatedly, “*insufficiency*,” is something the Department had a legal obligation to inform GRB of, but didn’t.

Subsequent to the issuance of the PF, the GRB requested a formal technical assistance meeting pursuant to 25 C.F.R. § 83.10(j)(2). The formal technical assistance meeting (“TA Meeting”) was conducted on July 31, 2023, at the Department of Interior offices and was transcribed.⁷ Putting it lightly, wasn’t incredibly helpful for the Petitioner.⁸

⁶ DOI revised the Part 83 regulation in 2015; *see* 80 Fed. Reg. 37887 (July 1, 2015).

⁷ The transcript generated from the Technical Assistance Meeting (held on July 31, 2023) shall be referred to as the “*TA Transcript*.”

⁸ *See* 59 Fed. Reg. 9280, 9290 for a discussion on the concept of a Technical Assistance “meeting” and while we recognize this is a vestige of the past now (2015 Regulations modified this aspect) it’s still the law for the Department and GRB. The technical assistance meeting GRB participated in was not only incredibly frustrating, but largely impractical and unconstructive. Anybody interested should read the TA Transcript for yourself. It’s not the most exciting reading material but for those who have practiced and worked on tribal recognition, it is appalling to call what GRB received “technical assistance” as contemplated under the Regulations. At the same time, you cannot blame the OFA director and staff as they really aren’t allowed to speak freely or engage in a back and forth, because vast majority of recognition decisions will end up being litigated (whether positive or negative determinations are issued). That’s just where this process is at. This process is irreconcilably broken and has been broken since it was created, and exacerbated by gaming. But here’s how technical assistance meetings were supposed to work:

Response: The current language calls for the report to summarize the “evidence and reasoning” for the proposed decision. Revised language has been added to further insure that the report provides a detailed discussion of the basis for the decision...[]Further, provision has been made for a formal meeting on the proposed finding which would be transcribed. **This will allow a thorough exploration of the bases for the proposed finding which will be on the record, as well as an**

ADDITIONAL CONTEXT ON PROCEDURAL HISTORY

GRB's Petition moved to the "active consideration" list in 2013. OFA's correspondence, dated December 13, 2013, states: "**THE DEPARTMENT ANTICIPATES ISSUING A PROPOSED FINDING ON OR BEFORE DECEMBER 1, 2014.**" GRB at the time says, "well, ok, at least we know we will get a decision soon." The Petitioner had not only assumed that a revised petition under the new regulations would stall the process further but also (naively) assumed the Department would do what it said it was going to do. GRB deemed it irresponsible to its citizens to re-petition and start over when the final rule wasn't even anticipated to be issued prior to when the Department was legally required to issue a proposed finding.⁹

The Regulations specifically require the Department to issue a decision within one year (with some extension authority) from the date the petition is placed on the "active consideration" list.¹⁰ GRB could not have possibly prognosticated that the Department would not only ignore the law, but then proceed to issue no less than **10 extensions** from 2017 under the guise of "good cause." And we can throw a suspension in there due to the COVID-19 pandemic. This culminates in OFA issuing the PF only a decade later (a mere **3,374** days) after the law required it do so. And even then, only perform an analysis on one of seven criteria due to "insufficient" evidence and undue a clear determination of unambiguous previous federal acknowledgment. Nothing stated here is exaggerated.

While we are it, this is a good opportunity to acknowledge that **NOT A SINGLE TRIBAL NATION HAS BEEN RECOGNIZED UNDER THE 2015 REGULATIONS!** The Petitioner was

exchange of views and information between the Bureau, the petitioner and any interested parties. These changes accord with the Department's view that a proposed finding is a proposal subject to change based on additional analyses and evidence. Since new data and analysis may affect the conclusions proposed in the finding, it is important to make the petitioner clearly aware of the evidence and reasoning behind the proposed decision.

⁹ See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68, 74 S.Ct. 499 (1954), otherwise referred to as the *Accardi* doctrine (that federal agencies are required to follow their own regulations and/or internal guidance).

¹⁰ See 25 C.F.R. § 83.10(h).

asked by various parties and officials why it didn't re-petition under the 2015 regulations, or maybe we should do that if we can re-petition, but what would be the point? Only one tribe has been recognized administratively over the past 14 years (Pamunkey) since Shinnecock (in 2010). One way or another, GRB continues to fight to defend our treaty rights, as we have for the past 168 years, and will continue to do so.

The documented record of our government-to-government relationship with the United States, as acknowledged through our treaties, is unmistakably clear. GRB is without doubt that our Petition, whether scrutinized by Congress, federal courts, the IBIA, or pursuant to a fair administrative system (*i.e.*, a system that parallels the recommendations of the American Indian Policy Review Commission), would survive such scrutiny.¹¹ Our treaties are the supreme law of the land, and it's time for the United States to live up to its word.

¹¹ See generally, *American Indian Policy Review Commission, Final Report* (May 17, 1977); see also *Task Force Ten: Terminated and Nonfederally Recognized Indians, Final Report to the American Indian Policy Review Commission* (October 1976).

TIMELINE¹²

- 1821 Ancestors of the Match-E-Be-Nash-She-Wish Band of Pottawatomi, Nottawaseppi Band of Huron Potawatomi, Pokagon Band of Potawatomi and Grand River Bands execute the Treaty of 1821 (this is the treaty relating to Docket 40-K).
- 1836 Ancestors of the Grand Traverse Band, Little Traverse Bay Bands, Sault. St. Marie Band, Bay Mills Indian Community, Little River Band, and Grand River Bands execute the Treaty of 1836 (this is the treaty relating to Dockets 58 and 18-E).
- 1838 Grand River Bands execute the Compact of June 5, 1838, allowing GRB to paid at Grand Rapids for ongoing annuity payments instead of at Mackinac.
- 1855 Ancestors of the Grand Traverse Band, Little Traverse Bay Bands, Sault. St. Marie Band, Bay Mills Indian Community, Little River Band, and Grand River Bands execute the Treaty of 1855 (this treaty removed us and promised allotments-broken).
- 1857-90 GRB is forced to relocate and found “reserved lands” were not reserved, and instead, were occupied or owned by speculators and/or cleared and squatted upon by settlers.
- 1872 Final annuity payments made to GRB and other bands pursuant to Treaty of 1855 and Secretary Delano *illegally* terminates the government-to-government relationship by misinterpreting Article V of the 1885 Treaty as dissolving the political relationship between “the tribal organization of Ottawa and Chippewa Indians” and the U.S.
- 1872-2024 GRB experiences abject poverty, discrimination, 100% deletion of communal lands (via allotment, fraud, stolen, or taxes), and depletion of resources from the illegal administrative termination “dissolving” the government-to-government relationship with “Ottawa & Chippewa Indians” in violation of the Treaty of 1855 (these facts were later recognized by OFA/the Department (GRB/NHBP/MBPI), Congress (LTBB/ LRB/Pokagon), and federal courts (*U.S. v Michigan*; *GTB v US Atty*)).
- 1872-76 Congress passes three different bills regarding lack of reserved lands for GRB as promised under 1855 Treaty, but really ends up protecting squatters, speculators, and settlers for GRB land already taken/stolen from the 1855 Grand River Area.
- 1905 Congress enacts a jurisdictional/reference act granting the “Ottawa and Chippewa Indians of the State of Michigan” (GRB, Grand Traverse, LTBB, LRB, Bay Mills, Sault) to file in Court of Claims against the U.S. for misuse of 1836 Treaty funds.
- 1907 Court of Claims finds in favor of the “Ottawa and Chippewa Indians” on basis that 1855 Treaty did not discharge the U.S. of its obligations under the 1836 Treaty.
- 1908 Henry Durant prepares “Durant Roll” with copious Field Notes utilizing the 1870 Annuity Roll (because we are a Treaty tribe) and relies on GRB *ogemuk* to prepare the roll; Groups Ottawas into 4 bands (Grand River, Traverse, Mackinac, and Sault Ste. Marie); Still used for certification by bands and federal government today.

¹² See also Dr. James M. McClurken, “*Grand River Bands of Ottawa Indians: Ethnohistorical Response*” (2006) at 1-25 (*Documents Relating Recognition of a Grand River “Entity”*) (hereinafter “McClurken, 2006 Ethnohistorical Response”).

- 1918-26 135 GRB *ogemuk* or headman (vast majority of whom previously counseled with Durant) authorize Jacob (Walker) Cobmoosa as “Power of Attorney” to pursue treaty annuity claims but due to Delano’s illegal termination in 1872, petitions are ignored.
- 1934 Indian Reorganization Act is passed by Congress.
- 1934-1940 GRB *ogemuk* meet with COIA, Superintendent, others, within the Grand River Area with about the IRA; Department officials recommended organization, but due to lack of appropriations, IRA organization not extended to Michigan lower peninsula tribes.
- 1946 Indian Claims Commission Act is passed and Levi McClellan (father of Waunetta Dominic) sends letter to a U.S. senator requesting funds to litigate treaty claims.
- 1948 GRB attends the first Northern Michigan Ottawa Association (NMOA) meeting and first accepted ICC claim is filed by NMOA on behalf of all Ottawas in Dockets 18, 40, and 58 (including GRB claims; Docket 40 later morphs into Docket 40-K).
- 1950-52 GRB Units 3, 4, 5, 6, and 7 formed within NMOA encompassing the (historic) Grand River Area (counties of Allegan, Kent, Muskegon, Newaygo, Oceana, Ottawa, Mason & Manistee); Unit 1 = LTBB; Unit 2 = Grand Traverse; Unit 3 = MBPI (Allegan); Units 4 (Grand Rapids) and 5 (Muskegon) = GRB; Unit 6 = (mostly) GRB (Lansing); Units 7/11 = LRB (Manistee/Mason and Wisconsin/Michigan boarder).
- 1953 ICC recognizes and distinguishes GRB as the only Ottawa eligible band under the Treaty of 1821 while other Ottawa bands are deemed ineligible.
- 1958 Cobmoosa Reunion occurs.
- 1964 ICC severs GRB’s Docket 40-K claims from other Ottawa bands (in February) and issues judgment in favor of GRB in Docket 40-K case (in December).
- 1965 GRB votes autonomously from rest of NMOA at Annual Meeting and takes several governmental actions on Docket 40-K distribution plan (including ¼ GRB quantum).
- 1968-69 ICC Final Judgment on Docket 40-K claims; GRB Descendants Committee formed at request of BIA; BIA brushes off GRB-supported distribution plan from 1965.
- 1969-72 Several GRB-wide meetings held with evidence including recorded votes to reinforce distribution plan; evidence also contains attendance and mailing lists for GRB; Department officials in attendance at vast majority of NMOA and GRB meetings.
- 1970 ICC issues judgment for Dockets 58 and 18-E against US; \$10 Million awarded.
- 1974 The Department conducts a transcribed hearing in Grand Rapids, MI on the Docket 40-K distribution plan focusing on ¼ GRB blood requirement for eligibility.
- 1975-76 Congress conducts hearings on GRB 40-K distribution plan and GRB successfully convinces Congress to include ¼ blood quantum over strenuous lobbying of the Department. Congress passes GRB bill approving distribution plan as GRB sought.
- 1979 Judge Fox decides *U.S. v. Michigan* holding Delano’s administrative termination of 1855 treaty band as illegal; Recognizes treaty hunting and fishing rights of Ottawa (but since GRB is not federally-recognized, GRB can’t partake even as of today).

1980	Grand Traverse is the first band/tribe to be administratively recognized under regulations after BAR Director Shapard's advice to petition as separate Ottawa bands.
1980-88	"Genia" and "Minneapolis" plans regarding distribution of 1836 claims (Dockets 58 and 18-E) divide GRB community into factions; Joe Genia elected as NMOA Chair.
1982	Pokagon Band files for recognition pursuant to Part 83 regulations.
1983	Former NMOA unit #7 forms non-profit corporation (Little River Band).
1989	Little Traverse Bay Bands submits a Notice of Intent to File Petition.
1991	Little River Band submits a Notice of Intent to File Petition.
1994	Pokagon, Little Traverse, and Little River bands are recognized by Congress after testimony reveals significant backlog with BAR lead to delays in review.
1994	Successors to Units 4 and 5 file separate Notices of Intent (Genia/Yob); Negake files as "Chief" with little to no support except from immediate and extended family.
1995	GRB holds unity meeting with Genia/Yob factions and agree to merge informally.
1996	Nottawaseppi Band of Huron Potawatomi administratively acknowledged.
1997	27 years after ICC award the Michigan Indian Land Claims Settlement Act enacted by Congress for distribution of judgment from <u>Dockets 58 and 18-E</u> with provisions for GRB (post federal recognition but contains a 10-year placeholder for GRB entity distribution); GRB Constitution adopted and factions merge formally.
1999	Match-E-Be-Nash-She-Wish Band of Pottawatomi administratively acknowledged.
2000	GRB submits petition for administrative acknowledgment pursuant to Part 83. ¹³
2005	Michigan senators introduce S. 437 to expedite review for GRB; OFA issues TA letter determining GRB satisfied regulations for previous federal acknowledgment.
2007	GRB misses MILSCA 10-year deadline for tribal funds – judgment distributed on per capita basis; GRB Placed on "Ready, Waiting for Active Consideration List."
2013	GRB placed on Active Consideration List; OFA lists one year as timeline for PF.
2021	GRB commemorates (not celebrates) the bicentennial of the Treaty of 1821 at Ah-Nab-Awen Park in Grand Rapids, with remarks, drumming, and a Water Ceremony.
2023	GRB sponsors the 41 st Annual Homecoming of the Three Fires Jiingtamok (pow-wow) at Riverside Park; OFA/PDAS issue negative one criterion finding regarding <i>community</i> and retracts finding of Unambiguous Previous Federal Acknowledgment.

¹³ The PF's timeline ends here with the upon filing of GRB's Petition in 2000. The PF, however, "analyzes" several items and events up to year 2022.

OVERVIEW OF THE PROPOSED FINDING

One Criterion Finding

The PF starts by citing to “Guidance and Direction Regarding Internal Procedures of May 23, 2008” published in 2008 during Carl Artman’s eventful stint as AS-IA.¹⁴ The 2008 OFA Guidance is assumed to provide substantiation for OFA’s one criterion finding although GRB argues quite differently as this guidance was intended to allow the Department, “*during the initial stages of active consideration*” to issue a finding on only one criterion. Assuming, *arguendo*, this guidance is enforceable, OFA’s actions contravene the Regulations with GRB. GRB demonstrated in 2005 (OFA in the TA letter) to have proved unambiguous previous Federal acknowledgment.¹⁵

Unambiguous Previous Federal Acknowledgment Determination

The PF rescinds the TA Letter’s previous Federal acknowledgment determination and alludes to the “provisional” nature of the determination.¹⁶ The TA Letter indicated GRB was eligible under the reduced burden that comes with previous Federal acknowledgment:

The initial review of the documentation and narratives that GRB submitted indicates that the Federal Government previously acknowledged the historical Grand River Bands of Ottawa Tribe by treaties in 1836 and 1855, and continued to acknowledge this tribe through annuities payments ending in 1875. GRB suggests that it represents a portion of that treaty tribe that removed to Oceana and Mason counties, Michigan, shortly after the last treaty signing in 1855. The current members of GRB claim to descend from that tribe. **This evaluation finds that GRB is eligible to proceed under §83.8, which modifies the requirements for the acknowledgment criteria in §83.7 by reducing on the burden of evidence for some criteria.**¹⁷

¹⁴ 73 Fed. Reg. 30146, 30148 (May 23, 2008)(hereinafter “2008 OFA Guidance” stating “[i]f a proposed finding against acknowledgment is issued on fewer than seven criteria and if, following an evaluation of the evidence and argument submitted during the comment period, it is determined that the petitioner meets the criterion or criteria, then the Assistant Secretary will issue an amended proposed finding evaluating all seven criteria.”). The 2008 OFA Guidance is analyzed further in the “**Additional Arguments**” section – 2008 Carl Artman Guidance.

¹⁵ 2008 OFA Guidance, 73 Fed. Reg. at 30148. No petitioner of record, other than GRB, that was determined to have unambiguous previous Federal acknowledgment during the TA review but then was required to show historical community when contemporary community was denied in a negative proposed finding.

¹⁶ PF at 2.

¹⁷ TA Letter at 1.

The PF, however, limits its review, to *community* pursuant to § 83.7(b) dating back to 1855 and does not further address §83.8 or previous federal acknowledgment again.¹⁸ The PF explains that GRB’s “materials were insufficient to meet criterion § 83.7(b) at present....,” but GRB demonstrates otherwise concerning GRB’s previous Federal acknowledgment determination.¹⁹

The Regulations (at § 83.8) govern the method for a petitioner to satisfy the rules for determining whether a petitioner qualifies for unambiguous previous federal acknowledgment:

(a) Unambiguous previous Federal acknowledgment is acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment **[TA Letter states 1875 as last acknowledgment using the last 1855 Treaty Annuity Payment as the basis.²⁰]** If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of §83.7 to the extent required by this section.

(b) A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to §83.10(b). If a petition is awaiting active consideration at the time of adoption of these regulations, this review will be conducted while the petition is under active consideration unless the petitioner requests in writing that this review be made in advance **[TA Letter determined in 2005 GRB’s evidence was adequate (with questions) - additional narrative and evidence provided herein²¹]**.

(c) Evidence to demonstrate previous Federal acknowledgment includes, but is not limited to:

(1) Evidence that the group has had treaty relations with the United States **[GRB proves this: treaties in 1821, 1836, 1838 Compact, 1855; Durant Roll and 1870 Annuity Roll; ICC Claims, and distribution plans legislation]**.

(2) Evidence that the group has been denominated a tribe by act of Congress or Executive Order **[GRB can prove this²²]**.

¹⁸ Id.

¹⁹ Id. OFA’s gaffe is analyzed here, but also further analyzed under the “**Additional Arguments**” section – Unambiguous Previous Federal Acknowledgment” section.

²⁰ See TA Letter at 1-2.

²¹ Id.

²² Congress does this repeatedly, but most recently enacted a law entitled “*To provide for the disposition of funds appropriated to pay a judgment in favor of the Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 40-K, and for other purposes*” (see 90 Stat. 2503 (1976)); see also 122 Cong. Rec. H 12180 (Oct. 1, 1976).

(3) Evidence that the group has been treated by the Federal Government as having collective rights in tribal lands or funds **[GRB proves this – U.S. held funds in trust for GRB most recently as 2005 (Michigan Indian Land Claims Settlement Act); also, until 1976-1986 with the ICC Docket 40-K judgment (appropriated by Congress in 1968); Claims litigated in 1900s contained collective funds for 1836 Treaty Ottawa & Chippewa].**

(d) To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that:

(1) The group meets the requirements of the criterion in §83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity **[GRB proves this - (ask other Michigan tribes; Durant Roll Field Notes; IRA Meetings in 1930s; ICC opinions; DOI and NMOA both viewed GRB Units 3/4/5/6/7 as distinct and autonomous; Michigan Indian Land Claims Settlement Act)].**

(2) The group meets the requirements of the criterion in §83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically **[All of the people on the GRB roll can prove descendancy from GRB historically (100% of them); Contemporary / Modern – ask other Michigan bands; internal conflicts on goals/decisions; discrimination; settled disputes between members with meetings/voting; 3 Fires Pow-wow)].**

(3) The group meets the requirements of the criterion in §83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in §83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in §83.7(c) **[GRB did this-see above(d)(2) – political influence over members as autonomous entity (via members consider issues addressed by leaders as important); internal conflicts on goals/decisions; settled disputes between members with meetings/voting].**

(4) The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g) **[GRB proves this – (d) GRB Constitution; (e) rolls of descendancy (multiple); (f) principally composed of**

GRB “only” citizens (must take historical context in the account here = Canons); (g) no prior congressional termination].

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d) (1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7 (a) through (c) from last Federal acknowledgment until the present [**Not necessary, but GRB can prove this too (see the following 100+ pages of evidence and analysis including GRB discrimination, named collective native ID more than 50 years, and political influence over members as autonomous entity (via members consider issues addressed by GRB leaders as important)).**].

GRB believes the Department can reinstate our eligibility for the reduced burden that comes with demonstrating prior Federal acknowledgment (which GRB did in 2005 and does here again in 2024). The Department must then apply the “reasonable likelihood” standard to view the makeup of GRB (**100%** can trace to the Durant Roll) in the appropriate (*i.e.* legally required) historical context. Then apply the Canons to any ambiguities that the Department may encounter. At that point, it will be apparent that the Department is obligated to *reaffirm* the government-to-government relationship with GRB as was promised by treaty establishing a trustee relationship.

Summary Under the Criterion

OFA’s “Summary Under the Criterion” is one the first indications of its wayward analysis into the history of GRB:

While the Petitioner’s members appear to descend from these historic Grand River-area bands (a claim that would be evaluated under criterion §83.7(e) in an Amended Proposed Finding if the deficiencies in this limited finding are resolved), the Petitioner has not demonstrated that its members comprise a distinct community that has existed as a community through time. In furtherance of its claim, the Petitioner submitted evidence of groups of descendants occasionally joining together for various purposes, including making claims against the Federal government, in the name of the “Grand River bands.”²³

²³ PF at 8.

The PF then indicates that GRB came together following the congressional recognition of the Little Traverse Bay Bands and the Little River Band. This section is summarized with a finding that:

In sum, although the claims of [GRB] stem from descent from a group of historic bands, [GRB] has not documented any activities since the treaty era that reflect a continuously existing distinct community. Rather, the evidence shows that the Petitioner came together beginning in 1995 from several independent groups.²⁴

GRB acknowledges the fractionation during the 1980s and early 1990s, but these were not “several independent groups” as stated in the PF. GRB and other (now federally-recognized bands) had \$70 million to divide from the Dockets 58 and 18-E judgments (which was \$10 million in 1970) and it certainly divided everyone within GRB and solidarity amongst the 1836 bands.

Historical Background

This portion describes the basic history of GRB including some general detail about GRB’s participation in the treaties executed in 1821, 1836, and 1855. Like the PF, GRB focuses on events after the execution of the Treaty of 1855.²⁵

Conclusions Under Criterion § 83.7(b)

The PF denotes OFA’s view of the evidence submitted by GRB as insufficient to show a distinct community “at present” or at all from historic times through today:

The evidence in the record is insufficient to show that Petitioner #146 comprises a distinct community at present, as required under § 83.8(d)(2), or that the Petitioner has existed as a community from historical times until the present, as required under § 83.7(b) or § 83.8(d)(5).²⁶

The PF goes on to state:

Throughout the time periods discussed below, boundaries across the Petitioner's kin-based networks have been fluid and inclusive, which makes the existence of a distinct community through time difficult to determine. Indians and non-Indians alike most often identified the Petitioner's ancestors generally as Indians or as descendants of the “Ottawa and Chippewa” treaty tribe, not as the “Grand River Bands,” and treated them as such. [] They also commonly interacted and socialized

²⁴ PF at 9.

²⁵ See generally PF at 10-19.

²⁶ PF at 21.

with other Ottawa, Chippewa, Potawatomi, other Indians, and non-Indian peoples. Much of the information in the record applies to descendants of Ottawa peoples in general whose ancestors lived in the Grand River valley, some of whom had initially relocated to reserved land in Mason and Oceana counties, but there is insufficient evidence in the record to determine that those ancestors comprised a distinct community.²⁷

Finally, prior to reviewing evidence period to period, the PF concludes that GRB appears to be a fictitious tribal entity formed in the 1990s (which is farcical):

At the beginning of the modern period (1984 to Present), several separate requests for recognition were sent to the Federal government, though there is little to no indication that these requests were made on behalf of an underlying distinct community. In fact, as discussed below, the evidence suggests that the communities containing the Petitioner's members were locality-based and functioned separately from each other. These requests were followed by significant efforts to combine the separate groups of descendants and actively recruit additional individual descendants, leading to the creation of Petitioner #146 between 1994 and 1997.²⁸

GRB addresses and effectively rebuts all these conclusions in this Response.

OVERVIEW OF RESPONSE

GRB demonstrates distinct community and all mandatory criteria by:

- The fact GRB is a Treaty Tribe (most recently 1855). **100%** of citizens trace to Durant Roll and meet a ¼ GRB blood requirement for citizenship.
- Our documented attempts, generally unsuccessful, to have treaty rights enforced in the aftermath of the Treaty of 1855 collectively with other Ottawa bands (*see Grand Traverse Finding*).
- Demonstration of the discrimination faced as part of the allotment process after 1855 into the 1890s; documented political discrimination by United States during 1930s-1940s; discrimination by other U.S. and other Michigan tribes as “non-reservation” natives during 1970s; general evidence of racial discrimination since 1855 through present.
- Assemblage of Durant information to compile the Durant Roll (and Field Notes) unmistakably denominating “Grand River” bands, whose location identified by Durant (*predominately*) in the Grand River Area.²⁹

²⁷ PF at 21 (footnote omitted).

²⁸ PF at 22.

²⁹ The information contained in the Durant Roll, conveniently, has been published as *Bureau of Indian Affairs Special Agent Horace B. Durant's 1907 Durant Roll Field Notes*, Raymond C. Lantz, Heritage Books, Inc (2014)(hereafter cited as “Lantz”). And rather than making assumptions, we bought OFA a copy. ***New Evidence***.

- Identification as “Grand River” (notwithstanding variations) as a collective native identity continuously over a period exceeding 150 years (understanding the regulation only requires 50 years) by the other *Anishinaabek* bands, the federal government (BIA/Department, ICC, Congress, other federal courts), the State of Michigan, the NMOA.
- The continued documented engagements with the United States to enforce treaty rights throughout the 1920s (albeit unsuccessfully via Jacob Walker Cobmoosa and Sampson Robinson).
- Documented attempts to organize under the IRA in the 1930s-1970s including meetings in the Grand River Area by federal officials and endorsements for organization by federal officials. The Department and Congress utilizing same or similar evidence for acknowledgment of 5 other Michigan tribes (Grand Traverse, LTBB, LRB, Pokagon, and NHBP) two of which are part of GRB historically (LRB and MBPI).
- Indian Claims Commission, as a developed fact-finding machine, could ascertain GRB is an autonomous, distinct band within the Ottawas.
- Petitioner’s new evidence on the Docket 40-K judgment distribution transcripts, processes, minutes, and mailing lists of various GRB units.
- Concise statements contained in the deposition of Waunetta Dominic as part of the *U.S. v Michigan* litigation providing corroboration.
- Distribution of claims and recognition process leads to dysfunction, then unity.

STANDARD OF REVIEW

To say the standard of review under the 1994 Part 83 regulations is mystifying is an immense understatement. Even when the Regulations were under review prior to promulgation the standard was under duress (and for good reason).³⁰ This portion of the Petitioner’s response will

³⁰ See 59 Fed. Reg. 9280 (February 25, 1994). Even at the time the 1994 Regulations were promulgated, the issues relating to the implementation of the standard, as stating one thing (“reasonable likelihood”), but implemented consistent with the “beyond a reasonable doubt” standard, were evident:

Comments: ...commenters requested a specific statement of the general burden of evidence...[should be] by a “preponderance” of evidence or that a criterion be considered met if it were more likely true than not.

Response [from DOI]: These comments are based on the incorrect assumption that the acknowledgment process presently requires proof beyond a doubt. The process only requires evidence providing a reasonable basis for demonstrating that a criterion is met or that a particular fact has been established...[discussion of preponderance standard not useable]...In response to these comments, language has been added to §83.6 codifying current practices by stating **that facts are considered established if the available evidence demonstrates a reasonable likelihood of their validity...(emphasis added)**.

focus on the elusive “reasonable likelihood as to the validity of the facts” standard, if can even be called that:

A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner **may also** be denied if there is insufficient evidence that it meets one or more of the criteria. A criterion shall be considered met if the available evidence establishes a **reasonable likelihood of the validity of the facts** relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.³¹

Saying the standard is “subjective” is a colossal underestimation as well.

Creating and applying an elusive *standard* that is entirely subjective isn’t even remotely close to what the “American Indian Policy Review Commission” endorsed for acknowledgment of unrecognized tribes.³² The only complete reference to the “reasonable likelihood” standard in the PF, is as follows:

The evidence submitted by Petitioner #146, and evidence Department staff obtained through its verification and evaluation research, is insufficient to demonstrate, under the reasonable likelihood of the validity of the facts standard, that Petitioner #146 meets the mandatory criterion for Federal acknowledgment, § 83.7(b), either as is or as modified by § 83.8.³³

Specifically, the PF indicates the Petitioner received a negative finding due to “insufficient” evidence and the base phrase “insufficient” throughout the PF.³⁴ Only in limited contexts does OFA proffer specific analysis as to why GRB didn’t meet the criteria under § 83.7(b) (or § 83.8(c)(2) for that matter, but we will get to that). Was it that the evidence submitted too limited? Or was it OFA’s opinion that the evidence wasn’t too limited, but tells a different story that what the Petitioner is contending?

The Petitioner did what it could during the TA Meeting to identify and quantify the standard of review through its questioning of Department officials specifically about the burden

³¹ 25 C.F.R. § 83.6(d) (**Emphasis added**).

³² See footnote 11.

³³ PF at 9.

³⁴ Id.

of proof. The following exchange exemplifies the elusiveness of how to articulate the standard to evaluate GRB's evidence (or how it was insufficient):

MR. FLETCHER: ...And I think one way or the other, we've been trying to get at that burden of proof throughout these proceedings, unsuccessfully in my opinion.

It appears to me in a lot of cases that we are required to prove things beyond a reasonable doubt, and that can't possibly be the standard. But I would like to hear OFA's thoughts on the standard under the regs, please.

MR. PARTESOTTI: This is John-Michael with the Office of the Solicitor. And I can discuss that a little bit. So it is raised in the proposed finding that the standard under which the petitioner's claims have been evaluated is the reasonable likelihood of the validity of the facts standard. And I'm just going to quote from the proposed finding here.

It states that, "The Part 83 regulations do not require proof beyond a reasonable doubt, rather, the process only requires evidence providing a reasonable basis for demonstrating the criterion is met or that the particular fact has been established. The regulations explicitly taken into account the inherent limitations of historical research on community and political influence. This does not mean, however, that a group can be acknowledged where continuous existence cannot be reasonably demonstrated."

MR. FLETCHER: Thank you, I guess. I get that. I guess I'm referring to the practice...But is there anything in addition to just reciting the standard that could be helpful in this context? How is reasonable likelihood implemented?

DR. FLAVIN: Well, this is Francis speaking.

One of the things when you're doing historical research in general and you're trying to demonstrate that something was the case, it's often important to kind of know what it is specifically that you're attempting to demonstrate.

And one of the things that I think was difficult in this finding was that it was really hard for us to get our minds around what this entity traveling through time looks like. Maybe it starts out as 19 separate bands, and comes forward in time, and maybe kind of merges together or something by the 1870s or the, you know, 19 teens, or something like that. I think in the TA response it said that the different components didn't come together until the 1980s, I think, or maybe it was the 1990s, I forget.

But having a good understanding of the community, this entity, this continuously existing entity coming through time, is a -- is something that we would be kind of looking for. Like, you can say, okay, it was one community in 1860, or one community in 1960. And it's like, okay, all right, one community.^[35]

Who's in it roughly? What does it look like? How is it composed? Okay. Now this evidence is supporting that this exists and oh this is also continuous through time.

And there are a couple of places in the TA letter -- I actually pulled some stuff up from criterion A. It mentions a lot of -- that the petition submissions either mention in the narrative or in the supporting documentation, lots of different Indian entities from Michigan, and were sometimes unsure which ones are supposed to be the petitioner, which ones are not supposed to be the petitioner, and sometimes there's overlap between them.

And so what might that be? And so what is the claim? What is the evidence that supports the claim? And then we will evaluate that -- that particular claim.

That's a simplified way of looking at it. But I think that would help us understand better what it is that you're trying to -- what it is that you're trying to claim as your continuously existing community.

MR. HAIT: And just taking it maybe one -- maybe a little bit more practical, from a more practical perspective, you know, we have in the regs, there are several types of evidence listed under criterion B that involve, you know, significant numbers of members, or a predominant portion, things like that.

There's other types where, for example, marriage rates, where we would have to look at, you know, individual marriages over a broad number of people.

So whenever we're looking at evidence like that, you know, we think -- okay -- a significant portion. Well, this particular document lists, you know, 75 people; is that a significant portion? Is that significant numbers of members? Well we don't

³⁵ (Emphasis added). This statement encapsulates a fundamental issue with OFA and GRB's Petition. GRB is a distinct community, but we have never existed as "one community"- GRB has always existed as a confederation of multiple bands (kin-based), the geographic location of which, and citizenship of which has been fluid, largely in response to dynamics from outside its internal political dynamics (*i.e.* missionary influences caused one Band community to split along religious lines; removal; US failure to implement allotment process of 1855 treaty/loss of allotments/homesteads and what Congress and U.S. federal courts found to be an unlawful failure to maintain government-to-government relations based on improper interpretation of Article 5 of the 1855 treaty). All of this is the exact same history as recognized by OFA previously with Grand Traverse and MPBI, and as Congress recognized with LTBB and LRB. OFA is applying the "community" criteria in a manner that both ignores the political structure of the GRB but also violates the federal governments' commitment in the Treaty of 1855.

know. We don't -- we don't have the number of -- the total number of members. If it's 75 out of 100, absolutely that would be significant, predominant and then some. If it's 75 out of 10,000, that's not -- that would be less significant. You know.

And so when we're looking at a lot of the evidence that was presented and the way that it was presented to us, we just simply can't quite get to a conclusion because we don't know who is in the community.^[36]

Even in looking at marriage rates, you know, the marriage analysis that was presented to us involved looking at ancestors of the members at the time. And, you know, so when I looked at some of the other evidence that was being presented over that same period of time, you know, we were being told that, you know, Waunetta Dominic, for example, was a very important member of the community. She wasn't even in the -- in the database that was used for the marriage analysis. You know, other individual leaders, you know -- I believe Arthur Mobey may have been one of them not even in the database.

So when we're looking -- and that was part of the problem with looking at that -- the marriage analysis. It's like, well, it seems that this marriage analysis was done on just a limited set of ancestors of the petitioner. And this discussion is in the PF. It's a limited kind of number of ancestors of the petitioner.

But in order to be an ancestor of a current member, obviously there had to have been the presence of a union. You see what I mean? Because -- because especially in the way that we defined union as a, you know, a coupling that resulted in a child.

Well that's the -- a couple resulting in a child is the only way someone would become an ancestor. You see what I mean?

So when we try to compare that, then, to some other document that lists, you know, maybe a petition that represents, you know -- well, you know, we are the Grand River Bands. And we're looking at the people who signed that petition and the people who were getting married, and we're like -- well there's these two groups don't really overlap entirely. Or -- or -- you know, is there some larger entity? We don't know.

³⁶ (Emphasis added). Again, OFA is applying the standard in a way that ignores the GRB historical structure. The Department must bend the criteria in the Regulations in GRB's favor due to the "Canons" (as discussed *infra*). The question is not "who is in the community" and "what are they doing to interact," but rather "is the community/group petitioning all Grand River Ottawa" and is there a consistent line between the people making up the petitioning group and the group that was last recognized. OFA can verify GRB's *current* roll versus the roll of MBPI and LRB. You will find that those *Anishinaabek* not enrolled with MBPI or LRB (and to a lesser extent GTB and LTBB) are GRB. This argument will be stated several times throughout this Response.

We need the evidence and the -- and the -- narrative to discuss how each of the individual documents in the record, you know, demonstrates that that distinct community existed. You know -- you know -- roughly who was in it, so that we can then make a determination of, you know, does this document actually represent members of that community?

Or -- and -- and is this a significant number of members of this community? You know, if there's -- you know -- like I said -- you know, if there's 75 people who signed the document, is that 75 out of 100, 1,000, 10,000? You know.

And that's -- and that's really what we struggled to identify in -- in all of the evidence, was, you know, what is that kind of baseline population that we're supposed to even be looking at?³⁷

If this is the articulation of the OFA staff on how the standard is implemented, it's easy to understand why an elusively ambiguous standard, that is entirely subjective, results in the inconsistency many petitioners have complained of over the decades.

APPLICATION OF STANDARD

There really isn't a way to quantify this standard,³⁸ but in cases where the Regulations are ambiguous (which are plentiful), the Department doesn't have to concern itself with how to address it. This is because the Department *must* resolve all ambiguities in favor of GRB under the Indian Canons of Construction³⁹ (the "Canons"):

And it is correct that the agency failed to grapple with the inescapable historical fact that Scotts Valley was a tribe that had its recognition and land stripped away by the federal government and its people scattered to the winds [GRB can relate]. Nor did it address the fact that the purpose—the only purpose—of the IGRA exception at issue is to restore tribes in this position to some semblance of the status they enjoyed before, with the opportunity to sustain themselves economically.

At bottom, much of the assessment in the ILO is subjective, as the agency lacks quantitative standards to apply, notwithstanding the promulgation of Part 292. The determination here turns upon the application of an imprecise

³⁷ *On-the-Record Meeting for Petitioner Number 146, the Grand River Bands of Ottawa Indians*, Transcript (7/31/23) at pgs. 214-220; 221 (lines. 1-21) (emphasis added).

³⁸ Even though the TA Meeting is designed to help, the proceeding is recorded and transcribed, and with tribal recognition generally trending towards litigation, nothing of substance could really be offered. Coupled with the fact that GRB is aware of years of OFA research resulted in a draft finding favoring GRB recognition makes this process even more painful. This process is irretrievably contaminated.

³⁹ Restatement of the Law, The Law of American Indians § 8 (Am. Law Inst. 2021). *New Evidence*.

adjective – “significant”–and this means that the agency was operating in an arena filled with ambiguity and discretion.

And that is exactly when the canon demands that any doubt be resolved in favor of the Tribe.⁴⁰

Judge Berman Jackson notes additionally:

Moreover, there is ample material in the ILO to support a finding in the Band’s favor if all inferences are resolved to its benefit. The agency cited facts that weighed in the Band’s favor, but then chose to devalue them.⁴¹

Judge Berman Jackson’s statement hits home for GRB in the application of the Regulations. GRB supplied abundant documentary evidence to meet all criteria but is continually devalued by OFA. OFA’s misinterpretation of the Regulations, as demonstrated by focusing on miniscule details, successfully serves to invalidate government-to-government relationships between sovereigns.

Either way, the GRB *ogemuk* have once again commissioned meticulous research and analysis, but due to the ambiguous and subjective nature of the standard even with the same data set, what one OFA researcher will find reasonable, another researcher may not find reasonable. What one Solicitor finds reasonable, another may not. What one Assistant Secretary may find reasonable, a subsequent Assistant Secretary may not.⁴² After all, the “modern community” analysis now consumes an additional 40 years!

The Department, however, is required to apply the Canons in review of GRB’s Petition to resolve any ambiguity in favor of GRB when undefined terms such as *significant*, *predominant*, or similar ambiguous terms, are used in the Regulations (which there are

⁴⁰ (**Emphasis added**). *Scotts Valley Band of Pomo Indians v. United States Department of the Interior*, 633 F. Supp. 3d 132, 166 (2022); *see also* *Morton v. Ruiz*, 415 U.S. 199, 205-06 (1974); *Cobell v Norton*, 240 F.3d 1081 (D.C. Cir. 2001); *Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991); *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1445 (D.C. Cir. 1988). **New Evidence.**

⁴¹ 633 F. Supp. 3d at 168 (**Emphasis added**).

⁴² Contrast the *Summary under the Criteria and Evidence for Proposed Finding for Federal Acknowledgment, Little Shell Tribe of Chippewa Indians of Montana* (July 14, 2000)(65 Fed. Reg. 45394), with the *Summary Under the Criteria and Evidence for Final Determination Against Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana* (October 27, 2009) (74 Fed. Reg. 56861), which was signed 9 years after the Little Shell proposed finding in favor of recognition. Little Shell’s proposed finding favoring recognition is not the only preliminary finding to be overturned in a final determination against recognition.

ambiguities at every turn).⁴³ The Department must modify its viewpoint of existing interpretation to accommodate for the Canons in favor of GRB. OFA is applying the standard in a way that ignores the GRB historical structure. The Department doesn't need to deploy the Canons for context, but just enforce that provision.⁴⁴ The question is not "who is in the community" and "what are they doing to interact," but rather "is the community/group petitioning all part of the "Grand River Bands of Ottawa" and is there a consistent line between the people making up the petitioning group and the group that was last recognized.

Through this Response the Petitioner hereby provides this narrative to OFA and the Department demonstrating the "solidarity" of GRB's *community* (as used in the Regulations⁴⁵) through the present day, with new evidence as well as incorporating previous submissions to rebut the PF.⁴⁶ Petitioner sufficiently meets the "standard" as to our distinct *community* after considering the new evidence, the previously submitted evidence, and relevant policy considerations (as well as all other mandatory criteria), traditional notions of fundamental fairness, and the Canons.⁴⁷ Not to mention that the Department is bound to follow its regulations and internal guidance pursuant to the *Accardi* doctrine.⁴⁸

⁴³ Restatement of the Law, The Law of American Indians § 8 (Am. Law Inst. 2021); *see also* F. Cohen, Handbook of Federal Indian Law 113-122 (2012 ed.). **New Evidence.**

⁴⁴ *See* 25 C.F.R. § 83.1 ("[c]ommunity must be understood in the context of the history, geography, culture and social organization of the group").

⁴⁵ *see also* 59 Fed. Reg. 9280, 9287 (1994).

⁴⁶ *See generally* Michigan Indian Legal Services, "Grand River Bands of Ottawa Indians: Petition for Federal Acknowledgment" (2000, as revised)("Petition"); Dr. James M. McClurken, "Grand River Bands of Ottawa Indians: History, Society, and Culture, 1615-1990" (2000)("2000 Report"); Michigan Indian Legal Services, "Grand River Bands of Ottawa Indians' Response to Technical Assistance Letter dated January 26, 2005" (2006)("MILS 2006 TA Response"); *see also* McClurken, 2006 Ethnohistoric Response.

⁴⁷ Along with the previously researched and drafted positive finding in favor of recognition (*see* "Additional Arguments" section – Aldo Salerno).

⁴⁸ *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68, 74 S.Ct. 499 (1954), standing generally for the proposition the Department is required to abide by its own guidance; *see also Hymas v. United States Dep't of Interior*, 2021 WL 2458353, at 11 (E.D. Wash. Feb. 23, 2021), *report and recommendation adopted*, No. 4:16-CV-05091-SMJ, 2021 WL 2458352 (E.D. Wash. Mar. 31, 2021), *aff'd in part, appeal dismissed in part sub nom. Hymas v. U.S. Dep't of the Interior*, No. 21-35522, 2022 WL 2383958 (9th Cir. Mar. 21, 2022).

This response contains research and evidence relating to our place and context within the greater Ottawa communities of Michigan's lower peninsula including the now federally acknowledged tribes: Little Traverse Bay Bands of Odawa Indians ("LTBB"), the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan ("Grand Traverse"), the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan ("MBPI" or "Gun Lake Tribe"), the Nottawaseppi Huron Band of the Potawatomi ("NHBP," formerly "HPI"), the Little River Band of Ottawa Indians ("LRB") and the Pokagon Band of Potawatomi Indians ("Pokagon"). More specifically, how we interacted in solidarity with these other bands since 1855 as a distinct community while also working collectively with these bands.

The PF outlines and analyzes this relationship in a manner empirically inconsistent with historical context and impact. Because the Petitioner received no formal retort after submitting our evidence responsive to the TA Letter (18 years ago), and the PF effectively ignores these close relationships, GRB can only assume OFA still retains a similar position on the relation between the *Anishinaabek* bands of Michigan's lower peninsula:

Submissions concerning the federally recognized Little River Band of Ottawa Indians in Muskegon [sic]⁴⁹ and Manistee, Little Traverse Bay Bands of Odawa Indians in Emmet County, and Grand Traverse Band of Ottawa and Chippewa Indians in Leelanau and Grand Traverse Counties, do not seem to relate to your group. More than half of the McClurken narrative deals with the years before 1875. Because your members descend from an 1855 treaty tribe recognized as late as 1875, the activities and movements of the Ottawa before 1855, are generally not pertinent to demonstrating that your group meets the criteria.⁵⁰

⁴⁹ TA Letter at 6. Muskegon (proper) or Muskegon County are not part of the congressionally established "LRB Area" consisting of "Manistee and Mason" counties by statute.

⁵⁰ TA Letter at 6. The act of Congress that recognized LRB specifically lists "Manistee" and "Mason" counties, which does not include "Muskegon" as part of the "LRB Area." Muskegon County is three counties south of Manistee County. That is part of the historical "Grand River Area," but it's useful to look at service areas of these bands as you will see they all overlap. This apparent "gaffe" by OFA instantaneously creates suspicion in terms of the substance of the TA Letter and GRB's response to the TA Letter is straightforward in this regard. The "Grand River Area" consists of the unnatural county boundaries of Allegan, Barry, Kent, Muskegon, Newaygo, Oceana, and Ottawa, as well as Manistee, Mason, Lake, and Wexford counties (1836 and 1855 areas). The "Grand River Area" currently, as modified by Congress (LRB/LTBB Act) and the Department (MBPI determination), no longer includes Allegan and Barry counties (1821 Treaty) that are now MBPI areas. Additionally, with the congressional recognition of LRB, Mason and Manistee (as well as Lake and Wexford) counties are designated to LRB (see *Memorandum re Federal Jurisdiction Status of the Little River Band of Ottawa Indians to Tammie Poitra*, Midwest Regional Director

Good, bad, or indifferent, GRB dedicates considerable time to exposing the flawed conclusion and assumptions made by OFA (which are numerous). The PF make no effort to understand the commonality and solidarity of the *Anishinaabek* bands.⁵¹ GRB is quite confident we can demonstrate the error of OFA's ways, but when such baseline errors are made, we will error on the side of providing too much information.

For OFA and the Department to truly account for the historical context of the Petitioner, OFA and the Department can look to its own guidance and documents as it relates to actions taken concerning these (now federally-recognized) bands by the Department in numerous other contexts. The Department, for example, should not be in the position of allowing the legal histories of some of these bands to apply in the context of "under federal jurisdiction" analysis for trust acquisitions, and then not allow these histories to carry over for purposes of reviewing the mandatory criteria as we explain herein. The groundwork was already laid.

In 1994, LTBB and LRB were recognized by congressional legislation.⁵² As part of the that process the well-renown author and professor, Vine Deloria Jr., submitted a barbed letter to the Subcommittee on Native American Affairs as part of the hearings relating to legislation of our

(Aug. 13, 2020) at 2-3)). This historical demarcation is consistent with the Compact of June 6, 1838, signed in Grand Rapids, Michigan by the Grand River Bands (including MBPI and LRB). For logistical purposes, this Compact was signed to allow GRB to receive annuities in the Grand River Valley (the northern point being the area in between the Manistee and Pere Marquette rivers). *See Summary under the Criteria and Evidence for Proposed Finding, Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians*, (June 23, 1997) 62 Fed. Reg. 38,113 (July 16, 1997), Technical Report at 17. ("MBPI PF" or "Gun Lake PF"). ("This Compact allowed the Tribe to be paid at Grand Rapids and to be known as the Gun Lake Village Band, along with Ottawa Bands from the Grand River region as they received their payment for the 1836 Ottawa and Chippewa Treaty."). ***New Evidence.***

⁵¹ This is a great opportunity to note that GRB is recognized on a government-to-government basis with MBPI, LTBB, NHBP, and the Saginaw Chippewa Indian Tribe. Recognition by other sovereign tribal nations is the best demonstration of contemporary community pursuant to the Regulations (as further analyzed in the "1984 to 2024" section at pages 97-98 and page 118). The support of MBPI is notable, as since the enactment of the IGRA in 1988, a baseline assumption is that nearby bands/tribe will oppose petitioners due to economic development competition. MBPI is, however, GRB's biggest supporter of our efforts to be recognized and GRB is eternally grateful. But after all, MBPI's support doesn't surprise us, because all these tribal nations referenced, as well as Pokagon, Grand Traverse, LRB, Bay Mills and Sault Tribe, are all our brothers and sisters, aunts and uncles, grandfathers and grandmothers, and cousins (literally!!).

⁵² *Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act*, 25 U.S.C. § 1300-k (Pub. L. 103-324, §2, Sept. 21, 1994, 108 Stat. 2156).

sister bands, LTBB and LRB. Prof. Deloria walked on nearly two decades ago, but his 1993 letter unfortunately underlines the same exact issues facing the Petitioner to this date:

Sadly that promise has not been kept and to the great embarrassment of Indian historians and legal scholars the Bureau of Indian Affairs has been placed in the position of demanding that two band of Indians [Little Traverse and Little River] having indisputable proof of federal recognition in formally ratified treaties of 1836 and 1855 now come forward and prove that they are Indians...The Odawa “lost” their federal rights to services simply because low level federal bureaucrats refused to carry out their responsibilities. This injustice has been compounded recently by the requirement that the Odawa satisfy the curiosity of another generation of federal bureaucrats who spend their time unnecessarily compounding the complexities which they have themselves devised in order to perpetuate the office of Federal Recognition...The actions of the federal bureaucracy in denying immediate recognition to these bands of Odawa have destroyed the logical symmetry of treaty law and have placed Congress in the embarrassing position of allowing low level federal employees to negate deliberate acts of previous Congresses.⁵³

The late, great Vine Deloria Jr. wrote these words to Congress 30 years ago, a year before the Petitioner submitted its Notice of Intent. His words, regrettably, remain true today. Another fierce advocate of GRB and all Michigan native nations is the late director of Michigan Indian Legal Services, Jim Keedy, who dedicated countless hours to working toward the recognition of the Michigan Ottawa and tribal sovereignty in general, noted:

Mr. KEEDY. They [OFA] look at social aspects. We come to them with 150 years of political action on behalf of the tribal [councils]. They say, well, we have to look at social interaction. Who goes to marriages? Who goes to funerals? And then we will describe whether you are a tribe or not. **They are extinguishing political rights.**⁵⁴

If anything, GRB seeks a positive finding in favor of recognition, but at the very least, anticipates the Department can explain and legally justify its positions.

⁵³ *Michigan Indian Recognition, Hearing before the Subcomm. on Native American Affairs of the Comm. on Natural Resources*, 103rd Cong., 1st Sess. 125 (Sept. 17, 1993)(letter from Vine Deloria, Jr., Professor of Law, Political Science, History, and Religious Studies, University of Colorado, to Hon. William Richardson, Chairman, Subcomm. on Native American Affairs, Comm. on Natural Resources (Sept. 14, 1993)). **New Evidence.**

⁵⁴ **(Emphasis added)**. See *Pokagon Band of Potawatomi Indians Act and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act: Hearing before the Senate Committee on Indian Affairs*, 103rd Cong., 2nd Sess. (Feb. 10, 1994) at 67, (Testimony of James A. Keedy, Michigan Indian Legal Services before the Senate Committee on Indian Affairs in support of S. 1066 a bill to reaffirm the federal relationship with the Pokagon Band of Potawatomi Indians (Feb. 10, 1994)). **New Evidence.**

RESPONSE TO THE PROPOSED FINDING

Introduction

The Grand River Bands of Ottawa Indians are successors-in-interest to signatories to many treaties; however, the focus is on the Treaty of Chicago (7 Stat. 218 (1821)), the Treaty of Washington (7 Stat. 491 (1836)), and the Treaty of Detroit (11 Stat. 21 (1855)).⁵⁵ For purposes of this Response, attention is engrossed around the aftermath of these treaties to show our distinct community. The chronicles of the Petitioner are inextricably intertwined with the histories of all the tribes in Michigan's lower peninsula. Judge Noel Fox, in *U.S. v Michigan*,⁵⁶ found that the 1855 Treaty terminated only the collective tribal entity ("Ottawa and Chippewa Indians of Michigan") formed by the United States for the purpose of treaty negotiations, and not the political status of the individual bands.⁵⁷ Ironically, this is the one of few provisions of the Treaty of 1855 that the *Anishinaabek* bands successfully negotiated into the treaty, as other significant demands were ignored.⁵⁸

Federal courts dug even deeper into this historical charade in the Grand Traverse "Turtle Creek Casino" litigation and permitted U.S. District Court Judge Hillman and the 6th Circuit Court of Appeals to sturdily reaffirm that the actions of the United States, via Secretary Delano, were patently *illegal* under federal law:

⁵⁵ See also PF at 15-19. See generally McClurken, 2000 Report; McClurken, 2006 Ethnohistoric Response; Petition. See also Compact of June 5, 1838. This agreement was specific to GRB as it existed at that time; See also MBPI PF, Technical Report at 17 ("This Compact allowed [GRB/MBPI] to be paid at Grand Rapids and to be known as the Gun Lake Village Band, along with Ottawa Bands from the Grand River region as they received their payment for the 1836 Ottawa and Chippewa Treaty.")

⁵⁶ 471 F.Supp. 192, 265 (W.D. Mich. 1979) ("Even if the federal relationship with Indian tribes or bands is not continuous, this does not destroy federal rights or bar the recognition of present tribal groups as political successors in interest"); see also 653 F.2d 277 (6th Cir. 1981). **New Evidence.**

⁵⁷ *United States v. Michigan*, 471 F. Supp. 192, 264 (W.D. Mich. 1979); see also McClurken, 2000 Report at v (Preface), (noting that "[f]rom 1836 to 1855, the Indians who now comprise the Grand River Ottawas were technically part of the Ottawa and Chippewa Tribe, but this "tribe" was an artificial organization created in Washington by the U.S. government in 1836 – a fiction that was dissolved by specific language contained in the 1855 Treaty of Detroit").

⁵⁸ See McClurken, 2000 Report at 46-63.

In 1872, then-Secretary of the Interior, Columbus Delano, improperly severed the government-to-government relationship between the Band and the United States, ceasing to treat the Band as a federally recognized tribe...**Following termination of the relationship, the Band experienced increasing poverty, loss of land base and depletion of the resources of its community**...Between 1872 and 1980, the Band continually sought to regain its status as a federally recognized tribe. The Band's efforts succeeded in 1980 when it became the first tribe acknowledged by the Secretary of the Interior pursuant to the federal acknowledgment process, 25 C.F.R. Part 54...The history of the Band's original recognition, executive termination and later re-recognition is essentially parallel to that of the Pokogon [sic] Band of Potawatomi Indians, the Little Traverse Bay Bands of Odawa Indians, and the Little River Band of Ottawa Indians. All three tribes were parties to the same series of treaties and the same termination by Secretary Delano in 1872.⁵⁹

The Sixth Circuit said the quiet part, out loud:

There is no dispute that only Congress had the *legal* right to terminate the Band's recognition because Congress originally had recognized the Band. But the relevant question is whether a termination nevertheless took place because **the executive branch of the government *illegally* acted as if the Band's recognition had been terminated, as evidence by its refusal to carry out any trust obligations for over one hundred years.**⁶⁰

Delano misinterpreted the language of the Treaty of 1855, and by the illegal action of “administratively terminating” the Petitioner (amongst other *Anishinaabek* bands that were subsequently recognized by the United States beginning in 1980). This illegal administrative action set in motion the path that all *Anishinabek* treaty bands were required to navigate to enforce all treaty rights. Each band first had to prove we still exist. If federal courts, Congress, and the Department (in other contexts), were able to identify the parallel histories of these bands, why can't OFA? It's not difficult to comprehend. How OFA doesn't account for that historical context is exasperating.

⁵⁹ *Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Atty for W. Dist. of Michigan*, 198 F. Supp. 2d 920, 924 (W.D. Mich. 2002), *aff'd sub nom. Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Atty. W. Div. of Michigan*, 369 F.3d 960 (6th Cir. 2004)(**Emphasis added**). **New Evidence.**

⁶⁰ *Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Atty. W. Div. of Michigan*, 369 F.3d 960, 968 (6th Cir. 2004)(**Emphasis added**). **New Evidence.**

Extrapolation to the GRB Petition of this historical context (that Congress, federal courts, and BAR have applied), however, will take some convincing to be applied by OFA:

In general, regarding extrapolating findings from one Indian tribe to a petitioner, it cannot be assumed that any Indian tribe, such as Grand Traverse Band, is analogous -- wholly analogous - to the petitioner, as each tribe would have its own history.⁶¹

OFA goes on to indicate that:

However, the [Grand Traverse] case cited in your question does not specifically address Petitioner 146 and it is insufficient to demonstrate community for 146 without the support of additional evidence. Furthermore, it cannot be assumed that this court case dealing with Grand Traverse Band of Ottawa and Chippewa Indians is analogous to the petitioner, as tribes and groups have their own histories.⁶²

The Regulations do not permit OFA to view these histories with blinders on. Perhaps the Petitioner is so close to the situation it seems obvious, but little research is required to understand and apply the parallels between the *Anishinaabek* bands of the lower peninsula of Michigan. The Petitioner is not asking for complete extrapolation from one finding to the next⁶³ (although actual extrapolation remains factually accurate as explained *infra*). From the perspective of the Petitioner, this is a basic foundational aspect of the **historical context** of the Petitioners legal history, and of all Ottawas in Michigan's lower peninsula.⁶⁴ To understand the Petitioner as we traveled through time, and to see our distinct community from 1855, is to understand the solidarity between Grand Traverse, LTBB, LRB, MBPI, NHBP, Pokagon, and GRB. And to a lesser extent, Saginaw Chippewa, Bay Mills, and Sault Tribe.

⁶¹ See *TA Transcript* at 18:17-22.

⁶² *Id.* at pg. 30:7-14.

⁶³ The Petitioner asks for consistency. See the "Additional Arguments" section – Technical Assistance Letter.

⁶⁴ 25 C.F.R. § 81.3 (quoting a portion of the definition of "Community").

This Rebuttal/Response, in part, establishes why the Department must recognize and apply the shared legal histories, as a baseline to show GRB through time since 1855. This aspect is required before OFA can see the forest through the trees, not only historically but with contemporary community. OFA views their research and responsibility as necessitating to walk into the forest and ask about the leaves, branches, and are especially adept at locating rabbit holes along the way to go down. If OFA and the Department can take a step back to see the big picture, a reasonable understanding of the GRB's *community* "in the context of the history, geography, culture and social organization of the group" can be seen when acting "solidarity"⁶⁵ with the other bands.

Anishinaabek bands, including GRB, spent the last 168 years trying to get the United States to live up to anything it said it would do. Those fighting, surviving, and impacted by the broken promises comprise our community. The PF downplays the importance of these fights and struggles to simply survive after 1855, frankly speaking, in an offensive manner. Not only offensive to our plight and history, but offensive in the ignorance in what conclusions were reached with our brother and sister bands. This conclusion drawn by OFA only serves to epitomize our positions on historical context as disparate treatment in comparison with the precedent set with other bands with matching histories (whether recognized by the Department administratively, or by Congress) in contravention of case law:

Further, in light of the virtually identical history of these tribes [LTBB and Pokagon] with the Grand Traverse Band, reliance on the Solicitor's analysis is particularly appropriate. Treating similarly situated tribes in a similar manner is consistent with federal legislation that counsels against interpretations that distinguish among tribes in ambiguous circumstances. See 25 U.S.C. § 476(f) "Departments of agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat, 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes

⁶⁵ "Solidarity" means unity or agreement of feeling or action, especially among individuals with a common interest; mutual support within a group; *see also* 59 Fed. Reg. 9280, 9287 (1994).

the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.”⁶⁶

OFA’s findings regarding other bands, congressional findings/actions, our previously submitted evidence, and the Department’s legal positions in other contexts, all point to the exhaustive work of generations of various *Anishinaabek* band leaders spent attempting to enforce and preserve our rights under these treaties.⁶⁷ The PF doesn’t recognize and apply these histories, and instead views the Petitioner in a vacuum of time or location. As such the PF is adrift off the shores of Lake Michigan.

As requested by the OFA staff, this rebuttal is a narrative “around what this entity traveling through time looks like.”⁶⁸ The previous submissions do more than just provide an outline of what occurred with GRB before and after the 1821, 1836, and 1855 treaties,⁶⁹ but the Petitioner will attempt to travel through time to show the Department. Here is a start in summarizing about 120 years of GRB’s history (and every 1855 Treaty tribe):

These circumstances [post 1855 Treaty violations], coupled with administrative termination, caused Anishinaabek governments to go, in a way, underground. They survived by adopting American-style governmental structures and processes, and especially by recognizing an early form of what is now known as tribal membership. The Anishinaabek, with attachments to family relations becoming more tenuous, came to identify as political constituents of a geographically bound band. In this way, for example, the Northern Michigan Ottawa Association formed with various geographic units. The Little Traverse Bay bands constituted Unit 1, the Grand Traverse Bay bands constituted Unit 2, the Grand River bands constituted [Units 3, 4, 5, 6, and 7], and so on. Eventually, these “Units” of the Northern Michigan Ottawa Association would become federally recognized tribes, or at least entities seeking federal recognition.⁷⁰

⁶⁶ *Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Att’y For W. Dist. of Michigan*, 198 F. Supp. 2d 920, 936 (W.D. Mich. 2002), *aff’d sub nom. Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Atty. W. Div. of Michigan*, 369 F.3d 960 (6th Cir. 2004).

⁶⁷ We understand it will be awkward to examine that fact that the actions of the same federal government that OFA and the Department are a part of today, are the central cause of the discrimination, overt poverty, land loss, and cultural disassociation the GRB community and other Anishinaabek bands endured, but it’s the truth.

⁶⁸ TA Transcript at 216:15-18.

⁶⁹ See generally McClurken, 2000 Report; McClurken, 2006 Ethnohistoric Response; Petition.

⁷⁰ See Matthew Fletcher, *Race and Tribal Nationhood*, 11 WYO. L. REV. 295, 313 (2011); see also Matthew Fletcher, *Politics, History, and Semantics: The Federal Recognition of Indian Tribes*, 82 N.D. L. REV. 487, 502-518 (2006).

1855 to 1908

The “Indian Problem” policy of the United States during this time is summarized succinctly as follows:

Federal Indian Policy. Until comparatively recently [1934] the policy of the Federal Government has been to convert the Indian to the conventional land owning white farmer. The first step consisted in an attempt to break up tribal assets into individual allotments, to terminate historical tribal governments and to suppress Indian customs and tribal laws.⁷¹

The Perplexing Allotment Process under the Treaty of 1855

After the execution of the Treaty of 1855, the majority of the historic GRB was forced to relocate to Muskegon, Mason and Oceana Counties (hereinafter referred to in general terms as the “1855 Reserved Area” or “1855 Reservation”⁷²), with *Anishinaabek* bands/families scattering to other regions of the state, other states, and Canada.⁷³ The evidence points to the community utilizing our canoes to traverse the Grand River to board a steamboat in Grand Rapids.⁷⁴ The spectacle of GRB people heading to Grand Rapids to board steamboat headed up the coast of Western Michigan to the 1855 Reservation caused quite a scene.⁷⁵

Many of the GRB bands relocating to the 1855 Reservation arrived generally after 1857 and arrived with weak titles (certificates) and settlers already squatting on GRB’s “reserved” lands.⁷⁶ The squatters just cleared the land and assumed the federal government would protect them (which was a good assumption because the U.S. did protect them).⁷⁷ And then there were the

⁷¹ Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.*, at 5 (1947).

⁷² “1855 Reservation” is used for ease of reference. GRB read the LTBB 1855 Reservation Boundaries opinion. To be clear, this Response is not the avenue to make any such arguments about establishment of a reservation.

⁷³ For example, some Grand River Ottawas (from Mason/Manistee counties) left for the western upper peninsula along with Michigan/Wisconsin boarder for opportunities relating to the logging industry near Lac Vieux Desert and Mole Lake. This accounts for why, as discussed *infra*, why both NMOA Unit 7 (Manistee/Mason) and Unit 10 (Upper Peninsula) make up the majority of LRB’s citizens after their congressional reaffirmation.

⁷⁴ See McClurken, 2000 Report at 78-79.

⁷⁵ See McClurken, 2000 Report at 79-80.

⁷⁶ See PF at 19; See also McClurken, 2000 Report at 80-86; See also 11 Stat. 21 (1855).

⁷⁷ See McClurken, 2000 Report at 82-83.

fraudulent transfers and illegal tax sales.⁷⁸ This history of the Ottawa bands of Michigan's lower peninsula bands, in terms of the travesty of the allotment process under the Treaty of 1855 are extremely well documented, by numerous sources. And exhaustively documented with GRB's Petition (and in the Grand Traverse⁷⁹ and MBPI Findings⁸⁰), but not well documented in the PF. Even the actual patents (for those even fortunate enough to attain them) provide evidence of external identification of GRB by the federal government, stating the withdraw from sale of the 1855 Reservation was "for the benefit of the Grand River Bands:"

Whereas, in the amended sixth clause of the first article of the treaty concluded July 31, 1855, between Commissioners on the part of the United States and the Ottawa and Chippewa Indians of Michigan, **it is agreed that the United States will withdraw from sale for the benefit of the Grand River Bands, township 12 north, range 15 west, and townships 15, 16, 17, and 18 north, range 16 west** in the state of Michigan...[]

And Whereas, there has been deposited in the GENERAL LAND OFFICE an order dated July 9th, 1870 from the Secretary of the Interior, to cause patents to be issued in accordance with the schedule certified July 8th, 1870, by the Commissioner of Indian Affairs, **which accompanies said order and showing the selections made for the Grand River Bands of Ottawa...**⁸¹

As outlined in the previous "Introduction" section, and further examined under this period, there is additional evidence that supports and supplements GRB's distinct community as provided under the Regulations. It's also necessary to show other examples from the Department where legal histories of Michigan lower peninsula tribes, as successors-in-interest to the Treaty of 1855, were applied to matters involving other federally recognized tribes in Michigan. In sum, attempting

⁷⁸ See generally McClurken, 2000 Report at 92-108.

⁷⁹ *Recommendation and summary of evidence for Proposed Finding for Federal acknowledgment of the Grand Traverse Band of Ottawa and Chippewa Indians* at 3-5, 44 Fed. Reg. 60,171 (Oct. 18, 1979), as adopted by 45 Fed. Reg. 19321 (March 25, 1980)(hereinafter "Grand Traverse Finding").

⁸⁰ MBPI PF at 81-86.

⁸¹ (**Emphasis added.**) No. 255, *U.S. Land Patent, T16N, R16W, Naw-kay-o-say*, July 9, 1870 (and related documents). This parcel is located in the southwest portion of Crystal Valley Township adjacent to the allotment owned by Chairman Yob's great-great-great-great grandfather (Chief Maish-ke-was-she); see also No. 179, *U.S. Land Patent, T15N, R16W, Shaw-waw-ne-ke-zhick*, July 9, 1870 (located just west of Cobmoosa Lake in Elbridge Township); see also *List of Treaty of 1855 Patents Issued - Oceana County*; see also *List of Treaty of 1855 Patents Issued - Muskegon County*. **New Evidence.**

to get our treaty rights enforced, whether Odawa, Pottawatomi, or Ojibwe, has been the fight of the bands in Michigan's lower peninsula since 1855 (and still is). The PF downplays the importance of these fights and struggles:

While the Petitioner's members appear to descend from these historic Grand River-area bands...[i]n furtherance of its claim, the Petitioner submitted evidence of groups of descendants occasionally joining together for various purposes, including making claims against the Federal government, in the name of the "Grand River bands."

The Petitioner asserts that these activities support its claim of a continuously existing distinct community under criterion § 83.7(b). However, the evidence relating to these periodic activities indicates otherwise. From one activity to another, the individuals purporting to act on behalf of the Grand River Bands changed significantly. Instead of reflecting the existence of a distinct community, these activities appear to have been performed by several different groups of descendants acting independently, in some cases, making different decisions on the same issues. Furthermore, the proportion of current members whose ancestors participated in any specific activity is low, relative to the total membership. In addition, those ancestors of members of Petitioner #146 who participated in the activities that the Petitioner claims demonstrate community represent only a small portion of each larger group of individuals who participated in the activities.⁸²

OFA's findings in this regard are essentially obtuse to the historical context, even in the face of other decisions of import from the Department utilizing the partaking of tribal histories. Notably, OFA makes no attempt to understand our political structures. There were (and are still) thousands of Ottawas and we didn't have one leader that bossed everybody around. Our *Anishinaabek* political structures did not resemble western structures of government and GRB's submissions reflect this exact point (*i.e.* this is part of understanding the historical context of GRB):

At the end of the nineteenth and beginning of the twentieth century, Grand River Ottawa society functioned as it always had - as a band-level society based on relationships between kin. Cooperation between kin groups and the communities they form, such as the Grand River community, was a tool for political action, overseen by a trusted and respected leader or group of leaders. A leader emerged when a large kin group sponsored and supported one of its own people to represent its interests. However, leaders did not exercise "authority" over members. Instead, they organized their constituents around issues of importance to the community, which was accomplished through face-to-face relations and consensus agreement.

⁸² PF at 8.

Leaders introduced plans of action, sought community support and approval of plans, and then implemented the decision of the group. Leaders who did otherwise, choosing to exercise their will over unwilling participants, simply were not accepted as leaders.⁸³

Since GRB's historical political structure doesn't fit nicely within the confines of the Regulations, we are treated discriminatorily, as predicted by Bud Shapard.⁸⁴

OFA, fortunately, can plagiarize the Department's analysis from different, but similar contexts. For example, the Midwest Regional Director approved the acquisition of land for MBPI in 2014.⁸⁵ As part of a Notice of Decision, the Midwest Region acknowledged the shared legal histories of all successors-in-interest to the Treaty of 1855 and the illegal dissolution of the bands:

This Article [V of the 1855 Treaty] was a source of confusion for the Department, which later erroneously construed the provision [] as dissolving the individual Chippewa and Ottawa Bands.⁸⁶

The Region cites to the *U.S. v Michigan*, while specifically noting that MBPI was not a party to the litigation (and Judge Fox's decision, at no point, directly addressed MBPI). The Region, however, used common sense and utilized the histories as applicable to MBPI for purposes of an "under federal jurisdiction" analysis related to the acquisition.⁸⁷ The Region cites, additionally, to the actions of Congress in relation to the Little Traverse Bay Bands and Little River Band to

⁸³ McClurken, 2006 Ethnohistorical Response at 114; *see also* McClurken, 2000 Report at 14-16 (noting story of *Keewaycooshcum*, who was murdered for "representing" GRB in the Treaty of 1821 and ceded lands south of the Grand River without consulting other *ogemuk* or headman of GRB bands), and at 109-150, 164-175, 164-175, 212-213, 249-299 (for a more detailed discussion of kinship and social structures); *see also* Petition at 91.

⁸⁴ *See* footnote 326.

⁸⁵ *See Summary Under the Criteria and Evidence for the Final Determination for Federal Acknowledgment of the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians*, (June 23, 1997) 63 Fed. Reg. 56,936 (Oct. 23, 1998) at 23 ("MBPI FD"); *see also* MBPI FD, Historical Technical Report at 69-71 (June 23, 1997).

⁸⁶ *Amended Notice of Decision for the Fee to Trust Application for the Jijak Camp and Walker-Larkin (Settlement) parcels*, Midwest Regional Director Diane K. Rosen to Hon. David K. Sprague (Sep. 3, 2014) at 12-13, n. 57 ("MBPI NOD"); *See also Letter to Honorable Thurlow "Sam" McClellan, Grand Traverse Band of Ottawa and Chippewa Indians re: Fee-to-Trust Decision of Tara Sweeney, Assistant Secretary – Indian Affairs* (March 31, 2020) at 7-8; *See also Memorandum re Federal Jurisdiction Status of the Grand Traverse Band of Ottawa and Chippewa Indians to Tara Sweeney, Assistant Secretary – Indian Affairs* (March 27, 2020) at 2-4; *see also Memorandum re Federal Jurisdiction Status of the Little River Band of Ottawa Indians to Tammie Poitra, Midwest Regional Director* (Aug. 13, 2020) at 2-3. **New Evidence.**

⁸⁷ MBPI NOD at 13.

recognize them in 1994.⁸⁸ What's alarming is OFA **never** addresses any of these histories at any point in the PF.⁸⁹ The Department, however, makes no qualms about the overlap. A portion of MBPI, for example, was (and remains) a part of the greater "Grand River Ottawas" up until the period of 1869-1877, before separating when Shau-bau-quong elected to return to Allegan County:

As recorded in federal census rolls and pension documents, many members of the Band relocated to the reserve established for the Band in the Treaty of Detroit in Oceana County, Michigan, beginning in 1858, while some families remained in Allegan County.^[1] At around that time, and consistent with the Treaty of Detroit, the Cob-moo-sa school, named after a Grand River Ottawa chief, was funded by the government for Indians living on the reserve in Oceana County.^[1]

Throughout the 1860s, Shau-bau-quong, as well as his Ottawa and Chippewa peers, consistently petitioned the government and participated in numerous failed efforts to negotiate new treaties with federal agents, due in part because they did not believe their Treaties were being upheld.^[1] **For example, during the American Civil War, the United States took no additional action to implement the provisions of the Treaty of Detroit, particularly the elaborate allotment provisions in the treaty.**^[1] This was in part due to the OIA's failure to produce the requisite lists of Indians under the treaty for the purpose of making allotments.^[1] **In addition, the government failed to enforce a preemption clause in the Treaty of Detroit, which exempted lands occupied by settlers or by "persons entitled to pre-emption," providing that all "such pre-emption claims shall be proved, as prescribed by law."**^[1] **As a result, many of the lands withdrawn by the treaty were occupied by settlers and even the State of Michigan.**^[1]

Frustrated by the failure of the allotment process, in 1863, Shau-bau-quong and other tribal leaders requested to send a delegation to Washington, D.C., through the local Indian Agent.^[1] In 1865, **Shau-bau-quong was elected by Indians living in the Oceana County (and also Mason County) settlements as "Chief Speaker" for negotiations of a new treaty between the Ottawa and Chippewa bands...**^[1]

The Band, including Shau-bau-quong, then left Oceana County and returned to Allegan County between 1869 and 1877...^[1]

Meanwhile, a significant portion of the Band's reserve lands continued to be claimed by non-Indian settlers, especially in the aftermath of certain Congressional enactments in the 1870s.^[1] **Shau-bau-quong regularly made official petitions to the President, the Secretary of the Interior, legislators, Indian agents, and the OIA on behalf of the Band, and at one point requested the**

⁸⁸ MBPI NOD at 13 (noting that the recognition act included a "finding that the United States Government had continuous dealings with the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians from 1836 to the present").

⁸⁹ LRBOI is listed in the "Acronyms and Abbreviations" portion of the PF, but not analyzed at any point in the PF.

closure of the OIA “so that the Indians could bargain directly with the Department of the Interior.” []⁹⁰

The PF states nothing of this history. But even in the context of a fee to trust acquisition (or an under federal jurisdiction analysis requiring historical analysis), the Department applied the shared legal histories and case law of other bands to support various legal positions and decisions in a cogent fashion.⁹¹ It isn’t hard to see the commonality. The congruency is plainly discernable.⁹²

These details and the awareness of the historical context are a must to appropriately place these events as it relates to Petitioner’s evidence of a distinct community. The PF doesn’t reach this level of analysis or context, and in fact, completely ignores it.⁹³ This succinct enumeration by the Department of Gun Lake’s history directly corresponds to the evidence submitted by the Petitioner.⁹⁴ And NMOA Unit 7’s transformation into LRB for that matter,⁹⁵ but also not analyzed in the PF.

Our submissions specifically reference (Moses) Shau-bau-quong being appointed by GRB as *ogema* or *ogemagigido* (for purposes of treaty negotiations and communication with the federal agents, state representatives, among others),⁹⁶ Then later on behalf of the Indian Town Community (which was a “Grand River Ottawa” community that blended GRB, LRB, and MBPI at that time).⁹⁷

⁹⁰ MBPI NOD at 14-15 (footnotes omitted).

⁹¹ See MBPI NOD at 16 (the Department cites to a Cowlitz Fee to Trust Acquisition from 2013 that ultimately, via a Cowlitz ILO, cites to OFA documents generated as part of the Cowlitz determination).

⁹² MBPI was a *band* within GRB. LRB is comprised of multiple bands as is LTBB. That’s why we are the Grand River *Bands*.

⁹³ See PF at 24-25.

⁹⁴ See McClurken, 2000 Report, Chapter III (70-108).

⁹⁵ See generally *Pokagon Band of Potawatomi Indians Act and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act: Hearing before the Senate Committee on Indian Affairs*, 103rd Cong., 2nd Sess. (Feb. 10, 1994); see also *Michigan Indian Recognition: Hearing before the Subcomm. on Native American Affairs of the Comm. on Natural Resources*, 103rd Cong., 1st Sess. (Sept. 17, 1993); see also 25 U.S.C. § 1300-k.

New Evidence.

⁹⁶ See McClurken, 2000 Report at 88.

⁹⁷ See McClurken, 2000 Report at 90-91. In fact, LRB’s enrollment criteria is notable in the context of GRB because LRB (as a *part* of the historic Grand River Bands) limits eligibility to: (1) persons who are lineal descendants of persons identified on 1870 Annuity Rolls of nine (9) identified Grand River Bands whose members primarily settled on the Mason County portion of the 1855 Reservation, or who taken remedial Indian Homesteads in Mason, Manistee, Wexford or Lake Counties; persons tracing to the other 10 Grand River Bands that were separately listed in the 1870 Annuity Payrolls would only be eligible for enrollment with Little River if they traced to persons listed

This provides a quintessential illustration of the historical context of the GRB community as we slowly transformed from kin-based bands to western style governments with “members.” OFA’s predecessor Branch of Acknowledgment and Research (“BAR”) specifically issued a determination which recognized the Michigan Ottawas and Ojibwas amalgamations from kin-ship based bands to a singular entity during this exact period and consistent with GRB:

The Grand Traverse Band is an amalgamation of the aboriginal bands of Ottawas and Chippewas living in the Grand Traverse Bay area which initially cooperated in a loosely organized alliance and which can be considered to have become amalgamated into a single entity by the time of the Durant roll in 1908. The amalgamation process occurred gradually over a period of years in response to the pressures of changing times and society.⁹⁸

This evidence submitted and reviewed for the period ensuing the Treaty of 1855, according to the Regulations, must be viewed with that historical context, and OFA is obligated to follow the Grand Traverse Finding as precedent. Or even if OFA doesn’t want to follow precedent, OFA must still recognize this history because that’s what happened.

For example, the Department could replace “Grand Traverse” with “Grand River” and all the facts remain true (this is a reoccurring theme throughout GRB’s Response). The PF apparently dismisses this historical context and evidence as “insufficient,” without analysis, and focuses instead of other evidence (which, as explained *infra*, is the evidence meant to corroborate the treaty history and historical context).⁹⁹

on the Durant Roll and were identified as residing in Manistee, Mason, Wexford or Lake Counties. The rationale being that residence in those counties indicated that they were more politically aligned with nine (9) Bands whose *Ogemuk*/Headmen and members had re-located to those areas after the 1855 Treaty or whose Band villages were already in Mason and Manistee Counties. GRB is different.

⁹⁸ Grand Traverse Finding at 6.

⁹⁹ PF at 30-31; 50. The PF focuses on demographics and indicates that the census data only shows up as “Indian” without notation to Grand River. Who else would be Indian and living there? Did some Oneidas sneak into the “Grand River Area” and get included as part of the census, and then leave? If OFA views census data within the Grand River Area as ambiguous, such ambiguity must be resolved by making the logical inference those “Indians” are GRB ancestors.

Shau-bau-quong was influential during the periods of time during the non-implementation of the Treaty of 1855 and the discombobulated land patent process. Between the squatting, illegal tax sales, and the fraud of the settlers, this was a dark time for GRB and all Ottawas.¹⁰⁰ Dr. McClurken even points out the percentage of bands that selected (or rather unsuccessfully attempted to select) allotments in the 1855 Reserved Area, but this evidence is simply ignored in the PF.¹⁰¹ The evidence specifically details that even through these times, the GRB community was strong.¹⁰² Dozens of letters were sent from GRB people, amongst other *Anishinaabek* people (and sent by leaders too, but not always), attempting to communicate with the federal government and local agents to remedy these issues.¹⁰³ But to no avail, and the Ottawa bands were subject to the same familiar refrain when it comes to federal policy throughout Indian Country.

That aside, the evidence provided establishes a showing of community with the petitions and protests of the communities that eventually lead to congressional actions. These actions didn't occur by chance and it's documented it in our submissions. Dr. McClurken, over much of Chapter III and all of Chapter IV of the 2000 Report, outlines the GRB community having the rug swept from under them and what they were doing to enforce their rights (unsuccessfully).¹⁰⁴ Our evidence shows that leaders continued to be appointed by the bands, disputes in leadership were occurring (caused by local Indian agents attempting to appoint tribal leaders) that were resolved internally.¹⁰⁵ The central focus of the GRB community here, remained, on compelling the federal government to live up to its word.

¹⁰⁰ See McClurken, 2000 Report at 192-198 (noting the various imaginative and unimaginative avenues settlers and speculators utilized to defraud Ottawas out of their land).

¹⁰¹ See McClurken, 2000 Report at 123-130.

¹⁰² See McClurken, 2000 Report at 80-151.

¹⁰³ See McClurken, 2000 Report at 80-108.

¹⁰⁴ See McClurken, 2000 Report at 80-151, 188-198.

¹⁰⁵ See McClurken, 2000 Report at 131-133.

In 1871, Indian Agent Richard M. Smith, after being gone for 2 years, penned this sobering report to the COIA regarding GRB's perplexing allotment process:

Returning to the agency again, after an absence of about two years, I soon learned that my predecessor in office had recommended to the proper authorities at Washington the issuance to them of patents in fee for the lands selected by them of 80 and 40 acres each, to the number of about 2,500, and that thereafter the guardianship which the United States has so long and so beneficially exercised over them should forever cease, and, to use his own language, "let them go." This recommendation, if carried out, would, in my opinion, be most unfortunate and pernicious to these Indians, and, therefore, I hope it will not be adopted....I beg leave further **to say that about 400 patents were transmitted to my immediate predecessor in office for delivery to the Grand River Ottawas and Chippewas in this State, before he was retired from the service. About fifty of these patents were delivered by him to those Indians in the month of October last, and the residue of them in, as I am informed, the following March.**[notes that GRB are considered "advanced" enough to take title]... At the request of those Indians I made them an official visit in July last, and...**ascertained from a personal examination of the files and records kept in the office of the register of the county of Oceana...that the keen-scented and grasping white man, with his artful cunning, had already been there, and that by deed and other expedients he had actually possessed himself of more than 6,000 acres of the land so patented to them as their future homes...And most assuredly this will be the case if the greed of gain, whisky, the general taxation of the Indians, and other pernicious influences, can accomplish it.**¹⁰⁶

Ouch. Unfortunately, this is a clear picture of GRB's distinct community in terms the discrimination GRB faced in the aftermath of the Treaty of 1855. This tragic period is also recognized in the GTB Finding and the MBPI NOD.¹⁰⁷

Even those persons and families that did receive a patent and were able to comprehend that to keep the land they would have to pay illegally assessed taxes, still had to work. GRB folks were still forced into seasonal or migratory labor in trades relating to orchards and lumbering, respectively.¹⁰⁸ These folks were struggling to make ends meet

¹⁰⁶ *Annual report of the Commissioner of Indian Affairs, for the year 1871*, Richard M. Smith to Clum, Acting COIA (Sept. 18, 1871) at 509-510 (**emphasis added**).

¹⁰⁷ 25 C.F.R. § 83.7(b)(1)(v)("[e]vidence of strong patterns of discrimination or other social distinctions by non-members"), and it's worth noting that the 1994 Regulations do not provide a definition of "*discrimination*." Discrimination can mean a lot of things.

¹⁰⁸ See McClurken, 2000 Report at 138-139.

and were drained by the administrative ineptitude of the federal government to enforce and implement the Treaty of 1855. The lack of urgency by the federal government in fulfilling treaty obligations had destructive consequences for GRB and this is all well documented by government sources (such as federal courts, Congress, the Department, and BAR/OFA).

When Treaty of 1855 annuities went unpaid in 1872, four of the GRB *ogemuk*, Paw-shaw-se-gay, Aish-quay-o-say, Kaw-gaw-go, and Maish-ke-aw-she (whom Chairman Yob descends from) issued a petition to the Commissioner of Indian Affairs (with the help of Wm. J. Termant, a township supervisor in Oceana County). The petition said “our Indian Agent...could not pay the Indians their annuities for the want of funds. Now the Greater part of our bands were depending upon their annuities to pay their taxes on their lands...”¹⁰⁹ After specifically identifying themselves as “Grand River Indians” and their location in Oceana and Mason, the letter also alludes to an additional form of *community* evidence. This form involved the federal government paying merchants and traders directly (usually negotiated), as opposed to submitting the annuity directly to the beneficiary:

P.S. in your answer they would like to have you state how much money you send our Indian Agency and pay them, that is the **Grand River Indians**, Ottawas and Chippewas living Oceana and Mason Co., Michigan, and they would like to have you instruct the Agent to pay the annuities to the Indians themselves, and not to Merchants & Traders as had been done heretofore.¹¹⁰

This evidence expresses the GRB community (during 1855 to 1907) came together in attempts to enforce treaty provisions (both the 1836 and 1855 treaties) and the discrimination we endured when the treaties were broken. The evidence here also demonstrates community with the Grand River Area’s geographic location (Oceana and Mason counties). The geographic area (described

¹⁰⁹ See McClurken, 2006 Ethnohistorical Response at 2 (*William J. Termant (Township Supervisor) to Commissioner of Indian Affairs*, 25 March 1872, NAM M234, R.410:729-731); see also McClurken, 2000 Report at 164.

¹¹⁰ *Id.* at 3; see also Petition at 99-102 (evidence of “IOU” for merchants from GRB *ogemuk* on behalf of the bands which the federal government attempted to get away from after the Treaty of 1855).

in the footnote) is within the Grand River Area, as well as the LRB area, expressly acknowledged as being the “Grand River Area” when that portion of the Grand River Ottawa sought and obtained legislative reaffirmation in 1994.¹¹¹ This is confirmed in the congressional legislative history to the LTBB/LRB Act, but loudly ignored in the PF.

As we attempted to get any attention with our plight by sending letters/petitions, community meetings, consultations with local agents, or otherwise, Congress did finally notice. The 1855 Reserved Area continued to be pilfered by illegal tax sales, fraud, and/or just plain squatted upon by non-natives. The grass-roots efforts and lobbying of GRB, collectively with other 1855 *Anishinaabek* treaty band, caused Congress to enact laws in response to the *ogemuk*.¹¹² These congressional acts, however, were uncommitted and had the opposite impact GRB had lobbied for.¹¹³ The following excerpt from Michigan Indian Agent Mark Stevens provide a cogent but disconcerting summarization to the allotment period as experienced by GRB’s community:

The disposition of the lands embraced in this treaty [of 1855] have been materially affected by the clause just cited [5 year selection period] and the act of Congress of 1872 and 1875. But little of this land was allotted to Indians during the first five years after the treaty was entered into. Very many of the Indian have selected lands under the latter part of the clause above cited, and under the act of Congress of 1872. **There are a large number of contested cases pending between whites and Indians growing out of selections made under circumstances above referred to. The Indians so interested complain that in contested cases at the land office an unjust discrimination is made against them.** The white man contesting appears with witnesses and attorneys in his behalf, while the Indian sits back and looks on without any witnesses or without any knowledge of what is necessary to prove his claim without an attorney, only to learn the result, which is, that he has no valid claim. A large number of the above cases have been suspended. If a rehearing of the cases were ordered justice to the Indians might be promoted.

¹¹¹ GRB’s trek to the 1855 Reservation area and resulting “selection” of allotments caused a scattering of the GRB bands. GRB meant to stay together, but since “reserved” lands were occupied, GRB was *forced* to “scatter.” Either way, GRB remained *predominantly* within GRB historical territory even if we didn’t live on the same road. The Regulations do not prohibit the use of a geographic area as we have demarcated the “Grand River Area” (Oceana, Muskegon, Kent, Ottawa, and Newaygo counties).

¹¹² See Grand Traverse Finding, Anthropological Report at 5-6, (“efforts, initiated within the region in the 1860s and 1870s...definitely to give some suggestion of a cooperative effort, if only because they are initiated by the groups themselves. Common residence, and the setting aside of a common area from which to draw lands, in effect defined common interests at this point”).

¹¹³ See McClurken, 2000 Report at 158-164.

Certainly something ought to be done that the Indian may be protected in his rights.¹¹⁴

Most of the relevant jurisdictions within the 1855/1836 Treaty areas, including the state, counties, and townships, disregarded treaty property tax protections, and congressional legislation, by feigning ignorance as to the exemptions from taxation.¹¹⁵

The act of Congress in 1872 made a “few token gestures toward fair treatment for Ottawas, but was largely designed for Americans...[i]n reality, the law sped up American settlement of the Ottawa reservations and protected those squatters who were already there.”¹¹⁶ And although we are painting a picture of the historical context, what shouldn’t be lost is that these are all congressional actions stemmed from Odawa bands, acting as communities (including GRB) to pressure local agents, Congress, or whomever. These Odawa efforts constitute sufficient evidence to satisfy the criterion for *community*.¹¹⁷

In 1875 Congress was again compelled by lobbying initiated by GRB *ogemuk* on behalf of their constituent GRB bands, among other Ottawa and Ojibwe bands, to enact better legislation with more legal protections. What resulted as a lame attempt by Congress to address the fraud and inequalities that resulted from the Treaty of 1855 allotment process.¹¹⁸ The fraud and discrimination surrounding the allotment process, however, remained prevalent. Please note that OFA, once again, glossed over analysis or application of the discrimination evidence presented during this period.¹¹⁹ GRB’s evidence submitted is supported by additional persuasive evidence in

¹¹⁴ *Annual report of the Commissioner of Indian Affairs, for the year 1886*, Mark Stevens to John Adkins (Sept. 1, 1887) at 163 (**emphasis added**).

¹¹⁵ McClurken, 2000 Report at 196-198.

¹¹⁶ McClurken, 2000 Report at 103; *see generally* *Id.* at 102-104; *See also, An Act of the Restoration to Market of certain Lands in Michigan*, 17 Stat. 381 (1872); *see also* 17 Stat. 88 (1872).

¹¹⁷ GRB *ogemuk* are exerting strong influence on behalf of the bands and are in the process of amalgamation due to these collective efforts (*see* 25 C.F.R. § 83.7(b)(2)(v) and § 83.7(c)(2)(iii)).

¹¹⁸ *See also, An Act to amend the act entitled “An act for the Restoration to Market of certain Lands in Michigan*, 18 Stat. 516 (1875); *see also* McClurken, 2000 Report at 190-193.

¹¹⁹ McClurken, 2000 Report at 192-198.

other OFA findings, as well as congressional hearings “as evidence of strong patterns of discrimination...by non-members.”¹²⁰ The submissions and the supportive evidence, show a predominant portion of the Petitioner endured this discrimination, to the point Congress tried to step in address the issue on three separate occasions (even if Congress was unsuccessful and ended up protecting settlers/squatters instead).

GRB Community and the Court of Claims

The GRB community, still struggling mightily during this time, also distinctly came together to focus on legal claims relating to the Treaty of 1836. The PF completely ignored the community mobilization and identification evidence leading up to the Court of Claims cases that necessitated the creation of the Durant Roll.¹²¹ The evidence submitted outlines the mobilization that occurred within the Ottawa bands to file a petition with the Court of Claims (thereby displaying a snapshot of the solidarity of the Ottawa bands at that time).¹²² BIA agents still acknowledged the structure of the bands during this time period:

In 1886 Indian Agent Mark Stevens, referring to Michigan Indians in general, stated that the Indians continued to “annually elect certain of their numbers, whom they call chiefs or headmen, whose duty it is to transact all business with the government or the Indian agent, sign all papers and stipulations, which they consider binding upon the band.”¹²³

Moreover, the actions of Louise Obermiller are detailed in our submission and must be applied to our community analysis. Obermiller’s ability to link the LTBB and GRB area leaders is outlined specifically to show who the GRB *ogemuk*, and where they were located, but also their/our

¹²⁰ 25 C.F.R. § 83.7(b)(1)(v); see 1975 Senate Hearing and 1976 House Hearing (full citation of hearing documents at footnote 292); see also *Annual report of the Commissioner of Indian Affairs, for the year 1886*, Mark Stevens to John Adkins (Sept. 1, 1887) at 163; see also Grand Traverse Finding, Anthropological Report at 4-5.

¹²¹ See PF at 22-31 (lacking any analysis of community in terms of mobilization of the bands to seek attention with the implementation of the Treaty of 1855 or mobilization of community for Court of Claims petition).

¹²² McClurken, 2006 Ethnohistorical Response at 112-117; McClurken, 2000 Report at 165-168.

¹²³ Grand Traverse Finding, Anthropological Report at 6.

autonomy as a separate band.¹²⁴ And although the snapshot of the Petitioner, during this period, displays *community*, our people were largely in despair.

By the time the court of claims entered a judgment in favor of the Ottawa and Chippewa bands in 1907¹²⁵, the damage had been done. Or as we began in the section, the contrary way of thinking is that the “Indian problem” policy of the United States was closer to being solved. The assets of the Ottawas, and each of its communities, were systematically and methodically dismantled and any claims disbursements provided too little, too late. Even into the early 1900s, the 1855 treaty provisions regarding allotment acted as the proving ground for the communal extermination concepts of the General Allotment Act of 1887, were identifiable.

In 1905, Congress authorized GRB (along with the other Ottawa bands) as “Ottawa and Chippewa Indians of the State of Michigan” to file claims for *collective* funds held in trust by the United States for the 1836 treaty bands:

Ottawa and Chippewa Indians of the State of Michigan to file a petition in the U.S. Court of Claims to address whether a fund based on the Treaty of 1836 and held in trust by the Government was relinquished by the provisions of the Treaty of 1855.¹²⁶

OFA’s treatment of this collective effort perpetuates the federal government convenient treatment of the Ottawa and Ojibwe as an amalgamated entity when it suited their purpose. This again, goes

¹²⁴ McClurken, 2006 Ethnohistorical Response at 116 (noting that GRB *ogemuk* were in the “Grand River Area”(as explained *infra*) including such as listings as Elbridge, Fountain, Pentwater, Hart, Pere Marquette, Custer, and Carpenter).

¹²⁵ *The Ottawa and Chippewa Indians of the State of Michigan v. United States*, 42 Ct. Cl. 240 (1907); *see also William Petoskey, et al. v. United States*, Docket No. 27,978, May 27, 1905. General Jurisdiction Case Files, RG 123, National Archives (This archival file contains the petition and the reports of Interior and Treasury Departments, but no decision of the Court).

¹²⁶ PF at 32-33; *see also* Act of March 3, 1905, 58th Congress, 33 Stat. 1048, 1081-1082 (1905). This is an uncontraverted showing the federal government as: (1) external identification of GRB and (2) holding of collective tribal funds for GRB amongst the other Ottawa bands as we existed at this time (1855 through at least 1911), consistent with 25 C.F.R. § 83.8(c)(3). Moreover, this period exceeded 50 years of funds being held in trust by the government, for 1836 tribes including GRB collectively. Considering the historical context of the Ottawas in the early 1900s, to argue these collective funds are not sufficient because they were held for all Ottawas and Ojibwas pursuant to the Treaty of 1836, and not just “Grand River” by itself, is a contrived interpretation of the Regulations and because “collective” is undefined by the Regulations, the Canons must be employed in favor of GRB.

against the provision the Ottawa (primarily) negotiated in the 1855 treaty which required the federal government to deal with individual bands or number of bands based on the Ottawa Bands' political determinations.

The Court of Claims rejected federal government's argument that the language of the Treaty of 1855 negated the responsibility for investment and payments under the Treaty of 1836, and entered judgement in favor of the Ottawa bands.¹²⁷ Congress passing a law granting jurisdiction to the Court of Claims didn't happen by accident. The Petitioner provided detailed evidence about the GRB communal interactions that led to the eventual filing and successful litigation relating to these payment claims, despite the other Ottawa bands also participating in these claims.¹²⁸ The Petitioner's submission also lists the relationship between those organizing these claims for GRB and their descendants of today.¹²⁹ Previously submitted evidence shows the specific chiefs and headmen that comprised the GRB at that moment in time and the relationship between modern day descendants.¹³⁰ All of which constitutes clear evidence of the Petitioner's community and solidarity between the bands.

The Petitioner presented a sufficient narrative and evidence for this period that showed consistent interactions and significant social relationships existing amongst the members of the Petitioner (as it was comprised at that time). The communal interactions throughout this 52-year period outlined in the PF, unfortunately, are generally centered around attempted renegotiation or enforcement of the Treaty of 1855 via the Court of Claims. Nonetheless, this is evidence of consistent communal interactions of the GRB. To summarize the status of the Petitioner during the end of this period:

¹²⁷ *The Ottawa and Chippewa Indians of the State of Michigan v. United States*, 42 Ct. Cl 240 (1907); *see also William Petoskey, et al. v. United States*, Docket No. 27,978, May 27, 1905.

¹²⁸ McClurken, 2006 Ethnohistoric Response at 115-117.

¹²⁹ *Id.*

¹³⁰ McClurken, 2006 Ethnohistoric Response at 119-120.

In 1908, when the government had to find Indian communities and recognize Indian leaders in order to compile the Durant Roll, they had no trouble in doing either. The old Grand River Bands had survived in distinct Indian communities, even if they had not prospered. In meeting the conditions of a rapidly changing environment, the Ottawa created new political organizations to meet the needs of their distinct communities.¹³¹

The GRB and broader solidarity between the other Ottawa/Ojibwe bands relating to the lack of treaty execution by the federal government, petitions for the issuance of land patents, geographic location of land grants,¹³² as well as the discrimination foisted upon the bands, serves to satisfy the *community* criterion in this period. At least that's what the Grand Traverse Finding concluded:

Cooperative efforts in dealing with the Federal Government are in evidence as early as the 1860's and the evidence is that by the turn of the century they were substantially socially integrated, with a sense of common interests and considerable intermarriage and overlapping of families.¹³³

Additionally, the excerpt of the following Grand Traverse Finding offers additional community related findings of import that match GRB's context as well:

54.7 (b)

The Grand Traverse Band [Grand River Band] has lived in the Grand Traverse Bay [Grand River] area since the 1850's, and the ancestral Ottawa and Chippewa have occupied the area since aboriginal times. Land has been taken in trust for them by the county. The Bureau of Indian Affairs has identified them as living in and peculiar to this specific geographic location.¹³⁴

This excerpt is a large part of the Grand Traverse Finding on community. GRB didn't luck out with a county putting land into trust for us, but GRB has lived in the Grand River Area since being removed to that location in the 1850's and the BIA/Department has repeatedly identified GRB as living in this specific geographic location in multiple occasions since 1855.

¹³¹ McClurken, 2000 Report at 201-203; *see also* Matthew Fletcher, *Race and Tribal Nationhood*, 11 WYO. L. REV. 295, 313 (2011).

¹³² *See* Petition at 95-99.

¹³³ Grand Traverse Finding, Anthropological Report at 20.

¹³⁴ Grand Traverse Finding, *Discussion of Grand Traverse Band Based on Criteria in Part 54 of Title 25 of the Code of Federal Regulations*, Report on History at 11; *see also* footnote 98 (citing to Grand Traverse Finding at 6).

Notwithstanding the evidence provided by the Petitioner in the context of the claims, the PF focuses its analysis on demographics, marriages, birth patterns, and newspaper articles (which this type of supportive evidence serves continuously throughout GRB's Petition, as corroborating evidence of the already existing recognition of GRB by the federal government). OFA casually mentions the aftermath of the Treaty of 1855 and that claims were made and litigated. OFA fails to acutely observe or analyze, however, that the evidence provided by GRB, in all reasonable likelihood as to the validity of the facts, shows GRB was/is a distinct *community* acting in concert with the other bands just like Grand Traverse.

1909 to 1947

This portion of the rebuttal focuses on three central events, and other smaller scale events, to show the community criterion is met. The creation of the Durant Roll, the treaty claims petition period between 1911 and 1930, and the Department's failure to organize GRB pursuant to the IRA will be the focus. This period is notable, additionally, in the context of the MBPI and Grand Traverse positive determinations, as well as the congressional findings relating to the legislation reaffirming the relationship between the United States and LTBB and LRB, on the Durant Roll and the IRA petitions for organization.

Demonstration of Community – Durant Roll

On the heels of the judgment ordered by the Court of Claims, Congress directed the creation of a “complete roll of the Ottawa and Chippewa Indians of the State of Michigan entitled to participate in the funds” to implement the judgment.¹³⁵ The previous submissions, along with the new documentary evidence, substantiates the community of the Petitioner during this time (as well as previous federal acknowledgment as it's indisputable GRB was part of this historical tribe). The

¹³⁵ 35 Stat. 70, 81 (1908).

make-up of the Petitioner, as comprised during this period, still maintained structure, consistent with the other *Anishinaabek* bands, with chiefs and headman acting as leaders of each band. OFA fails to recognize that the structure was confirmed by direct documentary evidence from the initial agent assigned to complete the roll.¹³⁶

Notably, that Agent Charles McNichols was directed by Acting Commissioner of Indian Affairs, Charles Larrabee, to accept a decision of an *ogema* “as prima facie evidence of the right to enrollment of any Indian belonging to such band.”¹³⁷ When McNichols was unable to complete the work, the same direction was given to Henry Durant¹³⁸ to defer to the customs and decisions of the Ottawa *ogemuk*.¹³⁹

In 1908 Horace Durant compiled a roll for payment of this claim with the advice of leaders of the bands. Prior to the per capita payment, the roll was modified at the insistence of the leaders, who were acknowledged to speak for Grand Traverse and other Michigan bands.¹⁴⁰

Once again, the Grand Traverse Finding can be “cut and pasted” with GRB stepping in place and each fact remains 100% accurate. GRB’s submitted evidence bears this out. Additionally, the Grand Traverse Finding acknowledged the *ogemuk* retained authority, *exerting strong influence*

¹³⁶ See generally McClurken, 2000 Report at 168-171.

¹³⁷ See McClurken, 2006 Ethnohistoric Response at 118; See also McClurken, 2000 Report at 169 quoting from “Charles Larrabee to Charles McNichols (November 17, 1905).”

¹³⁸ This rebuttal uses both “Henry” or “Horace” when referring to Durant, or sometimes just “Durant.”

¹³⁹ McClurken, 2000 Report at 170 quoting from “Charles Larrabee to Horace Durant (July 23, 1908).”

¹⁴⁰ Grand Traverse Finding at 3. This evidence, combined with additional evidence that about 75% of the proposed citizenship lived within 150 of Peshawbestown, Michigan (the Grand Traverse Area) was evidence of community under the 1978 Regulations (*see* 43 Fed. Reg. 39361 (Sept. 5, 1978)). OFA and the Department can attempt to distinguish the GRB and Grand Traverse petitions due to differing regulations. The Department, however, provided a strong rebuttal to any notion the 1994 Regulations were more stringent than the 1978 Regulations and the 1994 regulations are “consistent with all acknowledgment decisions” made:

Comment: Several commenters maintained that the existing regulations only required a showing that members were sufficiently concentrated geographically to allow the possibility that they could maintain social and political relationships, without having to show that such relationships actually existed. They maintained that a requirement to demonstrate that social relationships actually exists represents a change in the regulations.

Response: This view misinterprets the definition of community in the present regulations. The revision does not constitute a change in meaning. **It is consistent with the intent of the regulations and with the legal precedents underlying the regulations, which require demonstration of the social solidarity of the tribe. It is also consistent with all acknowledgment decisions made under the existing regulations.** See 59 Fed. Reg. 9280, 9287 (1994).

over who exactly comprised its band in a binding manner and acting on issues band members considered to be of great importance¹⁴¹:

Henry Durant, the agent dispatched by the Bureau to make a payment roll, was ordered that “where the Indians are found to be living in tribal relations, the certificate of the chief or headman of a band is to be accepted by you as prima facie evidence of the rights to enrollment of any Indian belonging to such a band.”[] In dealing with the Grand Traverse Indians, Durant found that the headmen exercised enough authority and had adequate knowledge of their members to claim the right of including or excluding people from the payment roll.¹⁴²

It’s the same. Replace “Grand Traverse Indians” and insert “Grand River Indians” and the entire finding remains factual. The excerpt clearly indicates Durant was to locate the “bands,” not to locate individuals, but the bands. This is critically important as the Durant Roll was utilized as direct evidence of not only identification of each band community, but then BAR/OFA justified its finding with this evidence.¹⁴³ As such, similar findings must be considered precedent as applied to the Petitioner.

Henry Durant conducted this work in such an accurate manner¹⁴⁴ that it allows *all* the 1836 and 1855 federally-recognized treaty successors to utilize descentancy from the Durant Roll as evidence of citizenship,¹⁴⁵ including the Petitioner. And not only is Durant Roll created upon deference to the *ogemuk*, but the accompanying Field Notes accurately depict the disposition of the bands, who was included in each band at the time and where they were located.¹⁴⁶ If the Durant Roll is relied upon as the central base and starting point for the existence of these bands (even if

¹⁴¹ See 25 C.F.R. §§ 83.7(c)(1)(ii) and (c)(2)(iii).

¹⁴² Grand Traverse Finding at 5; see McClurken, 2006 Ethnohistoric Response at 118-119; see also McClurken, 2000 Report at 170.

¹⁴³ Grand Traverse Finding, Report on History of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan at 10.

¹⁴⁴ See Grand Traverse Finding, Anthropological Report at 6.

¹⁴⁵ The constitutions of the Bay Mills Indian Community, the Sault Ste. Marie Band of Chippewa Indians, Grand Traverse, LTBB, and LRB all utilize descentancy from the Durant Roll, in some form or another, as a basis for citizenship in their bands.

¹⁴⁶ See generally Lantz at 419-581. Durant’s identification of the Ottawa bands, whether he was directed to or not, is what the Department should be doing regarding the “reasonable likelihood” standard.

was just “listed individuals who were due funds”¹⁴⁷), it is sufficient for the Department to rely upon (which they have over and over again in other contexts including judgement claim distributions, as discussed *infra*).

The PF, however, makes no effort to apply the Petitioner’s evidence as to the formation and work done by Durant to prepare the Roll as evidence of community, and no discussion of the deference paid by the United States with the bands to determining their own membership.¹⁴⁸ The OFA findings on the Durant Roll in the context of MBPI¹⁴⁹ and especially Grand Traverse¹⁵⁰ are consistent with the Petitioner’s interpretation and act as precedent favoring a finding of community for GRB:

54.1(o) “Community” or “specific area” means any people living within such a reasonable proximity as to allow group interaction and a maintenance of tribal relations...[]

- (2) All members of the Grand Traverse Band have established that they are descendants of the historical Ottawa and Chippewa Indian tribes by tracing their ancestry to the Traverse Band Indians listed on the 1908 Durant Roll. The Durant Roll is currently accepted by the Bureau as the basis for establishing Indian ancestry for certification for services and claims payment purposes.

From the above evidence, we conclude the Grand Traverse Band inhabits a specific community viewed as American Indian, and that its members are descendants of the Ottawa and Chippewa bands which historically inhabited the Grand Traverse Bay area. The group, therefore, meets the criterion in 25 CFR 54.7(b).¹⁵¹

¹⁴⁷ PF at 32.

¹⁴⁸ See PF at 32-34. This concept a tribe/band having the unquestioned and inherent sovereignty in determining our citizenry, as recognized in the compilation of the Durant Roll, was also recognized, and confirmed by the United States Supreme Court in *Santa Clara v. Martinez*, 436 U.S. 49 (1978).

¹⁴⁹ MBPI Finding, Genealogical Technical Report at 32-22; *see also* Historical Technical Report, at 117.

¹⁵⁰ See Grand Traverse Finding *passim*. We analyze how the Grand Traverse Finding, evidence, analysis, and conclusions/findings could nearly be identical *infra*.

¹⁵¹ Grand Traverse Finding at 5; *see also* Grand Traverse Finding at 12 (the “Grand Traverse Area” is defined as “Unit II which coincides with the Grand Traverse area” indicating NMOA Unit 2’s boundaries were accepted as favorable evidence in determining the geographic scope for the Grand Traverse community. The Department must apply the same evidence in the same manner with GRB Units 4 and 5 (i.e. the “Grand River Area”).

The PF fails to analyze our evidence or adopt and accept evidence from other findings and determinations, but to rebut possible arguments raised post submission, we note the Burt Lake Preliminary Finding. The Burt Lake Preliminary Finding directly contradicts the work of OFA/BAR on the Grand Traverse Finding, but takes a similar tone to language used in the PF and in the TA Letter relating to the Petitioner¹⁵²:

The Durant Roll of 1910 did not constitute Federal acknowledgment of any Michigan tribe or band. In the Act of 1908 that required the roll, Congress directed the Secretary of the Interior “to make a complete roll of the Ottawa and Chippewa Indians of the State of Michigan entitled to participate in the funds arising from the judgment of the Court of Claims,” not to identify current members of any particular bands (United States 1908, 81). The Act authorized the Government to deal with Ottawa and Chippewa Indians for a single, limited purpose, not to establish a government-to-government relationship with any specific band. In producing the roll, Special Agent Horace Durant did not seek to identify members of bands existing in 1910, but to identify Ottawa and Chippewa Indians who had received annuities in 1870 and to list their lineal descendants. The precedent in acknowledgment findings is that such descendency rolls did not constitute Federal acknowledgment of a tribe.

This is another example of OFA’s inability, however, to see the forest through the trees. The *Burt Lake Finding*, as well as the TA Letter, contradicts BAR/OFA’s own findings with Grand Traverse. The Durant Roll constitutes evidence of the GRB communities as we were made up at the time because of the manner in which Acting Commissioner of Indian Affairs, Charles Larrabee, directed McNichols and Durant to prepare Roll as described in the following paragraph. Who was a part of the community, where we were located, and who are GRB’s descendants now.

And of course, Congress did not direct Henry Durant to identify the *ogemuk* and headman of the bands, or the bands themselves, as they existed in 1910. But that’s exactly what Henry Durant did because he was directed to by his bosses to do identify the bands.¹⁵³ Congress was

¹⁵² See TA Letter at 3 (stating “[w]hether Indians named on this roll were members of tribes was immaterial; the central question was whether they or a direct ancestor received annuities in 1870. See *Burt Lake Proposed Finding*.”).

¹⁵³ McClurken, 2000 Report at 170 quoting from “Charles Larrabee to Horace Durant (July 23, 1908).”

never in a position to dictate or micro-manage how Durant would compile the roll and OFA's reliance on the congressional mandate is misplaced. Durant noted in his correspondence to the Commission on Indian Affairs (who then conveyed the same message to the Secretary of the Interior) that the Ottawa still maintained their structure:

[Durant's] reports show that the various Indian communities and groups still recognize chief's and headmen and to some extent have maintained their tribal organization notwithstanding the treaty of 1855 by which such organization was to be dissolved...¹⁵⁴

Durant's "council" with the "older men of the tribe" is further confirmation of the deference given to the *ogemuk* as to the make-up of the communities:

The Durant Roll had been based on the 1870 Ottawa and Chippewa Indian Annuity Roll, which was considered a fairly correct census of the tribe in 1870. Only heads of families were named on that roll with the number of family members. By holding council with the older men of the tribe and through their testimonies, Durant was able to identify nearly all of the 1,813 families enrolled in 1870, and with a few exceptions had located their descendants.¹⁵⁵

The testimony of Ogemakwe Dominic confirms this.¹⁵⁶ And confirms how GRB can easily distinguish with the numbering system employed by Durant.¹⁵⁷ The Durant Roll and Durant's Field Notes creating the roll, are direct evidence of GRB's community at that time. The *ogemuk* and the headman referenced in the Durant Roll and in Durant's field notes is the composition of the GRB

¹⁵⁴ McClurken, 2000 Report at 171, fn. 413, (quoting from "Commissioner of Indian Affairs to Secretary to the Interior, January 25, 1910, Special Agent Files, 4533-1908-053, Bureau of Indian Affairs, RG 75, National Archives.").

¹⁵⁵ Memorandum from R. Lavis, Assistant Secretary-Indian Affairs to Deputy Minneapolis Area Director: Addendum to Results of Research Report of April 22, 1974, and Amended Recommendation of disposition of Judgment Funds, Dockets 18-E and 58, Ottawa and Chippewa Nations of Indians, and also, Dockets 18-R and 364 (Aug. 23, 1978) at 7. **New Evidence.**

¹⁵⁶ STEKETTEE: ...and the Indians themselves had a right to reject or accept them...

DOMINIC: ...right...

U.S. v. Michigan, Helen Hornbeck Tanner papers, 1930s-2009, Deposition of Waunetta Dominic (Draft), Bentley Historical Library, University of Michigan, Ann Arbor (hereinafter the "Dominic Deposition"), at 44-45. **New Evidence.**

¹⁵⁷ Dominic Deposition at 182 stating:

Your Grand River Ottawa is listed on the [Durant] Roll either eligible or ineligible, so we use that. But if we have to back further to find out in many cases somebody would ask me, they'd say, "well, golly I didn't know he was on there. Who is this guy, if he—is that a Grand River guy?" **Well, I can tell by the numbers whether he is Grand River or not because all numbers from 49 and above are Grand River, 49 below are non-Grand River. (Emphasis added).**

community.¹⁵⁸ Durant, in turn, lists those on the “Grand River Band” portion of the roll, just as he did for the other “bands” referenced on the roll.¹⁵⁹ Additionally, the Field Notes provide first-person references by both Durant and GRB members denominating themselves as part of the Grand River Band(s) and their locations with the Grand River Area:

Grand River Band

Sophia (wife) 3-56

Husb_(Robt Aken) 3-58

Newaygo Mich

May 10 1909¹⁶⁰

* * *

Note: This family cannot be traced to the 1870 roll but the oral testimony of James Cogswell, Rodney Onegake, Jacob Bailey, Shay-Go-Nay-Be, and many others, James Bananas family are **Ottawas of the Grand River Bands...**

Aug 11, 1908

Elbridge Township

Michigan

Indian Church House

Later: James Bananas is son of wife of 14-60 & half brother of Chas. Coby, so says the latter at Cross Village. Durant¹⁶¹

* * *

Note: Confirmed by **Grand River Inds.** At Custer...Note: Mary Ann Chittigo’s daughter & grandchildren are to be enrolled as Saginaw Inds & not as **Grand River Inds.** Durant

Report: Mary Ann Chittig’s was not enrolled with her father in 1870 as a **member of the Grand River Band.** Her father lived with the **Grand River Band near Pentwater...**It is now her desire to now be enrolled with the **Grand River** and will relinquish all claims as a member of the Saginaw Band.¹⁶²

¹⁵⁸ McClurken, 2000 Report at 171-172.

¹⁵⁹ See generally, Lantz; see also Grand Traverse Finding, Anthropological Report at 6, noting “The 1870 roll divided the Ottawa and Chippewa into Mackinac, Sault Ste. Marie, Traverse and Grand River Bands, and then into smaller bands each under a chief. Durant’s main roll unfortunately just uses the division into four, although he recognized a division into Grand and Little Traverse existed. This limits its usefulness.” (**Emphasis added**). Although the 4 divisions in the 1870 annuity list limited its usefulness for Grand Traverse, the “Grand River” division extinguishes that limitation for GRB, in addition to segregating MBPI and LRB as well).

¹⁶⁰ Lantz at 429 (**Emphasis Added**).

¹⁶¹ Lantz at 432 (**Emphasis Added**).

¹⁶² Lantz at 436 (**Emphasis Added**).

* * *

Look up through children on Traverse sheets, Has not lived among **Grand River Indians** for 30 years.¹⁶³

* * *

Sir...a few lines to let you know that there is one young man here that belongs to **grand River Indians** his name is Adam Shaw.¹⁶⁴

* * *

* Freesoil Inds do say Mitchell Ninise's parents were **Grand River Inds** but left her & went north.¹⁶⁵

* * *

Report: Dick Richards, being 70 years old, it is puzzling to me that he was not enrolled by himself as the head of a family in 1870...altho I am unable with the assistance of himself & and many of the **other Indians of the same band**, to so locate him, and, **as he and all affirm that he is a Grand River Indian & drew an allotment as such, he is therefore enrolled.**¹⁶⁶

* * *

...My father's name Wobbena=inggo he was Chippewa Tribe and he was one of member of Chief Passhaw=Sak-gays Band of Early of **Grand River Band of the Ottawa and Chippewa Tribe** and Those of [] Two Tribes of the **Grand River Bands** and Grand Rapids Black skin Tribes and the chief Mr=noon-day, the government of the United States they moved those 2 Tribes to the farther north of the given them no later 1857- to Oceana co. of Indian Reservation of the Lands of the situation of you **Township of albridge Oceana County Michigan.**¹⁶⁷

* * *

Freesoil Mich June 23rd 1909

Hon. Horace B. Durant

St. Ignace, Mich.

Dear Sir.

I hope I will hear from you by returning mail, in regard to the whole member of the following bands
Grand River, Traverse

¹⁶³ Lantz at 438 (**Emphasis Added**).

¹⁶⁴ Lantz at 441 (**Emphasis Added**).

¹⁶⁵ Lantz at 527 (**Emphasis Added**).

¹⁶⁶ Id. at 527 (**Emphasis Added**).

¹⁶⁷ Lantz at 541-542 (**Emphasis Added**).

Mackinac, Sault Ste. Marie...

Please. Answer.

I, am, Your Very Respectfully

Sampson Robinson

Freesoil, Mich.¹⁶⁸

* * *

Mr. Horace B. Durant

Feb 22 1909

Sir received your Letter an answer will Say **I am full Member Ottawa &**

Chippewas Grand River Band Chief [Me-tay-o-mig]

no children

Mrs. Eliza Trombly¹⁶⁹

Again, Durant wasn't direct by Congress to generate a roll that distinguishes by bands, but that is in fact what he did, and what he was directed to do.¹⁷⁰ Attached as Appendix A is a survey of the locations referenced in the Durant Field Notes as demonstration of GRB within the Grand River Area at the time of the Durant Roll.¹⁷¹ Overall, these specific references to GRB by Durant and by members (and the locations), cannot simply be dismissed or ignored, but instead, used to prove GRB's distinct community. That's precisely why the 1836/1855 treaty tribes use this roll, the NMOA used this roll, Congress used/uses this roll to distribute Ottawa and Chippewa judgments, and why the BIA uses it for determining eligibility for other federal services for Ottawas in Michigan today.¹⁷²

GRB Petitions for Treaty Enforcement and Organization under the IRA

¹⁶⁸ Lantz at 556 (**Emphasis Added**).

¹⁶⁹ Lantz at 579 (**Emphasis Added**); *see also* Lantz at 398-399 for addition "Grand River Band" references outside the Grand River Band portion of the roll/field notes (page 49 and up).

¹⁷⁰ *See* footnote 97.

¹⁷¹ The survey is just reviewing generally the locations, and not an exact science. What was found, however, speak for itself in terms of the predominance within the Grand River Area.

¹⁷² *See Michigan Indian Recognition: Hearing Before the Subcommittee on Native American Affairs of the Comm. on Natural Resources*, 103rd Cong. 1st Sess. at 133-134 (Sept. 17, 1993)(statement of James M. McClurken noting that "[t]he combined cooperation of the individual tribes allowed the NMOA to gradually evolve from a single-issue organization to meet broader health, education, welfare and political needs. NMOA leadership made sure that health and education services available to the Michigan tribes who organized under the Wheeler-Howard Act were also available to the Ottawa/Odawa"); *see also* fn. 292 (1975 Senate Hearing at 25).

After the Durant Roll was completed, the fight for the Ottawa communities, collectively as the “Ottawa and Chippewa Indians” and as individual geographic bands, to have treaty rights and obligations persisted. GRB has documented efforts of our leaders exhaustively through our submissions of the period after the Durant Roll but prior to the enactment of the IRA in 1934.¹⁷³ OFA, once again, chooses to ignore the evidence of community supplied by the Petitioner during this time period.¹⁷⁴ Leaders during this time, Jacob Cobmoosa and Sampson Robinson, were both acknowledged as leaders (as selected by the GRB) via power of attorney documentation.¹⁷⁵ The PF fails to address the confirmation of the GRB distinct community these documents demonstrate.

Congress enacted the IRA in June of 1934. And as the petitions rolled in after the adoption of the Wheeler-Howard Act, to have the Ottawa [and Chippewa] Nations recognized (with all bands represented), the response from the United States was tepid at best (from higher ranking officials), outwardly ignorant at worst, but those officials “closer to the action” lobbied their bosses to allow GRB to organize.

The PF provides little analysis of the documentation showing the GRB community during this era despite voluminous evidence. Following a generic summary of the Indian Reorganization Act (including an inapplicable Solicitor memo regurgitating the misinterpretation of the “dissolution” provisions of the Treaty of 1855¹⁷⁶), the PF provides an uninspired and transitory analysis of this period, and of Petitioner’s submissions:

With the passing of the 1934 IRA, Michigan Indians initiated efforts to reorganize. Petitioner #146 claims that Enos Pego (1877-1939) filed the first petition for reorganization of the Grand River bands sometime in 1935 but that “the original document is no longer on file in Federal archives.” Department researchers found correspondence from 1935 to the Chairmen of the Senate and House Committee on Indian Affairs from Jacob Walker Cobmoosa, who petitioned for claims on behalf

¹⁷³ See McClurken, 2006 Ethnohistoric Response at 119-139 (analyzing significant documentation and evidence supporting the efforts of Jacob Walker Cobmoosa during the period after the Durant Roll through the enactment of the IRA); *see also* Petition at 12-14, 112-126; *see also* McClurken, 2000 Report at 204-221.

¹⁷⁴ See PF at 34-35.

¹⁷⁵ Petition at 12; *see* McClurken, 2006 Ethnohistorian Response at 102-110.

¹⁷⁶ PF at 35-36.

of the “Ottawa and Chippewa Tribes of Michigan,” now under the IRA. Another 1936 claims petition was submitted by 82 individuals to U.S. Representative Albert J. Engel. The individuals did not identify themselves as Grand River Ottawa peoples in this petition. However, in July 1936, Arthur Mobey sent a letter to the Commissioner of Indian Affairs regarding a petition for reorganization. His letter included the names of 44 individuals he identified as “Grand River Indians.” It is unclear what the relationship was between the Cobmoosa petition and Mobey correspondence, whether they were competing petitions, and whom Cobmoosa and Mobey respectively represented. The Department of the Interior Superintendent of the Tomah Agency, Frank Christy, responded to Mobey’s letter, stating that any cash payments due Ottawa peoples under treaties had been paid and that the matter of reorganization under the IRA would take time to consider. Efforts at reorganization among Ottawa Indians would continue in 1937 and 1938. Enos Pego died in 1939, and Petitioner #146 claims that “World War II intervened and no Grand River Ottawa leader after him was able to pursue IRA restoration of Ottawas’ tribal governments.”¹⁷⁷

Now aside from the crystal-clear policy in adopting the Holst Report (which ended any real communication or possibility of organization under the IRA after 1939), consider the disparities between the PF and the Grand Traverse Findings on this period on the same exact subject matter.¹⁷⁸

That is also the case in the MBPI Finding, BAR/OFA takes a step further and uses inferences with findings from the NHBP. MBPI’s petition provided no IRA evidence and is analyzed anyway because there is precedent established in Michigan regarding recognition and the failed attempts to organize under the IRA qualified as evidence of community and identification by the federal government for purposes of recognition. And because there was nothing in the record indicating MBPI submitted a request for organization, NHBP’s request for organization was inferred (logically) due to their close relationship:

Prior to 1992, the membership of MBPI was included on the rolls of Huron Potawatomi, Inc. (HPI), which had been seeking Federal acknowledgment since prior to the institution of the Federal Acknowledgment Process. HPI sought to organize under the Wheeler-Howard Act (Indian Reorganization Act, or IRA) in 1934, but fell under Commissioner of Indian Affairs John Collier’s general decision

¹⁷⁷ PF at 36 (footnotes omitted).

¹⁷⁸ Grand Traverse Finding, Report on History of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan at 6-10 (concluding that “[i]n 1915 a Grand Traverse leader contacted the Bureau seeking aid in defense of treaty rights, and the IRA era is replete with evidence that the Band existed and that the Bureau recognized the fact.”).

in 1940 not to further extend Bureau of Indian Affairs (BIA) services to the Indians of Michigan's Lower Peninsula. The MBPI were not part of those early efforts of the HPI. On March 11, 1972, HPI submitted another request for recognition and organization under the IRA to the Bureau of Indian Affairs, and the MBPI families were part of these modern efforts.¹⁷⁹

What occurred since 1934 (and regurgitated by the Department from that point until today) is that each effort to organize the Ottawas of Michigan's lower peninsula was met with significant opposition by the federal government at every level (despite evidence showing all lower peninsula *Anishinaabek* bands should have been allowed to vote and organize at that time). Congress understood the disparate treatment levied upon the *Anishinaabek* bands of lower Michigan during the IRA period. With the enactment of the "Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act" ("LTBB/LRB Recognition Act"¹⁸⁰), Congress found that:

(5) The Bands filed for reorganization of their existing tribal governments in 1935 under the Act of June 18, 1934 (25 U.S.C. 461 et seq.: commonly referred to as the "Indian Reorganization Act"). Federal agents who visited the Bands, including Commissioner of Indian Affairs, John Collier, attested to the continued social and political existence of the Bands and concluded that the Bands were eligible for reorganization. Due to a lack of Federal appropriations to implement the provisions of the Act, the Bands were denied the opportunity to reorganize.

(6) In spite of such denial, the Bands continued their political and social existence with viable tribal governments. The Bands, along with other Michigan Odawa/Ottawa groups, including the tribes described in paragraph (2), formed the Northern Michigan Ottawa Association in 1948. The Association subsequently pursued a successful land claim with the Indian Claims Commission.

(7) Between 1948 and 1975, the Bands carried out many of their governmental functions through the Northern Michigan Ottawa Association, while retaining individual Band control over local decisions.

¹⁷⁹ See MBPI PF at 4; see also MBPI PF, Historical Technical Report at 131-133.

¹⁸⁰ As previously alluded to, LTBB along with LRB, were recognized by Congress in 1994. Grand Traverse was recognized by the "BAR" process in 1980. Even after recognition, the United States (via DOI and the BIA), didn't make anything easy. Between 1980 and 1988, the Band engaged in a protracted dispute with the Department of the Interior over the terms of its constitution because it wanted to enroll citizens of the other Ottawa bands in the lower peninsula of Michigan. During this period, the Secretary of the Interior refused to take further land into trust for the Band. In March 1988 [8 years after federal recognition], after the dispute was resolved, the Secretary ratified the Band's Constitution, see generally Matthew Fletcher, *The Eagle Returns: The Legal History of the Grand Traverse Band of Ottawa and Chippewa Indians* (2012), Michigan State University Press.

(8) In 1975, the Northern Michigan Ottawa Association petitioned under the [IRA]..., to form a government on behalf of the Bands. Again in spite of the Bands' eligibility, the Bureau of Indian Affairs failed to act on their request.¹⁸¹

The various hearings conducted on LTBB/LRB Recognition Act supplied Congress with plentiful and clear evidence as to the shared history of these related bands that OFA is obligated to apply to the Petitioner.¹⁸² The Petitioner could, in theory, insert our name into these findings and just about all the findings remain factual (word for word).¹⁸³ Although the congressional actions reaffirming the relationship with LTBB/LRB/Pokagon may not force the Department to treat the Petitioner similarly, a rational obligation to recognize the commonality, when combined with a legal obligation to understand the historical context of the Petitioner, is quite obvious and reasonable.

As explained more thoroughly (consistent with the findings of Congress and the Department), GRB supplied evidence of John Collier meeting the GRB Community in Grand

¹⁸¹ *Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act*, 25 U.S.C. § 1300-k (Pub. L. 103-324, §2, Sept. 21, 1994, 108 Stat. 2156).

¹⁸² See *Michigan Indian Recognition: Hearing Before the Subcommittee on Native American Affairs of the Comm. on Natural Resources*, 103rd Cong. 1st Sess. (Sept. 17, 1993); see also *Pokagon Band of Potawatomi Indians Act and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act: Hearing before the Senate Committee on Indian Affairs*, 103rd Cong., 2nd Sess. (Feb. 10, 1994); see also H. Rep. No. 103-621(1994); see also S. Rep. No. 103-260 (1994).

¹⁸³ **Let's try it:**

(5) The [Grand River] Bands filed for reorganization of their existing tribal governments in 1935 under the Act of June 18, 1934 (25 U.S.C. 461 et seq.: commonly referred to as the "Indian Reorganization Act"). Federal agents who visited the Bands, including Commission of Indian Affairs, John Collier, [as well as Superintendent Frank Christy and Mark L. Burns], attested to the continued social and political existence of the Bands and concluded that the Bands were eligible for reorganization. Due to a lack of Federal appropriations to implement the provisions of the Act, the Bands were denied the opportunity to reorganize.

(6) In spite of such denial, the Bands continued their political and social existence with viable tribal governments. The Bands, along with other Michigan Odawa/Ottawa groups, including the tribes described in paragraph (2), formed the Northern Michigan Ottawa Association in 1948. The Association subsequently pursued a successful land claim with the Indian Claims Commission. (7) Between 1948 and 1975, the Bands carried out many of their governmental functions through the Northern Michigan Ottawa Association, while retaining individual Band control over local decisions.

(8) In 1975, the Northern Michigan Ottawa Association petitioned under the [IRA]..., to form a government on behalf of the Bands. Again in spite of the Bands' eligibility, the Bureau of Indian Affairs failed to act on their request.

Yep. It works. All these details remain factually accurate. Only replaced LTBB/LRB with GRB. Everything else, word for word, is accurate as to GRB, LTBB, LRB, and Grand Traverse.

Rapids in 1935, and GRB leaders were present (Enos Pego and Jacob Cobmoosa).¹⁸⁴ Collier then send federal agents, including Mark L. Burns (Minneapolis Area Office) and Superintendent Frank Christy, who conducted meetings regarding reorganization in GRB communities including Crystal Valley (Oceana Co.) and Muskegon.¹⁸⁵ Arthur Moby, Peter Stone, and Enos Pego got the attention of the Department as well as Congressman Albert Engel.¹⁸⁶ Visiting those specific areas didn't happen by chance and is outwardly in response to the amount of natives (*i.e.* Grand River Ottawas) living in those areas.¹⁸⁷

Federal officials attested to the continued social solidarity and political existence of the Petitioner and concluded that the Petitioner was eligible for reorganization including Mark Burns:

I feel that they [Grand River Bands] are entitled to come under the Reorganization Act, although they have no reservation, nor are they enrolled. However, before anything can be done for these people, quantum of Indian blood must be determined.¹⁸⁸

¹⁸⁴ McClurken, 2000 Report at 226; *see also* McClurken, 2006 Ethnohistorical Response 145-146.

¹⁸⁵ McClurken, 2000 Report at 222-223; *see also* McClurken, 2006 Ethnohistorical Response 147-148.

¹⁸⁶ *See* McClurken, 2006 Ethnohistorical Response 145-155.

¹⁸⁷ As more thoroughly discussed in the “1948 to 1983” section, we demonstrate our *community* by what specific data we can present with the recognized leaders/speakers of GRB for this period, such as Jacob Cobmoosa, John Chingman (Muskegon), Peter Stone (Hesperia), Arthur Mobey (Honor), Enos Pego (Hart), Francis Wakeman, in addition to the Census information submitted (*see* McClurken, 2006 Ethnohistoric Response at 32-41). Then we utilize the NMOA unit mailing lists (generally showing the makeup of Units 4 and 5 that occurred roughly 25 years later after the failed IRA reorganization efforts) as well as unit meeting minutes containing leaders of those GRB units. The connections can be easily recognized that our distinct GRB *community* remains constant with families in the “Grand River Area” (*i.e.* Oceana County (Elbridge, Hart, Pentwater), Newaygo County, Muskegon County, and Kent County/Grand Rapids)(which is our version of the “Grand Traverse Area” as used in the Grand Traverse Finding, or the Bradley/Salem areas with MBPI, or Mason/Manistee with LRB). The NMOA Unit mailing lists also allows us and the Department to see the GRB members outside of the Grand River Area for comparison. The comparison shows the majority of our base citizenry is continuously within the Grand River Area going back to 1855 and today remains in the Grand River Area. Further evidence, such as the attendance lists and voting actions related to the Docket 40-K distribution all confirm our community by the allocation of group resources to enforcement of treaty rights and settling disputes via democratic means via the NMOA. Whether it was hearings involving BIA/DOI officials or congress, unit meetings, or NMOA-wide meetings where GRB took separate actions, it's significant evidence of our community. Not to mention the final roll created as part of this process (which we've never been permitted to receive a copy of).

¹⁸⁸ *Pokagon Band of Potawatomi Indians Act and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act: Hearing before the Senate Committee on Indian Affairs*, 103rd Cong., 2nd Sess. (Feb. 10, 1994) at 287, 380-384, (Appendix K: Testimony of James M. McClurken, Ph.D., concerning S. 1357 (A Bill for Status Reaffirmation and Clarification of the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians); *see* McClurken, 2006 Ethnohistorical Response at 151-152 (quoting from quoting from Mark Burns to John Collier, 16 June 1936, CCF General Services 9634-1936, 066); *see also* McClurken, 2000 Report at 225-229.

Despite this substantiation of GRB eligibility, Acting Commission of Indian Affairs Zimmerman misinterpreted the IRA in opining that only current natives living on reservations, were permitted to organize.¹⁸⁹ In other words, no land, no organization. BIA officials still indicated, however, that the “Grand River Band of Ottawa” were eligible for organization under the IRA:

Reference is made to Office letter of May 27, inclosing a copy of a letter received by the Office from Mr. Enos Pego, of Hart, Michigan, requesting information concerning the Indian Reorganization Act.

Mr. Pego refers to the Indians living in Oceana and Mason Counties, in Michigan, where he claims the Grand River Band of Ottawa had their reservation.

Under date of April 6, I made a report to the Office concerning these Indians; I feel that they are entitled to come under the Reorganization Act, altho they have no reservation, nor are they enrolled. However, as stated in my letter of April 6, before anything can be done for these people, quantum of Indian blood must be determined. This was clearly explained to the Indians on my last trip to Michigan. I believe that two or three field men should be sent into Michigan to work this out, and urge that this be done.¹⁹⁰

Petitioner’s specific GRB evidence submitted is similarly situated to the evidence utilized not only by the Department with the Grand Traverse, MBPI, and the NHBP determinations, but by Congress as well (nearly word for word, that’s us too!!). Collier also referenced Enos Pego, and Peter Stone (of “Hesperia”) in his correspondence to Senator Burton K. Wheeler about GRB’s IRA petitions:

This is in reference to your letter of March 31 in which you enclose a letter to you from **Mr. Enos Pego and Mr. Peter Stone of Hesperia, Michigan**, relative to the Ottawa Band of Indians coming under the Wheeler-Howard Act.

The matter of the Grand River Band of Ottawas of the State of Michigan coming under the Indian Reorganization Act has heretofore received the attention of this Office...

This particular group presents an unusual problem. While they may have rights under the Indian Reorganization Act when and if organized, they have for year been dealt with by the state authorities as have other citizens, receiving direct relief...For the Indian Service to go among these people with inadequate funds...It is a situation which we hesitate to disturb.¹⁹¹

¹⁸⁹ McClurken, 2000 Report at 223-224.

¹⁹⁰ McClurken, 2000 Report at 231-232; *see also* McClurken, 2006 Ethnohistorical Response 151-152.

¹⁹¹ *See* McClurken, 2000 Report at 226-227; *see also* *Michigan Indian Recognition: Hearing Before the Subcommittee on Native American Affairs of the Comm. on Natural Resources*, 103rd Cong. 1st Sess. at 132, (Sept. 17, 1993)(Testimony of James M. McClurken, Ph.D.); *see also* *Pokagon Band of Potawatomi Indians Act and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act: Hearing before the*

These excerpts listed in this Response are but a sampling of the letters, petitioners, and pleas for organization under the IRA by the GRB Community, and the federal officials that turned their backs on them.¹⁹²

This excerpt from the Grand Traverse Finding encapsulated the summary of the lower peninsula Ottawa organizational attempts:

Collier's extreme reluctance to become involved in the Grand Traverse situation was reinforced by John Holst's "A Summary of Indian Groups in the State of Michigan." Holst, a supervisor of Indian schools, [via his report from 1939] argued that the Michigan groups had either assimilated or were on the verge of such complete acculturation that imposition of the IRA would destroy a lifetime's work in the Lower Peninsula. According to Holst, no evidence of "tribalism" (which he never defined) now existed, and no authentic bands or leaders. Moreover, the "tribal" organization of all Great Lakes groups had dissolved around 1812. Holst completely ignored entire sections of Old Northwest [lower peninsula] Indian history, ignored the 1836 Treaty and misdated the 1855 one. The report, when seen in its historical context, reflected Bureau policy as it was in the 1930's with all its attendant preconceptions. By 1939 the Bureau had decided on a "hands-off" policy that was set out definitively in a 1940 memorandum by Collier to his Michigan subordinates. Michigan and the Bureau, he advised them, had reached a compromise on the Indian situation. As the states extended their responsibilities over all citizens, the Federal government would diminish its sponsorship. There would be no further extension of the IRA in Lower Michigan. The Indian Office, Collier advised, had not set up additional educational or welfare agencies for Michigan that would "in any way tend to recognize Indians as a separate group of citizens."¹⁹³

Senate Committee on Indian Affairs, 103rd Cong., 2nd Sess. (Feb. 10, 1994) at 288, 380-384 (Appendix K)(Testimony of James M. McClurken, Ph.D, concerning S. 1357 (A Bill for Status Reaffirmation and Clarification of the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians); *see also* 2006 Ethnohistorical Report at 12, 154-155; *see also* Petition at 16.

¹⁹² *See* McClurken, 2000 Report at 221-248; McClurken, 2006 Ethnohistoric Response at 139-159; Petition at 14-16, 127-132.

¹⁹³ Grand Traverse Finding, Report on History at 8 (referencing Holst, J.H., "A Survey of Indian Groups in the State of Michigan," 1939 at 4, NARA-DC, RG75, CCF-General Services (Mich. Misc. I), 9634-1936, 066).

The Holst Report, from the Petitioner’s perspective, was the “back fill” for rationalization of the decision by Christy disallowing reorganization of the Ottawa bands pursuant to the IRA and instead disclaimed responsibility to that of the state of Michigan.¹⁹⁴

The Grand Traverse Finding clearly questioned the conclusions reached in the Holst Report (for what GRB views as obvious bias toward the *Anishinaabek* of Michigan),¹⁹⁵ but still used the population figures he generated as part of the finding in favor of recognition. Holst also listed the following families in the listed towns within the Grand River Area (as it was composed in the late 1930s):

Ottawa Groups in Lower Michigan

[]Crystal Valley	4
Hart	6
Elbridge	8
Cobmoosa	2
Hesperia	2
Muskegon	15
[Grand Rapids	15]
[Holland	6]

58 Families.¹⁹⁶

With this list including Grand Rapids and Holland as within the Grand River Area (but excluding MBPI and LRB areas) there is evidence of roughly 58 Grand River *Bands* families in the Grand River Area.¹⁹⁷ As the Department will encounter in the next section, this number of families

¹⁹⁴ See McClurken, 2000 Report at 242-248 (describing the deficiencies and bias Holst used in his report that was also corroborated by Grand Traverse Finding, Anthropological Report at 10-11; Report on History at 8); *see also* McClurken, 2006 Ethnohistorical Response at 158-159.

¹⁹⁵ Grand Traverse Finding, Anthropological Report at 10-11 noting:

Holst’s report requires, obviously, some comment. Many of his other statements, which state basically that the Indians were all acculturated, were economically well off and faced no discrimination, are contradicted by Mekeel’s report of the time on the Upper Peninsula (1937), and were directly challenged by the Superintendent of the Great Lakes Agency (Farver 1939). The specific comments on political structure and the Grand Traverse leaders do not accord with the other evidence in hand discussed in this report. (Emphasis added).

¹⁹⁶ Excerpt - Holst, J.H., “*A Survey of Indian Groups in the State of Michigan*,” 1939 at 19.

¹⁹⁷ Unsurprisingly, Holst lists Grand Rapids and Holland as “Pottawatomie Groups” but we include them and using a nuclear family (which is very conservative for an *Anishinaabek* family during this period), there were approximately

translates correspondingly to the numbers of NMOA Unit members via the “Grand River Band Only” lists (community of 200-300 over the age of 21 recognizing and justifying themselves as GRB).

Overall, GRB provides (and has provided) significant evidence of the GRB community’s efforts to seek organization under the IRA, and the PF provides one paragraph as to this analysis.¹⁹⁸ Ultimately, after piling evidence upon evidence via the GRB’s voluminous submissions, the PF states the following conclusion:

However, most articles and clippings focused on treaty-related claims, reorganization efforts under the IRA, pan-Indian events and activities, old Indian settlements, people, or events involving individuals not ancestral to the Petitioner's current members, or the death of lineal ancestors of current members of Petitioner #146. They do not describe a distinct community of members interacting with each other.¹⁹⁹

Our response to that is the adage of “what’s good for the goose, is good for the gander.”

It’s unconscionable that the same exact evidence used to support acknowledgment for Grand Traverse, MBPI, and NHBP, but isn’t good enough for GRB (not to mention, once again, was good enough for Congress to recognize LTBB, LRB, and Pokagon). John Collier, Frank Christy, and Mark Burns all traveling to the “Grand River Area” to discuss the IRA with GRB. GRB’s evidence for this period, taken at face value with logical inferences, is ample here. OFA, however, focuses on analysis of newspaper articles, obituaries, oral histories, ghost suppers, and indicates these events should be further “corroborated” with additional evidence, instead of reviewing its own findings with GRB or MBPI,²⁰⁰ or the findings of Congress.

250-350 GRB ancestors (58 families x 4.5 in each family = 261 people) from the report within the Grand River Area.

¹⁹⁸ See PF at 36.

¹⁹⁹ PF at 39 (emphasis added).

²⁰⁰ PF at 39, 49-51.

Although the Petitioner strongly disagrees with this interpretation and approach by OFA under the plain language of the Regulations, OFA fails to see the evidence submitted (newspaper articles, obituaries, oral histories, ghost suppers) is the corroborating evidence, to the Durant Roll. Such evidence corroborates why the Durant Roll identifies the “Grand River Band” (and field notes corroborating self-identification of “Grand River” Ottawas/bands and listed their residence within the “Grand River Area”).

Such evidence corroborates why federal officials consistently communicated with the GRB community as “Grand River.” And it wasn’t just correspondence as Collier, Christy, and Burns all traveled specifically to discuss the IRA with GRB in Grand Rapids, Muskegon, and Crystal Valley (within the Grand River Area, they didn’t go to the “Grand River Area” to talk with Oneidas²⁰¹). The Durant field notes corroborate our community in terms of geographic location and GRB ancestors and the IRA-era documentation between GRB and federal officials speak for themselves in terms of GRB’s distinct community.

1948 to 1983

The focus for the Petitioner during this period of 1948 to 1983 has, and will remain, on the GRB operating autonomously within the structure of the Northern Michigan Ottawa Association (“NMOA”). GRB’s response focuses on the previously submitted evidence as well as new evidence gathered as to mainly GRB Units 4 and 5. Specifically, the operation of the Grand River units in the context of the ICC claims separating from NMOA for the Docket 40-K claims.²⁰²

²⁰¹ The “Oneidas” have “caught a couple strays” in this Response and in a way that could reasonably be viewed as pejorative. That is not intentional. This is simply an exaggeration to exemplify the Petitioner’s argument and to rebut the PF as to what “Indians” was Durant and IRA-era federal officials talking about. The Petitioner has no ill will against the Oneidas (New York, Wisconsin, Canadian, or otherwise). It’s all water under the bridge.

²⁰² GRB maintains other significant events occurred during this time period to demonstrate community with the previously supplied evidence, however, since we couldn’t locate what color shirts the participants of the Cobmoosa Reunion were wearing, or any other events that were attended by only Grand River Bands ancestors, we rely upon our already submitted evidence, and satisfy community pursuant to 25 C.F.R. §§ 83.7(b) via (b)(1)(viii)[collective Indian identity] and (b)(1)(ix)[use of political influence under 83.7(c)], as well as § 83.7(b)(2)(v)[using 83.7(c)(2)(ii)-settling of disputes and (c)(2)(iii)-strong influence by voting requirements] evidence. GRB contends

Creation of GRB Units under the Northern Michigan Ottawa Association

In 1948, the Northern Michigan Ottawa Association was formed by Robert Dominic (“Ogema Dominic” or “Bob”) along with his wife, Waunetta Dominic (“Ogemakwe Dominic” or “Ms. Dominic” who identifies herself as “Grand River Ottawa”²⁰³). In Ogema Dominic’s own words:

So, back in 1948, when we filed a claim before the Indian Claims Commission in accordance with Public Act 726 that Congress passed for and on behalf of Indian throughout the United States, we launched what we thought would be a short case, maybe two or three years involving two or three years at the most, to get our claims settled. But, lo and behold, in view of that, I released my job, my position on the personnel staff of General Motors and Buick in Flint, to go north and work with the Indians. I was just going up there to the thing going, and I have an agreement to go back with Buick when I go through with what I was going to do. That was 1945-1946. The law was passed in 1946. I am still up there, never gone back to Buick.

(laughter)

But we got into a real squabble with the federal government over your claim. In the first place we had to prove that we had Indians in Michigan.

(laughter)

Next, where are your Indians? You haven’t got no proof that you have any Indians in Michigan. Okay, we did that. That was the start of the basic rule questionnaires which we now have on file, of family records and family trees, and we have maintained and updated these files up to the present day, and we used those under our attorneys, Hanno and Rogers, before the Indian Claims Commission, so we won the first step – that there were Indians in Michigan.

* * *

the Cobmoosa Reunion in 1958 is a clear demonstration of our community despite the PF stating that, effectively, because GRB can’t prove we organized the event and had assistance from non-GRB people/organizations, it can’t be used as community evidence (*see* PF at 57-61). GRB has elected, however, to forego further analysis of this clear evidence of community subsequent to the TA Meeting. The TA Transcript offers a glimpse of the absurd view of how OFA researchers search for evidence of community with indicating that the list showing 346 natives attending, but because they didn’t put “Grand River” and because the event wasn’t organized and run by the Units 4, 5, or 7 of the NMOA, it’s not evidence of community (*see* TA Transcript 131-153 for discussion of reunion).

²⁰³ Dominic Deposition at 175.

Now, that started 27 years ago, when we started, and on about late 1960, we started getting some decision and then in the sixties, they really started coming in...[w]e won the claim for the Grand River^[204], we won the claim for 1836 jointly with another case.

* * *

Now, I want to state my position in regard to the Grand River. I support Senator Hart's Bill, s-558, one hundred percent, and for what is stands for and what the Grand River Indians can get out of it.²⁰⁵

As Mrs. Dominic explains, it was a labor of love working for the Ottawa (and Ojibwa).²⁰⁶ And Mr. Dominic, who walked on in 1976 (and as a would-be citizen of the Little Traverse Bay Bands of Odawa Indians), worked non-stop as has been documented throughout this process to litigate claims and work with families to organize their ancestry.²⁰⁷

Petitions were filed on behalf of the successors-in-interest to dozens of treaties through the Indian Claims Commission. The rights of the Ottawas, including the Petitioner, were litigated under the treaties of 1821, 1836, and 1855 (amongst others). As it relates to the Petitioners, this process is critical for this period as GRB is uniquely situated to verify evidence of community through the various hearings, transcripts, mailing lists, attendance records for these meetings, and other documentation that grew from the claims process.

²⁰⁴ This is further explained in footnote 207, but note the context of "them" or "they" as he, like all Ottawas in the lower peninsula, understood the distinction between the bands based upon the Durant Roll designations.

²⁰⁵ Notice and Transcript of PUBLIC HEARING REGARDING USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS, CLAIMS, Docket No. 40-K, Grand Rapids, Michigan, May 18, 1974 at 64-66; letters commenting on use and distribution of judgement. **New Evidence.**

²⁰⁶ Waunetta notes in the Dominic Deposition (at 26-27):

DOMINIC: ...So he says, now I'm going to tell ya, you are going to have to make a choice, he says, either you are gonna have to be poor and come up here in Northern Michigan and works for Indians, or we'll make it on our own real good, he says, in Flint. I said, well, I've never been rich before in my life, so I wouldn't know how to feel anyway, never had anything before, I says, so let's be poor.

²⁰⁷ Please note the interplay in pronoun use with Mr. Dominic and Mrs. Dominic when GRB is discussed or written about. Mr. Dominic will generally use "them," "they" or "their" because he is Little Traverse Ottawa. Whereas Mrs. Dominic will generally use "us" and "me" because she's Grand River Ottawa.

The NMOA, even in its infancy, recognized the demarcation of the Petitioner from the rest of the NMOA Ottawa.²⁰⁸ Ogema Dominic corresponded with Mr. Cornelius Baily, not only on the claim but to contact Mr. Jacob Cobmoosa (referred to as “Mr. Walker” in the letter) about the distinct GRB claims.²⁰⁹ As the prosecution of the 1836 Treaty claims continued, the process to research the claims under the 1821 Treaty continued into the early 1950s.²¹⁰ Ogema Dominic references the bands utilizing, in a general sense, the representation of the Ottawas bands:

Approximately 300 Indians [] attended our [NMOA] meeting last Saturday. They came from all over the state. No doubt we would have more attending, but where Indians are heavily [sic] concentrated they elected to send delegates travelling in one or two cars to save expense. Then these representatives went back to tell their neighbor Indians what they did and heard at the council. They are unanimously in favor of our claims movement.²¹¹

The GRB related units took form concurrently, established representatives, and sent notice to the NMOA of those decisions:

The Muskegon, Grand River, Unit 5 has [authorized] Mr. Cornelius Bailey to get the full report on petitions as of now. **And to see if you approve of our Muskegon unit as organize, and plans for the other two Grand River units:**

Virginia Chingman
Sec[retary]²¹²

The Petitioner’s record now includes several letters regarding the Grand River units operating to serve its citizens within the context of the NMOA:

The following are the officers:...

²⁰⁸ *Letter from [Robert Dominic] to Charles Rogers* (Mar. 25, 1949), Private Collection of Robert and Waunetta Dominic (hereafter “Dominic Papers”), noting that “...I’ve been working [with] Mr. Cornelius Bailey, an Ottawa from the Grand River Band of Ottawas” regarding the, not yet researched, 1821 Treaty claim of the GRB; *see also* Dominic Papers, *Letter from Robert Dominic to Mr. Cornelius Bailey* (May 12, 1949)(referencing “the Grand River Band of Ottawas and “their” old claims”).

²⁰⁹ Dominic Papers, *Letter from Mr. Cornelius Bailey to Robert Dominic* (May 1949)(stating “[a] little about Mr. Walker, He seems to be going right along all the time. His first petition was turned down, but he got instructions how to revise it and send it back to Washington D.C. to conform with the rules of the Commission.”).

²¹⁰ Dominic Papers, *Letter from A.B. Honnold to Robert Dominic* (May 31, 1950)(noting that NMOA questionnaires showed “Grand River Band 198” in terms of the 1836 Treaty claims” (which would become the Dockets 18-E and 58 claims). The letter also references that the “attorneys for the Government admit and contend that the above named 5 bands constitute the only Ottawas and Chippewas interested in the 1836 cession...”).

²¹¹ Dominic Papers, *Letter from Robert Dominic to Mr. Arthur Honnold to* (June 7, 1950).

²¹² Dominic Papers, *Letter from Virginia Chingman, Grand River Unit 5 Secretary to Robert Dominic* (Dec. 28, 1950).

Grand Traverse Unit #2 ²¹³	(Appointees)	
Mitchell Raphael	Chief	Cedar, Michigan
Esther Coon	Secretary	Homer, Michigan
Susan Miller	Treasurer	Omena, Michigan
Grand River Unit #3	(Appointees)	
Lewis Church	Chairman	Hopkins, Michigan
Gladys Church	Secretary	Hopkins, Michigan
One other to be accepted		Hopkins, Michigan
Grand River Unit #4	(Appointees)	
Joshua Shagonaby	Chairman	[]Grand Rapids, Mich.
Silas J. Bush	Vice-Chairman	Grand Rapids, Mich.
Susan Miller	Treasurer	Grand Rapids, Mich.
Grand River Unit #5	(Appointees)	
John Chingman	Chairman	[]Muskegon Hts. Mich.
Virginia Chingman	Secretary	Muskegon Hts. Mich.
Susan Miller	Vice-Chairman	Muskegon Hts. Mich.
*Cornelius Bailey	Intermediary Emeritus,	Custer, Mich.

*Term of office expired but eligible for meeting.²¹⁴

Grand River Units 4 and 5 (as well as 3 and 7²¹⁵) would continue to elect unit leaders to serve GRB's interests.²¹⁶ For clarity's sake, it's important to point out the majority of Unit 1 NMOA

²¹³ Grand Traverse's Unit #2 officers are listed simply to support the geographical demarcations consistent with the Grand Traverse Finding as well as the Unit #3 demarcation for Gun Lake.

²¹⁴ Dominic Papers, *Letter from Robert Dominic to Joshua Shagonaby* (Feb. 24, 1951); *see also* Petition 138-144. The Petitioner views this snapshot of the GRB community because a shift in population is ongoing from rural locations to urban centers and was ongoing since the early 1900s (as demonstrated from Durant's Field Notes; *see also* McClurken, 2000 Report at 204-205), but accelerated in the 1950s because of federal programs such as the Urban Indian Relocation Act of 1952 and the Indian Relocation Act of 1956 (70 Stat. 986)(1956)(which the basic concept was to luring natives from reservations and rural areas and into urban centers allowing them to blend with the general population. The program also attempted to ramp up the economy after WWII with manufacturing-related programs. The federal programs were generally unsuccessful for native populations. These programs generated population shifts for rural GRB members to Grand Rapids, Muskegon, Lansing, Flint, Saginaw, and Detroit. Basically, any town that had an automobile manufacturing or assembly plant resulted in a native population increase. What happened is that instead of being impoverished in rural areas, most ended up being impoverished in an urban setting. As our submissions indicate the GRB community did decrease within the Grand River Area, but still showed a strong majority within those Grand River Areas such as Grand Rapids and Muskegon as demonstrated by Units 4 and 5 mailing lists and activities, along with Unit 6 in Lansing.

²¹⁵ We speak less at this point about units 3 and 7 as those units are made up of the present day MBPI and LRB respectively, and we slowly deviated paths beginning now until the 1980s.

²¹⁶ *See* Dominic Papers, 5th Annual Council Meeting, Minutes, June 20, 1953 at 2 (electing Unit #4 officials as "Joshua Shagonaby, Eva Bayles, and Sam Leo." Unit #5 officers were "John Chingman, Solomon Shalifoe, and Virginia Chingman.") **New Evidence.**

members now make up the citizens of LTBB.²¹⁷ The majority of Unit 2 NMOA members now make up the citizens of Grand Traverse.²¹⁸ Unit 6 (Lansing) was a majority of GRB eligible citizens, but due to the Urban Indian Relocation Act (and other similar laws), many *Anishinaabek* people (and other natives) ended up where the auto manufacturing plants were located. These units set in urban centers such as Muskegon, Grand Rapids, Lansing, Flint, and Detroit (GRB citizens in these locations remained a part of the GRB and *Anishinaabek* communities but were not necessarily located inside the Grand River Area).²¹⁹

As the process continued, letters between Ogema Dominic and the attorney referenced specific trips to prepare the Grand River Band claim and Ogema Dominic looking for the 1870 annuity roll:

...I plan to see many of the Indians in the southern part of the state, **these are mostly Grand river Ottawas**...I feel that I could accomplish a great deal more than I would by using mail and asking a lot of questions, **in tracing Grand River ancestors**.²²⁰

Once the needed research was completed, and filed, the ICC eventually understood the GRB claim to be separate as evinced by the ICC opinion, noting that:

The only treaty that seems, from the record, to have been recognized as belong to one band of Ottawas alone is the treaty of August 29, 1821; and that it was recognized as belonging solely to the **Grand River Band of Michigan** is indicated by the fact that the annuity of \$1,000 provided therein was thereafter paid to this

²¹⁷ See *Supplemental Testimony of Michigan Indian Legal Services, Inc., Attorneys for the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians on S. 1357* (March 7, 1994), submitted for the hearing record for the Senate Committee on Indian Affairs, 103rd Cong., 2nd Sess. at 403 (Feb. 10, 1994); See also, *Michigan Indian Recognition, Hearing Before the Subcommittee on Native American Affairs of the Comm. on Natural Resources*, 103rd Cong. 1st Sess. at 75-118 (Sept. 17, 1993)(Testimony of James A. Bransky and William J. Brooks, Michigan Indian Legal Services, Inc., Attorneys for the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians on H.R. 2376, before the Subcommittee on Native American Affairs of the Comm. on Natural Resources).

²¹⁸ Grand Traverse Finding at 12 (noting that “[t]he group participated in the Indian Claims Commission case of the Ottawa and Chippewa of Michigan. According to the [Grand Traverse] petition, delegates from Peshawbestown and Northport (separately stated) attended a 1951 Northern Michigan Ottawa Association [] meeting on the subject. NMOA was formed in 1948 and according to informants Unit II which coincides with the Grand Traverse area was the second one formed (*emphasis added*)).

²¹⁹ See footnote 214; See also Grand Traverse Finding at 3, and footnote 140.

²²⁰ Dominic Papers, *Letter from Robert Dominic to A.B. Honnold* (April 4, 1952)(**Emphasis added**).

band alone, and the payment of said annuity ceased after the release by this band alone in the treaty of 1855.²²¹

The quoted finding from the opinion is also part of an ICC decision where treaty-signing ancestors of the Petitioner were further precluded from filing claims relating to other Pottawatomie treaties prior to 1821. This is important because this put GRB in a very distinct category as it related to both our *Anishinaabek* brethren and all the multiple collective claims percolating. The Docket 40-K claim is solely specific to GRB and as such, enables us to distinguish ourselves from **everybody else** (native or non-native).

The court further explained GRB was distinct (as the federal government came to later understand) and such distinction continues through present day:

On August 29, 1821, a group of Ottawa Indian known as the Grand River Band of Ottawa Indians resided in the southern Michigan peninsula about the Grand River. Said group or band was wholly separate and apart from other bands or groups of Ottawa Indians occupying the country north of them, including the parent band at L'Arbre Croche, functioned as an autonomous, independent unit, separately using, occupying and possessing a definable area within Royce Area 117.^[222]

The ICC clearly gets it.

The process, however, was not completed and the NMOA and the GRB community carried with their affairs that including, but was not limited to, prosecution of GRB specific claims. Unit #4 informed the NMOA that the leadership consisted of “Chair[woman], June Gardner; Vice-Chairman Lewis Childs; Treasurer, Eva Cushaw,” with Unit #5 electing “Chairman Peter Stone.”²²³ This GRB process of informing NMOA of its leadership was repeated in 1963 for Units

²²¹ *Robert Dominic, et. al., as the Representatives and on behalf of all members by blood of the Ottawa Tribe of Indians...v. U.S.*, 2 Ind. Cl. Comm. 461, 478 (1953) (**Emphasis added**). **New Evidence**.

²²² *Robert Dominic, et. al., as the Representatives and on behalf of all members by blood of the Ottawa Tribe of Indians...v. U.S.*, 6 Ind. Cl. Comm. 414, 438-439 (1958). **New Evidence**. Royce Area 117, for purposes of this Response and GRB, was the area south of the Grand River (in present day Grand Rapids, Mich.), but north of the Kalamazoo River (in present day Kalamazoo, Mich.)(see 6 Ind. Cl. Comm. at 439-440). That area approximates the GRB 1821 territory.

²²³ *Dominic Papers*, NMOA Executive Council Meeting (Aug. 13, 1960)(Grand Rapids, Mich.) at 4.

#4²²⁴ and #5.²²⁵ Additional NMOA records relating to the units also helps corroborate the demonstration of the GRB community. Notices for the NMOA's 15th Annual Meeting were circulated to Unit #4 (Grand Rapids) for 75 households, and to Unit #5 for 100 households.²²⁶

GRB Units and Docket 40-K

In terms of the 1821 claim, the confusion was in the isolation of the 1821 treaty lands, and how to divide up the judgment award between the Potawatomi and GRB claims.²²⁷ The ICC, due to the clear distinction between GRB and other Potawatomi and Ottawa bands, severed those specific claims into Docket No. 40-K (hereinafter "40-K Docket"). In rendering Findings of Fact, the ICC stated the Grand River Bands:

Only two groups of Ottawa Indians were receiving annuities from the United States in 1821. They were Ottawa Indians residing in the present State of Michigan who were known as the **Ottawa of Grand River**...The petitioners in Docket 40-K and consolidated Dockets 40-B, C, D, E and [F], are successors in interest to the Ottawa of Grand River in Michigan, and include Indians whose ancestors resided in the northern part of the area here involved and who were known as the **Grand River Band of Ottawa Indians**...²²⁸

In addition to the ICC's ability to identify the distinct community of GRB, Ogemakwe Dominic is easily able to articulate the distinction between GRB and the other Ottawa Bands:

DOMINIC: Well, I think I explained that earlier in the day where down below the Grand River there is five million acres of land that was [ceded] to the

²²⁴ *Dominic Papers*, NMOA Unit Officer Sheet, Unit #4 (1963)(listing June Gardner, Chair (Grand Rapids); Lewis Childs, Vice-Chair (Grand Haven); Eva Cutshaw, Treasurer (Marine City); Sam Leo, Counsellor (Grand Rapids); Bill Shomin, Trustee (Grand Haven); [Herbert/Norbert] McClellan, Trustee (Grand Rapids). **New Evidence.**

²²⁵ *Dominic Papers* Unit #5 Meeting, minutes (May 13, 1963)(Muskegon, Mich.) at 4 (listing Chairman, Mr. Peter W. Stone; Vice-Chairman, Mr. Alex Chingman; Treasurer, Mrs. Elizabeth Cantu; Secretary, Mrs. Delia E. Morgan; Counselor, Mr. Don Williams; Counselor, Mrs. Lillian Stone). **New Evidence.**

²²⁶ *Dominic Papers*, NMOA Notice for 15th Annual Meeting (May 25, 1963) (June Council Announcements). **New Evidence.**

²²⁷ *Dominic Papers*, NMOA 16th Annual Meeting (June 20, 1964)(noting that "[a]s yet the 1821 decision had not been handed down due to confusion concerning the Pottawatomie claims"). **New Evidence.**

²²⁸ 2 Ind. Cl. Comm. 461, 467 (**Emphasis added**). GRB asserts that this ICC opinion is evidence incapable of rebuttal with the ICC court noting the "Grand River Band of Ottawa Indians" as a named, collective Indian identity since 1821 as the date of the decision was 1953. GRB submits that, in all reasonable likelihood, the collectively named identity of the Petitioner would be recognized at least 50 years moving back (to 1903) or 61 years forward in time until 1994, with the GRB remaining, predominately, within the "Grand River Area"; see Huron Potawatomi PF 1995 at 9, (noting "... the HPI have had a named, collective Indian identity continuously since 1842, a period of significantly more than 50 years, thus meeting criterion 83.7(b)(1)(viii)."

government in 1821, ceded by the Grand River Ottawa and the [Potawatomi's]. About one-third of that was the Grand River Ottawas and about two-thirds was the [Potawatomi's]. And when these Indians ceded the land they were moved north of Grand River...

STEKETTEE: You mean the Ottawas were?

DOMINIC: Yes. And they settled along the Muskegon and [Newaygo] and all along that shore line. That's where the majority of your Grand River are today. A few came up in here, like for instance, me. I'm Grand River Ottawa. Now there are a few here in this area [Petoskey], not too awful many. Well, I could just name a few families that are Grand River Ottawas here [in Petoskey].²²⁹

* * *

TIERNEY: ...if I am correct in understanding what you have discussed here today, there are many members of your association [NMOA] who are descended from people who signed the 1821 Treaty and people who signed the 1836 Treaty. Is there any way that you keep those people separate on your membership lists so that you know who is a beneficiary under which treaty?

DOMINIC: Yes. Just giving you a little sample, questions such as did you receive payments in 1910. Did you parent or grandparent receive payment? Were you on the 1908 Ottawa-Chippewa [Durant] Roll? Are you of both Ottawa and Chippewa blood? Band from which descendant, Sault Ste. Marie, Mackinaw, Little Traverse, Grand Traverse, Grand River and others?...What is the date of your birth and what is your blood degree?²³⁰

* * *

TIERNEY: Are there people who are members of the Northern Michigan Ottawa Association who are Ottawa that never moved north of the Grand River...

DOMINIC: Yes.

TIERNEY: So their names are not on the [Durant] Roll?

DOMINIC: They are listed as Grand River Ottawas or they are listed as Little Traverse or Grand Traverse.²³¹

* * *

DOMINIC: **...this is something which I think very few people realize—there are Ottawas up in this area [Petoskey] and different areas that are not Grand River Ottawas. They never came from that area. Like for instance, these guys, these are Ottawas, but they are not Grand River Ottawas. They are Ottawas from this area [Petoskey].**²³²

* * *

²²⁹ Dominic Deposition at 175 (Emphasis added). **New Evidence.**

²³⁰ Dominic Deposition at 179-180.

²³¹ Dominic Deposition at 181.

²³² Dominic Deposition at 181-182 (**Emphasis added**).

TIERNEY: Yah, so that you still have a group of people who are Grand River Ottawas who only signed the 1821 Treaty?

DOMINIC: You mean a—(Interrupted)

TIERNEY: You have a league of members in your association?

DOMINIC: Yah, we have a Grand River Roll and we have a non-Grand River Roll. The non-Grand River Roll persons are those persons who belong to the Sault Ste. Marie, Mackinaw, Little Traverse, Grand Traverse band. Then the Grand River Roll contains those persons who are eligible at one-quarter under the Grand River claim.²³³

The ICC, after years of briefing, expert testimony and reports, and oral arguments, undoubtedly understood the relationship between the GRB and the NMOA was collaborative but at the same time concurrently autonomous as to GRB. The ICC opinion notates this separation and recognizes the autonomy between the entities with the specific inclusion of GRB's Resolution into the ICC opinion:

57. At the annual meeting of the Northern [Michigan] Ottawa Association and Ottawa-Chippewa Tribal Council held at Petoskey, Michigan, on October 16, 1965, **the proposed compromise settlement of the claimed offsets furnished prior to 1836 was fully explained at the meeting by the attorney for plaintiffs and was there separately considered and voted upon by the Grand River Band of Ottawa Indians.** By a vote of 81 for and none against, a resolution was adopted authorizing the directing plaintiffs' attorney to sign the appropriate stipulation said claims offsets at \$4,671.66.²³⁴

The Commissioner of Indian Affairs, Robert L. Bennett, also filed a letter with the ICC on February 1, 1968, acknowledging a representative of the BIA was present at this meeting, that the settlement was voted upon only by the GRB, and GRB's actions were adopted according to the "customs" of the Petitioner:

...The 1821 treaty claim and the proposed settlement was explained to them by Attorney Fitzharris. Resolution No. 101 was adopted, by a vote of 81 for and 0 against, authorizing and directing the claims attorneys to sign the appropriate stipulation settling the offsets at \$4,671.66. A representative of this Bureau attended

²³³ Dominic Deposition at 185 (*Emphasis added*).

²³⁴ *Robert Dominic, et. al., as the Representatives and on behalf of all members by blood of the Ottawa Tribe of Indians v. U.S.*, 19 Ind. Cl. Comm 95, 97-98 (1968)(*Emphasis added*).

the meeting. We are satisfied that the meeting was held according to the customs of the Indians and that the resolution was adopted in the usual manner.²³⁵

As referenced *supra* GRB was able to gather additional research for the Petition, including NMOA documents that were previously unavailable. Evidence submitted with this Response shows the very intentional nature of segregating the GRB from the rest of NMOA, as Ogemakwe Dominic describes:

DOMINIC: See we hold [council] meeting once a year, and at that time all tribal business is taken care of. It's like if we're dealing with Grand River Ottawa, we section the Grand River Ottawas off to one side you know, for anything concerning them, they do the voting and what not, and then for the 1836 Treaty it would be [everybody else]...²³⁶

Returning to analysis of the 17th Annual NMOA meeting, the “1965 Registration List” from this meeting along with the minutes provide a clear picture of the GRB community/government operating in concert with the NMOA structure and organization.²³⁷ The minutes indicate that during the afternoon session of the meeting, “[m]embers of the Grand River Band were seated in a separate section for voting purposes.”²³⁸

The 1965 Registration List, combined with the 17th Annual NMOA meeting minutes allows us to provide the evidence of GRB’s distinct community and where the community was located. GRB postulates the 1965 Registration List represents a microcosm of the entire GRB community. After analyzing the data, it shows a predominant portion of those attending this NMOA meeting were GRB (by location 67 total GRB with 49 with addresses in the Grand River Area). Common GRB surnames are evident both inside and outside the Grand River Area as verified (from other lists from 1969 and 1971). The numbers of GRB that can be pointed out by name and location,

²³⁵ *Id.* at 99.

²³⁶ Dominic Deposition at 84.

²³⁷ NMOA, 17th Annual Council Meeting, Minutes, October 16, 1965; *see also* “Registration [for 17th Annual Meeting],” October 16, 1965 (listing approximately 213 names (only 128 were voting members) of which we can demonstrate with a reasonable likelihood that 67 were GRB members, and likely there were at least 81)(the “1965 Registration List”); *see also* McClurken, 2006 Ethnohistorical Response at 185.

²³⁸ NMOA, 17th Annual Council Meeting, Minutes, October 16, 1965, at 2.

generally correspond with the number of voters that cast votes on the “GRB only” Resolutions (*i.e.* 101, 103, 104, 105, and 106; all votes between 61 and 81 total votes). Additionally, voting on Resolution 102 (which was the only NMOA-wide vote recorded) was approved 128 in favor and 0 against allows us to distinguish the rest of the Ottawas from GRB.²³⁹ Not only does GRB distinguish themselves from within NMOA apart from the “general public,” but from the other non-Docket 40-K NMOA Ottawa units/bands.²⁴⁰

The PF ultimately concludes that Petitioner’s evidence, without corroborating evidence, insufficiently demonstrates the GRB community in the context of the NMOA:

Since these units were not exclusive to the descendants of the historical Grand River Bands, it is difficult to conclude, absent corroborating evidence, that the activities in certain local units of NMOA show a distinct community comprised of a predominant portion of the Petitioner’s members or ancestors.²⁴¹

The minutes from the 17th Annual NMOA meeting show that approval of the ICC judgement offsets was only one of many GRB-specific items voted upon.²⁴² The GRB members, as delegates of the greater GRB community, also voted on several other items including directing the federal government to distribute the claim per capita instead of collective or group funds (which remained

²³⁹ Certainly, there are assumptions being made as this is not an exact science. There are many factors that could impact these numbers, but still, in all reasonable likelihood we can prove our community at this given time. You have the likelihood of additional GRB voters outside the Grand River Area but with the logical inferences permitted, because the total voting number NMOA-wide was 128, and there are 49 within the Grand River Area (with last names that track historically with GRB and 18 GRB outside the area), we show a predominate portion of our community attending this meeting that was held in Petoskey. Not a quick trip (more than a 3-hour car ride) from Muskegon, Oceana County, and Grand Rapids (or Lansing and Detroit). This seems hard to ignore in terms of the GRB community with that high of a quantifiable percentage of GRB people traveling 3 hours to Petosky for this meeting. When this list is viewed in conjunction with the 1969 List as well as Fountain School attendance list in 1971, GRB demonstrates more than 50% of our community participating in all of these meetings.

²⁴⁰ See 25 C.F.R. § 83.1 (Definition of Community) and 25 C.F.R. § 83.7(b)(2)(iv). The NMOA, with the appropriate historical context of the Petitioner, is a distinct community social institution encompassing most of the GRB members pursuant to the Regulations; *see also* McClurken, 2006 Ethnohistoric Response at 189, fn. 500 (detailing how the GRB meetings were arranged aside and apart from NMOA meetings).

²⁴¹ PF at 57; *see also* PF at 55, noting “[d]ue to the ambiguity regarding membership, it is difficult to estimate how many active members NMOA had at any time, or how many descendants of Grand River-area Ottawa joined.”

²⁴² *see also* McClurken, 2006 Ethnohistorical Response at 185-188.

an option until this vote).²⁴³ These votes are critical to show the baseline for the GRB community numbers as outlined in Appendix B.

Only GRB members voted on Resolution No. 104 to defer payment of children's funds stemming from payment of the claims (50% to parents, and 50% to be placed in a trust fund for their claims payments upon reaching the age of majority).²⁴⁴ Yet, another GRB Resolution required a ¼ blood quantum to qualify for the claims judgement (which becomes *the* topic once the claims distribution process with the Department and Congress begins).²⁴⁵ These are actions of a government with a distinct community. These actions didn't apply to those Ottawa without GRB blood. Even the "whereas" clauses to these resolutions lend unequivocal evidence in support of GRB's distinct community (within the NMOA) acting as a government to its citizens:

RESOLUTION NO. 104

WHEREAS, the **Grand River Band of Ottawas are members of the Ottawa and Chippewa Tribes of Michigan as judicially determined by the Court of Claims on March 4, 1907, (42 Ct. Cl's 240)** and

WHEREAS, the said members are descendants of the original Grand River Band of Ottawas who were parties to the August 29, 1821 treaty, (7 Stat. 218 Kapp.) and

WHEREAS, **the said members of the Grand River Band wish to establish a board of trustees, who purpose shall be to protect and exercise general supervision of allotment shares accruing from the 1821 Grand River Claim, to minor child of this band,**

WHEREAS, they desire that these trustees be elected by members of the Northern Michigan Ottawa Association, **whose members belong to a unit which represents Grand River Indians**, one trustee to be elected by each said unit and that members be elected for an indefinite term of office and may be recalled and replaced by a simple majority vote of the membership attending any meeting called by the Northern Michigan Ottawa Association

BE IT FURTHER RESOLVED, that a copy of this resolution be given to the officials of the United States Indian Bureau.²⁴⁶

²⁴³ NMOA, 17th Annual Council Meeting, Minutes, October 16, 1965, at 3; *see also* Resolution No. 103 (included with NMOA 17th Annual Meeting minutes); *see also* McClurken, 2006 Ethnohistorical Response at 186.

²⁴⁴ NMOA, 17th Annual Council Meeting, Minutes, October 16, 1965, at 3; *see also* Resolution No. 104 (included with NMOA 17th Annual Meeting minutes); *see also* McClurken, 2006 Ethnohistorical Response at 186-187.

²⁴⁵ NMOA, 17th Annual Council Meeting, Minutes, October 16, 1965, at 3; *see also* Resolution No. 105 (included with NMOA 17th Annual Meeting minutes)(**Emphasis added**); *see also* McClurken, 2006 Ethnohistorical Response at 187.

²⁴⁶ *See* Resolution No. 104.

The resolutions considered, whether it passed or not, are clearly governmental actions of GRB. If these actions by GRB are not evidence of “tribal council, leadership, and internal process...making decisions for the group which substantially affect its members, and/or dealing with outsiders in matters of consequence,” then Petitioner must assume a tortured interpretation of the definition of *Political influence or authority*.²⁴⁷

In 1968, GRB conducted its business, generally speaking, within the confines of the NMOA structure in a clear showing of evidence supporting of *community* pursuant to 25 C.F.R. § 83.7(b)(2)(v), via 25 C.F.R. § 83.7(c)(2)(ii).²⁴⁸ This “Special Meeting of the Grand River Band of Ottawas” was held in the Grand River Area (Muskegon) and officiated by John Cantu as “acting host and chairman of Unit #5” of the NMOA.²⁴⁹ The minutes indicate that prior to this GRB Special Meeting, there were two Grand River committee meetings “prior to this general meeting” that generated four options for consideration.²⁵⁰ The plans/options included:

(1) Amend resolution #105 from one-quarter to more Grand River Ottawa blood to one-eighth or more.

(2) Retain resolution #105 at one-quarter or more Grand River Ottawa blood.

(3) Allow per-capita payments based on heirship in accordance with the laws of inheritance using the Durant Roll of 1910 as the basis.

(4) Lower blood degree to one-eighth Grand River blood plus other Indian blood to total one-quarter or more Indian blood.²⁵¹

²⁴⁷ 25 C.F.R. § 83.1 (definition of “*Political influence or authority*”)(*emphasis added*). If the Department views terms contained *within* the definition of “political influence or authority” as ambiguous (such as “significant” or “substantially”), then those ambiguities must be resolved in favor of GRB pursuant to the Canons.

²⁴⁸ (2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which: (ii) Settle disputes between members or subgroups by mediation or other means on a regular basis. There isn’t a sturdier demonstration of community than voting on matters of crucial importance like GRB did.

²⁴⁹ “Special Meeting of the Grand River Band of Ottawas,” (July 20, 1968)(Convention Hall, Muskegon, Mich.), Special Collection of June Dart (“1968 GRB Special Meeting”).

²⁵⁰ *Id.*

²⁵¹ *Id.*

Recall that Resolution #105 was the 1965 resolution of GRB setting a ¼ blood quantum (only GRB blood) requirement for judgment eligibility as approved at the October 16, 1965, 17th Annual Meeting of the NMOA.

Those GRB citizens present, over the age of 21, were permitted to vote.²⁵² A ballot was prepared for each eligible GRB vote to select an option and read in both English and in Ojibwa (*i.e. Anishinaabemowin*).²⁵³ Harold LaRouche, from the BIA, was also present. “All voters were checked for eligibility to vote prior to voting.”²⁵⁴ The results of the balloting were as follows:

#1 - 32; #2 - 202; #3 - 6; #4 - 7.

Investment proposal - Yes vote - 191; No vote - 39; Void votes - 19.

By result of the balloting, Resolution #105 of October 16, 1965, is hereby retained and investment of funds adopted.²⁵⁵

All of these actions are unblemished demonstrations of community under the Regulations.

First, consider Resolution #105 was adopted initially in 1965. Three years later GRB put these options to a vote once again and because the position was already previously approved, the logical deduction here is that GRB *had* to put these up for a vote. Obligated for a re-vote because there was conflict amongst GRB citizens on the plan. What does voting do? It resolves *conflict*. The conflict in distribution the judgment between GRB citizens not only required a new vote but prompted the Grand River Committee to hold two meetings prior (and probably more) to establish how to resolve this conflict and what to frame the ballot language. The remedy was to present these four options and put them up for an official vote. An election committee was appointed to

²⁵² *Id.*, “[e]ligibility to vote was given to members of the Grand River Band of Ottawa who were 21 years of age or over and had an ancestor on the 1821 claim.”

²⁵³ *Id.*

²⁵⁴ *Id.* at 2.

²⁵⁵ *Id.* The total amount of votes is relevant for comparison to the other meetings where GRB only votes occurred. In this case you have a total of 247 voting on the various “plans/options” for distribution and 249 for the investment proposal. This is why the 1965 Registration List is a microcosm, as 67-80 GRB members traveled to Petoskey, but here in GRB’s backyard, there is nearly 250 GRB members over the age of 21 that voted.

oversee the election. Eligibility to vote was regulated and verified. This vote and this process meant something. And as the vote calculation denotes, it was not unanimous.

This meeting, this process, and voting are unmistakably used to settle a dispute between GRB members that sufficiently demonstrates the exercise of GRB's political influence and authority by GRB leaders, over its citizens.²⁵⁶ These scenarios were positively viewed for a finding favoring community in other petitions and contexts.²⁵⁷

About a year later, GRB persisted with the distribution plan phase during the "Grand River Band portion" of the 1969 NMOA annual meeting. GRB members present voted to reaffirm the stances on the distribution of the judgement fund (again).²⁵⁸ Another governmental act of the GRB was to borrow funds against the pending judgement award to seek clerical assistance in the production of the Dominic Roll:

Whereas, the matter of operating, administrative, and clerical work for the Ottawa and Chippewas has increased beyond the capability of the present system, and
Whereas, it now becomes necessary to hire paid clerical help to answer any and all letters of inquiry from Indians, and

Whereas, it is the desire of the Grand River Band of Ottawas to borrow up to \$3,000.00 against the Grand River Judgment fund of Docket #40K 1821 treaty, the work on the [inquiries] from Indians, and now,

Therefore, be it resolved that the Grand River Band of Ottawas of the Ottawa and Chippewa Indians of Michigan do hereby authorize the Grand River Committee of the Tribal Council to borrow up to \$3,000.00 for said operating expenses, and

²⁵⁶ See 25 C.F.R. § 83.7(b)(2)(v), via 25 C.F.R. § 83.7(c)(2)(ii) and 25 C.F. R. §83.7(c)(1)(ii) via 25 C.F.R. § 83.7(b)(1)(ix).

²⁵⁷ See *Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Cowlitz Indian Tribe* at 11-12 (February 14, 2000)(65 Fed. Reg. 8436), (noting ". . . political processes often generate communications and interactions, and can be used to describe social connections between the petitioner's members in order to demonstrate that the petitioner meets criterion (b). . . . [Fieldwork by the BIA] found that members . . . base their political positions on knowledge they gain not only from formal meetings and CIT [petitioner] publications, but also from rumors they hear during informal discussions in everyday social situations... Such knowledge is gained through lifetimes of association. The high level of knowledge of tribal activities gathered outside formal meetings and publications provides supporting evidence that the petitioner meets 83.7(b) at present.").

²⁵⁸ NMOA, 21st Annual Council Meeting, minutes at 2 (June 21, 1969)(4-H Center, Emmet Co. Fairgrounds, Petoskey Mich.); see also List for "Grand River Band (only)," NMOA 21st Annual Meeting, June 21, 1969 (listing 96 GRB names on the "Grand River Band (only)" list). **New Evidence.**

Be it further resolved that copies of this resolution be given to the United States Bureau of Indian Affairs and other governmental agencies.²⁵⁹

GRB acting as a government for its citizens (*i.e.* community) in matters of consequence on behalf of membership is the takeaway from this legislative action, and GRB citizens being led by leaders. This not the NMOA borrowing funds for GRB, but GRB voting to borrow funds as a governmental entity.

GRB's entrenchment on these issues did not vacillate despite the Department adopting some and ignoring other stated positions of the GRB community regarding the Docket 40-K distribution plan. In 1970, Unit #5 organized yet another special NMOA meeting for the "Grand River Band of Ottawa Indians" in Muskegon wherein GRB reinforced, by resolution, its prior positions (by vote) from the 1968 GRB Special Meeting, 1969 annual NMOA meetings (such the per capita payment, children's awards, 1% compensation for the Dominic's, as well as the ¼ blood quantum requirement for eligibility).²⁶⁰ The 1970 Unit #5 minutes list GRB eligible voters present as "220" members (over the age of 21, with the registration list listing 292 individuals), and these totals correlate to the approximately 250 that were eligible to vote in the 1968 GRB Special Meeting.²⁶¹

These are clear presentations of not only community in the sense of what the community was comprised of, but also provided evidence of the reconciling of various ideas through debate:

²⁵⁹ See NMOA, 21st Annual Council Meeting, minutes at 2; *see also* Resolution 120, 21st NMOA Annual Meeting; *see also* McClurken, 2006 Ethnohistorical Response at 190.

²⁶⁰ Special Meeting, Grand River Band of Ottawa Indians, minutes, June 6, 1970 (L.C. Walker Arena, Muskegon, Mich.). The meeting was attended by Superintendent Robert Perea, Great Lakes Agency, Ashland, Wisconsin, and Harold LaRoche, Tribal Relations Officer of the Great Lakes Agency; *see also* Registration List for GRB Special Meeting," June 6, 1970 (listing approximately 292 names of which we can verify (via other lists, last names, location) that at least 188 on the list were GRB members residing within the Grand River Area and over the age of 21 (out of the 220 listed in the minutes as eligible to vote). This registration list also indicates there were 18 registration pages but only 15 pages in the document we recovered. 188 out of 220 within the GRB area shows a predominate/significant portion of GRB citizens engaged in this social interaction). ***New Evidence***; *see also* McClurken, 2006 Ethnohistorical Response at 192-193 (but "L.C. Walker Arena" not "Constitutional Hall").

²⁶¹ *Id.* at 3; *see also* McClurken, 2006 Ethnohistorical Response at 192-193.

A very lengthy discussion followed [after the proposed resolutions were read into the record] in which many expressed their ideas and asked questions. The Indians were very adamant in demanding that the Indian bureau follow their desires and take into consideration all resolutions and action previously adopted. It was also stated that the Indians are intelligent enough to run their own affairs and should be dealt with on that basis. The status of those on welfare was also discussed. Questions on enrollments and qualifications were answered.²⁶²

This meeting, and its circumstances, the location (L.C. Walker Arena in Muskegon), the attendees (including a local news stations and newspaper reporters), and the actions taken are evidence of the solidarity of the GRB community. When the attendance list is analyzed as corroborating evidence, this event serves as another demarcation of our distinct GRB community.²⁶³ Additionally, this meeting and its documentary evidence are useful, once again, to show the settling of disputes on the distribution between the members prior to going up for votes at the NMOA annual meeting. And how, of course, GRB Leaders exerted strong influence on the behavior of individual members in relation to these processes.²⁶⁴

Correspondence was issued from the “Grand River Band of Ottawa Indian Committee” to the Senate Committee on Indian Affairs objecting to provisions of HR 1100:

HR 1100...was carefully analyzed by the Grand River Band of Ottawa Indian Committee comprised of Anthony Chingman, William Hennessy, Arthur Markham, John Cantu, June Gardner, Rose Shalifoe, and Waunetta Dominic, all Grand River Ottawas by blood.²⁶⁵

GRB clearly was annoyed and frustrated that HR 1100 contained the same provisions as the previously introduced bill, that ignored all GRB directives:

It is clearly evident that the requests of the Grand River Band of Ottawa Indians is being ignored by the Honorable Phillip Ruppe in introducing two identical bills. **Hon. Mr. Ruppe was notified of the requests of the Grand River Band of Ottawa Indians by two oral interviews and by mail containing a full packet of all actions taken by the Grand River Band of Ottawas.** There was ample advance notice by the Grand River Band of Ottawas of their requests on the

²⁶² *Id.* at 2-3.

²⁶³ See Registration List for GRB Special Meeting,” June 6, 1970.

²⁶⁴ See 25 C.F.R. §§ 83.7(c)(2)(ii) and (iii); see also 25 C.F.R. §§ 83.7(c)(1)(i), (ii) and (v).

²⁶⁵ Dominic Papers, *Letter from Robert Dominic to Hon. Henry M. Jackson* (May 19, 1971).

distribution of their judgment fund to the Bureau of Indian Affairs, the Hon. Wayne Aspinall, Hon. Gerald Ford. and Hon. Phillip Ruppe.²⁶⁶

The perspective used by Ogema Dominic and NMOA in the letter is another example of the representation of the NMOA on behalf of GRB. Using phrasing like “their,” “them” or “they” are noticeable to show to autonomy. The NMOA acted as an advocate conveying requested GRB positions on the distribution plan to the Department and Congress:

...the Northern Michigan Ottawa Association is a duly organized and recognized group authorized to represent the Grand River Band of Indians in their pursuit of treaty rights as members by blood of this band.²⁶⁷

This succinct statement of the Ogema Dominic of the GRB/NMOA relationship could not be sharper. The letter further describes “gross discrimination” on the part of the United States in failing to recognize the identity of our “Grand River Indians and *their* requests just because *they* are not organized” under the IRA.²⁶⁸

Prior to the 24th Annual NMOA meeting, GRB called a special meeting in Grand Rapids at the Fountain School.²⁶⁹ The meeting was attended by at least 91 GRB citizens,²⁷⁰ and with the Fountain School Attendance List (listing 79 names and addresses), verification of 53 GRB citizens constituting a predominance of those attending and residing in the Grand River Area (mostly Muskegon (23) and Grand Rapids (22), with Oceana/Northern Muskegon County (6) and (2) from Holland).²⁷¹

²⁶⁶ Id. (Emphasis added).

²⁶⁷ Id. at 3.

²⁶⁸ Id. at 4.

²⁶⁹ See McClurken, 2006 Ethnohistorical Response at 194-195; see also Special Meeting, Grand River Band of Ottawa Indians, minutes, May 22, 1971 (Fountain School, Grand Rapids, Mich.), Private Collection of June Dart (“Fountain School Special Meeting Minutes”); see also Fountain School Attendance List, GRB Special Meeting May 22, 1971, Private Collection of June Dart (“Fountain School Attendance List”).

²⁷⁰ See Fountain School Special Meeting Minutes at 3 (noting, “there were ninety (90) votes for and one (1) against the motion” rejecting HR 1100 and to pursue amendments); see also McClurken, 2006 Ethnohistorical Response at 194-195.

²⁷¹ See Fountain School Attendance List; see also McClurken, 2006 Ethnohistorical Response at 194-195.

Adding to the building pile of evidence for GRB’s distinct community, the language of the “Attorney Contract” approved by GRB within the structure of the NMOA,²⁷² is self-evident along with the GRB Resolutions enacted to approve the agreement:

RESOLUTION No. 125

Adopted by members of the **Grand River Band of Ottawa Indians**:

WHEREAS, the Northern Michigan Ottawa Association includes in its membership records about 3,205 members of The Grand River Band of Ottawa Indians^[273]; and

WHEREAS, by Final Judgment of the Indian Claims Commission in Docket No. 40-K entered on March 27, 1968, the Grand River Band of Ottawa Indians recovered the sum of \$932,620.01, which has been invested by the Secretary of the Interior pursuant to authorization of the members of the Grand River Band of Ottawas²⁷⁴ belonging to the Northern Michigan Association by resolution adopted at a special meeting held on July 20, 1968, pending approval by the Secretary of Interior and the Congress of the United States of a program for the use and disbursement of said judgment funds; and

WHEREAS, it is the desire of the members of the Grand River Ottawa Band to act through their recognized tribal organization, Northern Michigan Ottawa Association, in presenting the program with respect to the disbursement of their judgment funds; and...[]

²⁷² NMOA, 24th Annual Council Meeting, Attorney Contract, June 12, 1971. The GRB and NMOA were careful to adopt the resolutions and the attorney contract with signatures from the Chairman of the NMOA, but the GRB Representative, Grace Mulholland, to confirm the actual client approved of the agreement; *see also* McClurken, 2006 Ethnohistorical Response at 194-195.

²⁷³ GRB assumes there will questions about this amount of GRB eligible members. This number must be viewed “tongue in cheek” with the amount of GRB Docket 40-K Roll in terms those eligible, but many current day citizens of LTBB, GRB, LRB, MBPI, Saginaw Chippewa, Bay Mills, and Sault Tribe would also have at least ¼ GRB blood quantum (making those individuals “technically” eligible). In 1971, only one 1836 band was recognized (Bay Mills). This 3,205 GRB number actually supports GRB’s arguments about intermarriage amongst the *Anishinaabek* because even full blooded Ottawas may have varying degrees of Grand Traverse, GRB, or LTBB blood (*see* hypothetical about two *Anishinaabe* lawyers in the “Addition Arguments” - Unjustified Denial of Access to Docket 40-K Roll).The best way to verify GRB specific citizens is through comparison with the Docket 40-K and MILCSA (Dockets 53 and 18-E) rolls (neither of which GRB is legally allowed to access, we guess). At the time those MILCSA payments were made in 2007, the vast majority of the 3,205 number were probably enrolled with other recognized bands (GRB, LRB, LTBB, BMIC, and Sault Tribe) were not eligible for individual per capita payment under MILCSA. Any decendancy payments made per capita under MILCSA would have gone to GRB citizens by process of elimination (which is evidence of our contemporary community).

²⁷⁴ As an aside, this is straightforward evidence of unambiguous previous federal acknowledgment pursuant to 25 C.F.R. § 83.8(c)(3), with GRB having collective rights in these funds held in trust by the United States.

WHEREAS, it is the desire of the members of the Grand River Band of Ottawas that the Northern Michigan Ottawa Association retain legal counsel to assist the Grand River Band of Ottawas and the Northern Michigan Ottawa Association in adopting a program and submitting said program with respect to the disbursement of said judgment funds to the Secretary of the Interior and the United States Congress for approval...

NOW, THEREFORE BE IT RESOLVED, **that the recognized tribal organization of Northern Michigan Ottawa Association, with which the Grand River Band of Ottawas are affiliated is hereby designated to represent the Grand River Band of Ottawas in the presentation of the Grand River Band of Ottawas' program with respect to the disbursement of said judgment funds.**

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Northern Michigan Ottawa Association and **Grace Mulholland, Grand River Band of Ottawa member on the Tribal Council**, be and they hereby are directed and authorized to enter into a contract employing said attorneys as legal counsel in accordance with the terms herewith and as prescribed by law.

VOTE FOR: 43
VOTE AGAINST: 0

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and enacted upon by **the members of the Grand River Band of Ottawas present** at the Annual Meeting of the Northern Michigan Ottawa Association held on June 12, 1971 at Petoskey, Michigan.²⁷⁵

The recognition of GRB's distinct community is further demonstrated by the NMOA, GRB's own citizens, but even the attorneys retained by GRB. Attorneys that represented tribes, tribal

²⁷⁵ NMOA, 24th Annual Council Meeting, Resolution 125, June 12, 1971, at 1-2 (**Emphasis added**); *see also* McClurken, 2006 Ethnohistorical Response at 194-195. The NMOA subsequently approved the request of the GRB with the adoption of Resolution No. 126, again, showing the distinction between the entities. GRB, in anticipation of OFA arguments regarding context and number of members, has submitted evidence (previous and new) that explains not all of the NMOA members traveled to the NMOA Annual Meeting every year. In this case, although the NMOA approximates 3,200 GRB members within NMOA, only a total of 43 voted at the NMOA meeting. Delegates, generally the unit officers (but not always), were sent from the communities/units and whether or not documented, acted as directed by the internal processes of the GRB units. The Regulations don't require a petitioner to show specific numbers or percentages for attendance as events such as NMOA meetings, but GRB posits that the vast majority of GRB citizens were "represented" by the 43 delegates that voted on this measure.

organizations, and tribal individuals before the ICC, were very deliberate in drafting their engagement letters and agreements.²⁷⁶ It was during this period when GRB and the Department began the process of debating the distributing the claim which provides copious evidence of the GRB Community.

GRB's position on how to distribute the Docket 40-K judgement was crystal clear, and GRB was very intentional.²⁷⁷ A 1971 meeting conducted in Muskegon acted as an opening *salvo* where GRB stated their positions face-to-face with Department officials that had effectively ignored GRB stances.²⁷⁸ No less than 8 federal officials attending this NMOA Special Meeting but that wasn't necessarily something new, and federal recognition was a topic that engendered much discussion, coaxed in terms of seeking federal recognition so the federal government would listen to GRB's posture regarding the judgments' rules for enrollment and other specifics.²⁷⁹ This truncated version of notes from the meeting provides several beneficial blocks of evidence of GRB's distinct community:²⁸⁰

²⁷⁶ Tribal attorneys were deliberate with engagements as the contracts could be later scrutinized, for example, by ICC courts or the Department (in the context of any required governmental approval for tribal attorneys). *See also, The Cherokee Nation, and Its Attorneys, Paul M. Niebell, Earl Boyd Pierce, George E. Norvell, and Dennis W. Bushyhead v. the United States*, 355 F.2d 945 (Ct. Cl. 1966) ("Two of the original attorneys had died, and the heirs of one of them were pressing the attorneys for payment of the amount due them; one of the surviving attorneys had had two severe heart attacks, and has since had another one; another attorney had had a serious illness; another contract attorney was in difficult financial straits, having invested his life savings and had borrowed considerable additional amounts, and had experienced the loss of his regular clientele and the income therefrom in carrying on his duties in this case; and all the surviving attorneys were burdened with loans, from which the partial fee allowed on March 12, 1963 brought some temporary relief. The attorneys were paying interest of at least 6 per cent on these loans, while the Cherokee Nation had been collecting 4 per cent interest on the money due the attorneys as attorney fee, from October 8, 1961 (over \$90,000.00)).

²⁷⁷ *See* Footnotes 243-246.

²⁷⁸ *See* McClurken, 2006 Ethnohistorical Response at 196-199.

²⁷⁹ *See* Notice of Special Meeting, Grand River Band of Ottawa Indians, December 1, 1971 (L.C. Walker Arena, Muskegon, Mich.), Private collection of Joe Genia (stating "[t]he question is recognition. Shall the non-reservation Grand River Ottawas be continually ignored by the Washington Indian Bureau because they are not of reservation status"); *see also* McClurken, 2006 Ethnohistorical Response at 196-199.

²⁸⁰ Perhaps not all the Department officials at this meeting were familiar with the GRB/NMOA relationship, but the local and regional officials understood the distinction as they had attended GRB and NMOA meetings since 1948:

TEIRNEY: Has there been any movement or attempt as far as you know, since that time by the United States to get [IRA] organization to the Ottawas?

DOMINIC: Yes, because they called the first [council] in 1948 they sent out the first notices to our [council].

Robert Dominic: Why is the Bureau not recognizing us?

Leslie Gay: I am out here and never had an opportunity to meet and discuss with the Grand River Band...but when you say why does not the Bureau recognize us, may I ask, Mr. Dominic, what is meant by us – Grand River Band or NMOA?

Robert Dominic: Grand River Band; they have made their voice known through these meetings.²⁸¹

* * *

Waunetta Dominic: Referring to what the Grand River Band wants that they don't already have - we want recognition when we turn in any requests; how we want money paid and who to pay. **We have been discriminated against in Federal jobs. I know Indians have applied for jobs (non-reservation) and told they can't apply under the Indian preference because they were non-reservation,** and we feel here in Michigan we are in the majority and we are the one's not heard...[w]e have been organized for the past 24 years and many people from the BIA realize we have been an organization acting for the Indians and working out problems. **The Fed. Gov. has asked our organization for help and receive help for identification of children who want to go to school, seeking employment and many things that have come up.**²⁸²

* * *

Rodney Edwards [GRB Attorney]: We have a problem which has been kind of general for Indians who have made recoveries. We have worked out something. **Claims were brought by individuals on behalf of the Grand River Band of Ottawa Indians and the recovery in the case was not in favor of those individuals but for the benefit of the Grand River Band...** We hope to have something worked out. 2 alternatives: 1) **Convince BIA that they should-recognize the Grand River Ottawa Band as a recognized band,** as a successive

TEIRNEY: Are, ah, you started to tell us about that [council]. You told us that it was held. Was there any discussion at that particular meeting about becoming organized under the...

DOMINIC:...the whole thing was organization.

TIERNEY: What happened to that?

DOMINIC: They attended I would say 3/4 of all our [councils]...

TIERNEY: ...uh-hum...

DOMINIC: ...the Bureau of Indian Affairs and at each time they were asked to speak to give their opinion on different things and they did. They would tell us the position and what we had to do, and various things what, ah you know, our people ah, they were there to help us, and to gear us where they going...We've had very good co-operation at, through the [Ashland] office and the Minneapolis Office, in fact, when our blood degree quantum come up they were bind us with letters of recommendations that legislation be passed on our behalf. The only ah, people whom objected of course, was the Washington Bureau.

(Dominic Deposition at 200-201). ***New Evidence.***

²⁸¹ Special Meeting, Grand River Band of Ottawa Indians, notes, December 1, 1971 (L.C. Walker Arena, Muskegon, Mich.), Private collection of Joe Genia at 1 (evidence of a distinct GRB community outside the NMOA); *see also* McClurken, 2006 Ethnohistorical Response at 196.

²⁸² *Id.* at 2 (evidence of discrimination on basis of non-reservation GRB members with federal programs).

group of those made under the treaty of 1821. 2) If they do not recognize administratively, go to Congress and put an act of Congress for the provision that you want to have ¼ degree blood line. Show to the Fed. Gov how you are organized and the rolls, etc. To me you are organized and have dealt with problems that came up before you. You have had meetings and should be given recognition and not just an organization which has no basis because everyone can vote and there is ancestry to the Durant Roll and 1/4 degree of blood to be a voting member.²⁸³

* * *

Leslie Gay: A recognized Ind. Tribe can belong to any organization it may want to belong. The Bureau's recognition of the Gd. River Band, should this be worked out, would not extend to the NMOA in the same sense. That is a private organization made up of members just as a corporation might be. Our problem is Gd. River Band recognition and if it was worked out it would not have any effect on the NMOA and the relationship that had with them.²⁸⁴

These depictions of the interaction between the federal officials and GRB tell quite a story. Just think about why GRB and the NMOA rented out an arena to conduct this GRB Special Meeting.²⁸⁵

We recognize that we are not able to provide the receipt for renting the area, a detailed list of each person present, and what they were wearing, and where they all went out to eat afterwards, but there are several logical inferences that can be drawn. Logic dictates the GRB and the NMOA set up the meeting where it would be well attended by the GRB community in Muskegon. The 1971 GRB Special Meeting was held at L.C. Walker Arena. Logic dictates that the reason the meeting *had* to be at L.C. Arena is because attendance GRB members was expected to surpass the capacity of a smaller venue.

As this process between GRB and the Department continued, additional hearings were held with GRB to further address the distribution of the judgment relating to the Docket 40-K claims. The central focus was the conflict of the ¼ GRB blood quantum requirement not only with those

²⁸³ *Id.* at 2-3 (evidence of attempt to seeks organization of GRB as federally-recognized and evidence of resolving disputes internally with GRB's legal counsel referenced "dealt with problems that came up before you"); *see also* McClurken, 2006 Ethnohistorical Response at 197.

²⁸⁴ *Id.* at 3 (evidence of distinct community and differentiation of GRB from NMOA as explained by a Department official, Leslie Gay); *see also* McClurken, 2006 Ethnohistorical Response at 198.

²⁸⁵ "L.C. Walker Arena" (which was utilized previously by GRB for meetings) is a (now) 3,000-seat arena in Muskegon, Mich., and at the time it was built in 1960, had a capacity more than 5,000 seats.

excluded (assumingly), but also with the BIA and the Department. At this point, 1974, federal officials had been at this a while, but had not yet reached a solution for Congress to consider:

MR. ROBERT C. SHAWA²⁸⁶: My name is Robert C. Shawa...Now, what I would like to ask Mr. Nitzschke...does the northern Michigan Indians come under this same heading as the Grand River Band of Ottawas.

MR. NITZSCHKE²⁸⁷: Okay, I think that's probably something that should be clarified...Now, as I understand it - - and I'll ask Mr. Dominic to correct me if I'm wrong - - the Northern Michigan Ottawa Association includes within its membership persons who are descendants of the Grand River Band of Ottawa, but the Northern Michigan Ottawa Association includes other Ottawas also.

MR. ROBERT C. SHAWA: I see.

MR. NITZSCHKE: So, it's not all of the membership of the Northern [Michigan] Ottawa Association that would be entitled to share in this judgment, but only those members or persons who can provide descendency to the Grand River Band.

MR. ROBERT C. SHAWA: The only questions that I wanted clarified is - - is the Northern Michigan Ottawa Association included in this Grand River Band of Ottawa?

MR. NITZSCHKE: I think it should be stated in reverse - - that some of the members of the Grand River Band are also members of the Northern [Michigan] Ottawa Association.²⁸⁸

²⁸⁶ The late Mr. Shawa was a LTBB citizen at the time he walked on.

²⁸⁷ The late Elmer T Nitzschke was a Field Solicitor for the Department of the Interior in Minneapolis, Minnesota and was the Hearing Officer for this transcribed proceeding.

²⁸⁸ (*Emphasis added*). Notice and Transcript of PUBLIC HEARING REGARDING USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS, CLAIMS, Docket No. 40-K, Grand Rapids, Michigan, May 18, 1974, pages 9-11 ("1974 Docket 40-K Transcript") **New Evidence**; see also Comment Letters contained in the latter half of the document, including a letter from June Gardner indicating partial justification for the ¼ blood quantum due to racial discrimination:

My grandpa, Henry Negake, a full blood Grand River Ottawa Indian has passed away in 1972 and now my mother, Catherine Rittenhouse, a full blood Grand River Ottawa has very little to look forward to now. These full bloods, half breeds and some quarter bloods are the ones who need the awards the most. They are the ones discriminated against because of race, yes, even in this time when there is not supposed to be any discrimination. They are the ones who look very much Indian and cannot pretend otherwise. Some quarter bloods, 1/8, 1/16, etc. etc. such as you want to include in our judgment have had no one pointing a finger at them saying, "dirty Indian", "squaw baby", "savage", "drunken or dumb Indian."

(*Emphasis added*). 1974 Docket 40-K Transcripts, June Gardner to BIA, May 22, 1974, at 111-112.

The Petitioner was fortunate to locate the transcript for this hearing to have a DOI official, such as Mr. Nitzschke, further corroborate the United States government was dealing directly with GRB and this was not a NMOA proceeding. Analyzing the lists, letters and comments attached to the transcript show approximations of 155 Ottawas commenting (with approximately 125 indicating GRB descent (or verifiable through other lists/minutes) and another 30 unverifiable Ottawas).²⁸⁹

The statements made throughout this Response, the corroborating documentary GRB community evidence, all operate to directly refute the PF regarding the findings on the relationship between NMOA and the Petitioner:

The only distinction that NMOA appears to have made specifically relating to descent from the historic Grand River-area bands pertained to eligibility to pursue claims under the 1821 treaty (Docket 40-K). Although the descendants eligible for distribution of Docket 40K judgement fund occasionally voted separately on issues pertaining to that judgment and were identified in NMOA meeting minutes as “Members of the Grand River Band,” the evidence is insufficient to show that those descendants comprised a distinct community within NMOA or that the historical Grand River Bands evolved into the nascent NMOA....Due to the ambiguity regarding membership, it is difficult to estimate how many active members NMOA has at any time, or how many descendants of Grand River-area Ottawa joined.²⁹⁰

Petitioner considers this portion of the PF refuted. GRB conducted informational meetings, conducted regulated referendums, participated in meetings held and conducted *by* the federal government, minutes, resolutions, notes, and attorney contracts all reference the solidarity of the GRB community consistent with the burdens of the Regulations. Additional corroborating evidence, including the 1974 Docket 40-K Transcript (new evidence), minutes of these Docket 40-K proceedings, mailing lists, logical inferences, along with acting like a government through its actions, directly refutes this finding in the PF.²⁹¹

²⁸⁹ See Appendix C.

²⁹⁰ PF at 55.

²⁹¹ See *also* Petition at 135. And don’t forget to apply the Canons to ambiguities on this subject.

Congress conducted both Senate and House hearings on the GRB distribution plan.²⁹² Although the Senate Report (94-577) is cited in GRB's previous submissions, the hearing transcripts and accompanying submitted documents were not previously submitted. These documents contain new evidence that speaks directly to community. The testimony of Ogemakwe Dominic and Gladys Laws are powerful:

MRS. LAWS: ...We tracked our people down and we are keeping track of them because they are what we have of our heritage in this country.

The Grand River Band of Ottawas is a distinct band. We might be small and we have lost our land through treaties, and we might have done a lot of things, but we still exist, and we are there and we do not consider anybody less than one-fourth Grand River Ottawa to be Grand River Indian.²⁹³

This self-recognition is powerful. GRB maintains the same blood quantum requirements today for eligibility to enroll.²⁹⁴ These are GRB leaders speaking directly to members of the United States Senate. Moreover, GRB attempted (through legal counsel) regarding the "dual enrollment" provisions that GRB insisted upon:

The Commissioner of Indian Affairs also objects to the proviso of Section 2 of S. 1659 "that no person shall be eligible to have his name placed on the roll who at the same time is an enrolled member of any tribe other than the Grand River Band of Ottawa Indians or the Ottawa and Chippewa Tribe of Michigan." This objection is not understandable. Tribal constitutions and enrollment ordinances, which have been approved by the Bureau of Indian Affairs, have, a similar provision...²⁹⁵

²⁹² See generally *Distribution of Funds to Cowlitz and Grand River Band of Ottawa Indians*, Hearing Before the Subcommittee on Indian Affairs of the Senate Comm. on Interior and Insular Affairs, 94th Cong. 1st Sess. (Sept. 26, 1975) ("1975 Senate Hearing"); see also *Ottawa Indians Judgment Distribution Bill*, Hearing before the Subcommittee on Indian Affairs of the House Comm. on Interior and Insular Affairs, 94th Cong. 2nd Sess. (Mar. 4, 1976) ("1976 House Hearing"); see also Senate Report 94-577 (Dec. 15, 1975). **New Evidence.**

²⁹³ 1975 Senate Hearing at 53-54 (statement of Gladys M. Laws, Secretary, Grand River Band of Ottawas Descendants Committee).

²⁹⁴ See Constitution and By-Laws of the Grand River Bands of Ottawa Indians, Art. VI (Dec. 1, 1997); see also Petition at 8.

²⁹⁵ 1975 Senate Hearing at 60 (statement of Rodney J. Edwards, of Edwards & Bodin, of Duluth, Minn., Attorneys for Grand River Band of Ottawas Descendants Committee).

The Senate committee favorably reported S. 1659 out of the committee and the Senate passed the legislation on December 19, 1975.²⁹⁶ About six months later, the House conducted a hearing regarding the proposed legislation.

The 1975 Senate Hearing raised many questions about the status of GRB and the NMOA in terms of eligibility for the judgment payment. The Department (in D.C.) hunkered down on their position (of no blood quantum) in preparation of the 1976 House Hearing penned an oft-cited memorandum (in the context of the LTBB and LRB legislation in 1994).²⁹⁷ The memorandum explains that the Department (central office) consistently rejected use of the “Dominic Roll” for certification purposes for federal services, the regional and agency offices absolutely recognized the validity of the roll:

The Northern Michigan Ottawa Association and the Grand River organization are, in many basic senses, functioning as or at least are accepted as tribal political entities by the Minneapolis Area and Great Lakes Agency.²⁹⁸

The stage was set for the next hearing occurring in the House. From the time of the 1975 Senate Hearing, Senator Hart advocated for GRB and submitted another letter in support of GRB’s demands:

The fact that determinations made from this roll and these records have been accepted by the Federal Government was substantiated by testimony from Mrs. Robert Dominic during the Senate hearings on the bill and by information submitted by the Department of the Interior.

The Grand River Ottawas contend that the Federal Government has accepted these verifications of blood quantum based on the Durant roll in the past and find no justification in the argument by the Department of the Interior and the Bureau of Indian Affairs that in the distribution of the judgment funds in docket 40-K a one-quarter degree Grand River Ottawa blood quantum could not be satisfactorily determined by the same roll.²⁹⁹

²⁹⁶ 1976 House Hearing at 9 (statement of Senator Philip A. Hart, March 4, 1976).

²⁹⁷ See Morris Thompson, *Commission of Indian Affairs to Solicitor, Status of Grand River Ottawa descendants regarding eligibility for Federal Indian Service* (Feb. 11, 1976).

²⁹⁸ *Id.* at 2; see also Petition at 19-20.

²⁹⁹ 1976 House Hearing at 10.

Even John Kyl, in opposition of the quarter blood requirement, identified for the committee that GRB is distinct from other Ottawa bands:

Mr. YOUNG. ...The estimate of 6,000, is that the minimum amount you think there is, or is there a variation between that and some other number?

Ms. PARKS. We don't know. We have no way of knowing who these people are, or where they are, other than those who are enrolled with the Northern Michigan Ottawa Association.

Mr. YOUNG. Just for the record, wouldn't you say 6,000 is a sort of a relatively conservative number? What does the Dominic roll have?

Ms. PARKS. I believe they report 1,000 Ottawas enrolled with them.

Mr. YOUNG. And if we jump from 1,600 on up to whatever the base was you quoted, Mr. Secretary, you can figure to multiply that by two, two and two, and you will have more than 6,000.

Mr. KYL. If the gentleman would yield for a moment, this gives us pause, because while the Durant roll gives one figure, the Smithsonian Bureau of Ethnology in 1900 reported 4,700 Ottawas.

Mr. YOUNG. Of one-quarter percent?

Mr. KTL. These are not all necessarily Grand River Band Ottawas, again, you see.³⁰⁰

When Congress enacted the legislation, over the strenuous objections of the Department, Congress effectively rejected the argument that the GRB had no formal organized political entity to receive the funds and recognized the autonomy of GRB. This type of direct, documentary evidence outlined in this section speaks for itself. GRB litigated separately, voted separately, acted separately, and most importantly, GRB recognized itself as distinct. Both the NMOA and some BIA officials *knew* GRB is autonomous.³⁰¹ Simply because GRB used the NMOA as the vehicle to implement these processes, doesn't take away the fact this evidence proves GRB was and is a distinct community. These congressional hearing transcripts and appendices, along with 1974 Docket 40-K Transcript, as new evidence corroborates GRB's viewpoint unequivocally.³⁰²

³⁰⁰ 1976 House Hearing at 17 (statement of John Kyl, Assistant Secretary of the Interior for Congressional and Legislative Affairs, Accompanied by Ralph Reeser, Legislative and congressional Affairs Officer, Bureau of Indian Affairs; and Janet Parks, BIA)

³⁰¹ See Petition at 151-155 (the initial evidence regarding the autonomous nature of GRB within NMOA).

³⁰² See also Dominic Deposition at 84-85.

The NMOA, however, served as a structured vehicle allowing the Petitioner to conduct its affairs within that structure while maintaining solidarity with NMOA and GRB was not alone in that thought process.³⁰³ The Regulations do not obligate a petitioner to conduct every communal activity to the exclusion of others (although it seems to be interpreted in that manner). Petitioner's submitted evidence (both previous and new evidence) should be recognized as substantiation of a distinct community, instead of this "nascent" evolution of GRB into NMOA, or vice versa.³⁰⁴

In furtherance of this point, the geographical units of the NMOA serve to support GRB's distinct community arguments as well as demographic analysis. In the Grand Traverse Finding, BAR/OFA was willing to allow population calculations (with a favorable finding of community) from Grand Traverse citizens living in Grand Rapids, Michigan to Peshawbestown, Michigan (which is approximately 142 miles, as the crow flies). GRB has demonstrated that a predominant portion of our past and current citizenship list resides within the Grand River Area. The Grand River Area is half of the distance utilized in the Grand Traverse Finding from Grand Rapids, Michigan to Pentwater, Michigan (of approximately 68 miles, as the crow flies).³⁰⁵

In summary, the passage of a quarter of a century has allowed the Petitioner, to some extent, the ability to locate new and additional evidence to support our position that GRB is a community. At the same time, the inability to access government records that are not only relevant, but

³⁰³ See *Michigan Indian Recognition: Hearing Before the Subcommittee on Native American Affairs of the Comm. on Natural Resources*, 103rd Cong. 1st Sess. at 58 (Sept. 17, 1993)(statement of Testimony of Daniel Bailey, Chairman of the Little River Band of Ottawa Indians on H.R. 2376, noting that "[t]he Little River Band of Ottawa, along with other NMOA members used the association to combine their influence and pursue issues that had proven difficult for the individual groups to win alone."

³⁰⁴ PF at 55.

³⁰⁵ In the context of 25 C.F.R. § 83.7(b)(1)(i) and (b)(2)(ii), after the Department acknowledges the shared histories of the lower peninsula Anishinaabe in a legal and historical context, it should become clear that the marriage analysis needs to also include the broader Anishinaabe groups in this context. GRB ancestors were inter-marrying the descendants of GRB, LTBB, LRB, MBPI, NHBP, and Saginaw Chippewa (see *Index of Native American Vital Records* (Births, Deaths, Marriages), Section 2: 222 Marriages 1858-1962). And while we assume that, in the absence of detailing every single marriage or union with wedding photographs, the marriage license, reception photos, and leftovers of the wedding cake, OFA will disregard this evidence. The Regulations permit such inferences in the context of geographic location and especially with marriages when viewed with the accurate historical context.

necessary for the analysis have not been reviewed by OFA. Notwithstanding GRB's inability to view and compare the Docket 40-K Roll (or for OFA to request it from the Michigan Agency as well as the MILCSA Docket 53 and 18-E rolls), our evidence remains strong. A reasonable person could review this evidence and surmise the Grand River Bands of Ottawa are identifiable as a *community* going back more than 100 years from 1984 continuing to the present day.

1984 to 2024

The PF entitles the final section as "Evidence of Modern Community from 1984 to Present."³⁰⁶ Let's call it what it really is, 1984 to 2024.³⁰⁷ A 40-year stretch of time, same as the other periods evaluated under the PF. Is this how administrative acknowledgment was supposed to operate? Not in the least. But again, here we are. At this point GRB's goal was to unequivocally demonstrate the separation and autonomy of GRB since 1855 as a distinct community, which we've done. That aspect will continue to unfold through this analysis of modern community, but at the same time, GRB has attempted to reinforce to OFA and the Department the overlapping nature of the *Anishinaabek* bands of the lower peninsula. If OFA and the Department can truly understand this historical context, it makes this modern portion easier to comprehend, because the PF and the TA Meeting made it clear, that's not currently the case.

Government-to-Government Relationship with other Michigan *Anishinaabek* Bands

GRB believes there is a practical (and we dare to even say simple) solution to hesitations about whether GRB "exists as an Indian tribe" in the context of contemporary community. The Regulations provide the *community* criterion "may be demonstrated by some combination of the following evidence **and/or other evidence that the petitioner meets the definition of**

³⁰⁶ PF at 70.

³⁰⁷ See MILS 2006 TA Response at 20 (noting that the "The Technical Assistance Letter defines 'at present' to cover "approximately ten years leading up to the establishment of a modern organization to the time of evaluation of the petition, in GRB's case approximately 1984 - 2004."). 2007 would mark the last time GRB submitted materials of substance, other than the membership lists and informal interviews, to OFA.

community set forth in §83.1.³⁰⁸ The Regulations distinctly permit the Department to consider “other” evidence to demonstrate community. The Department, however, has not defined what “other evidence” means within these promulgated Regulations. And because GRB thinks “other evidence” should be defined as including documented support from nearby federally-recognized tribes, and Canons require the Department to recognize the existing government-to-governments relationships already in place.³⁰⁹

The use of “government-to-government” evidence is justified by the fact that nearby tribes are in a much greater position to know if another *Anishinaabek* band should be recognized on a government-to-government basis. GRB has formalized government-to-government relationships with MBPI, LTBB, NHBP, Saginaw Chippewa.³¹⁰ And the State of Michigan.³¹¹ These other sovereigns understand these relationships better than the federal government. Not mention that in this day and age nearby tribes will almost always oppose federal recognition of a nearby petitioner (even if the petition is legit). Recognition of GRB by the other *Anishinaabek* bands means everything to us because they do not take that decision lightly, but right is right.

As such, having documented support of nearby sovereign tribes should be treated as evidence of the highest form and dispositive in finding GRB satisfies the modern community threshold. It really could be as simple as that.

³⁰⁸ 25 C.F.R. § 83.7(b)(1)(**Emphasis added**).

³⁰⁹ *Scotts Valley Band of Pomo Indians v. United States Department of the Interior*, 633 F. Supp. 3d 132, 166-168 (2022).

³¹⁰ See Gun Lake Tribal Council Resolution 22-1361 (March 22, 2022)(A Resolution in Support of Federal Acknowledgment for the Grand River Bands of Ottawa Indians), March 22, 2022; see also LTBB Resolution 07119902 (July 11, 1999), noting “[t]he Little Traverse Bay Bands of Odawa Indians recognizes the Grand River Bands of Ottawa Indians as a full fledged tribal government entity” and this remains the stance of LTBB in 2024; see also NHBP Resolution 06-16-22-08 (June 16, 2022)(A Resolution Supporting Michigan Senate Resolution 151 Urging the United States Department of the Interior to Approve the Petition of the Grand River Bands of Ottawa Indians for Federal Acknowledgment); see also Petition at 39 (noting NAGRPA recognition from the Saginaw Chippewa Indian Tribe of Michigan);

³¹¹ See Michigan Senate Resolution No. 151 (June 23, 2022); Michigan House Resolution No. 345 (September 28, 2022).

The Department set GRB on this path

If the acceptance of evidence of government-to-government relationships needs corroboration (and from GRB's perspective, in contradiction of the Canons), we will demonstrate "modern" community in a more traditional sense...by blaming the federal government. GRB will also address the fallacies presented in the PF by OFA in terms of our modern GRB community. Let's begin in 1979 where John ("Bud") Shapard, at the request of Michigan Senator Carl Levin, met with Ogemakwe Dominic and the NMOA to discuss federal recognition. At this meeting, Shapard advised Mrs. Dominic that the NMOA could pursue federal recognition in two ways. He said:

If you do decide to petition, there are two ways to approach the process, depending on your understanding of the nature and history of the Ottawa tribe.

The first is to have naturally existing bands within your association's membership such as Grand River, Little Traverse, etc., petition as separate groups. This might be advisable if you feel they meet the standards set forth in the regulations (25 CFR 54.7). The second approach is to have the Northern Michigan Ottawa Association petition on behalf of all its members. In the event you should choose this approach you must clearly establish that the Association meets the criteria in the regulations, that is, the group is a continuation of pre-existing Indian political organization which has a continuous existence from historical times until the present.

In the event it is not possible to acknowledge your group, the regulations provide that we discuss other options which may be available for receiving services or benefits. As you discussed in the meeting with Senator Levin's staff, it may be possible for you to explore the feasibility of legislation at that time.³¹²

NMOA conducted its first formal meeting in 1948, and after 33 years of operation, this signaled the death knell of the NMOA. Ogemakwe Dominic, unfortunately, began her journey (passed away) in December of 1981. Aside from Shapard's clear identification of the Grand River Band, even in passing, GRB ended up taking the path we were advised to take from the Department. To be clear, GRB agrees with Shapard's advice as the NMOA would have struggled with a number

³¹² See McClurken 2000 Report at 288-289 (citing, John Shapard to Waunetta Dominic, 13 August 1979, BIA-BAR); see also McClurken, 2006 Ethnohistoric Response at 227-228; see also Petition at 176.

of the criteria, in a manner GRB as a band, *should* not. Our biggest issue, however, was timing and distrust of the federal government.

Even prior to Ogemakwe Dominic's passing, the NMOA was in the midst of a shift in native regional and state politics largely on account of the hunting and fishing rights battle. And what GRB means by "blame the federal government" is in 1980, when Grand Traverse was administrative acknowledged by the U.S. through FAP, this action distressed the balance of Ottawa solidarity in the lower peninsula.³¹³ With Grand Traverse's acknowledgment, the U.S. had government-to-government relations with three distinct tribes within the 1836 treaty cession area (Grand Traverse, Bay Mills, and Sault Ste. Marie). The administrative recognition of Grand Traverse set the direction that other bands must follow,³¹⁴ except when Congress had to step in and right a wrong.³¹⁵

By all accounts, Grand Traverse attempted to enroll as many lower peninsula Ottawas as it could. Grand Traverse presented an initial constitutional document that would have permitted the enrollment from other Ottawa bands tracing back to the Durant Roll. Between 1980 and 1988, the Band engaged in a protracted dispute with the Department over the terms of its proposed constitution because it wanted to enroll citizens of the other Ottawa bands in the lower peninsula of Michigan. During this period, the Secretary of the Interior refused to take further land into trust for the Band.³¹⁶ Eight years after Grand Traverses' recognition, after the dispute was resolved

³¹³ See also Grand Traverse Finding, Anthropological Report at 16-17, (nothing that "[t]he main opposition to recognition comes from Louis and Esther Koon and their supporters. It stems from their support of the Northern Michigan Ottawa Association as the legitimate group to recognize...[and] [t]he present leadership group has also succeeded in winning the most recent election for Unit II of the [NMOA], the unit which covers the Grand Traverse Area. The leadership reports that as a consequence for NMOA leader, Waunetta Dominic, has excluded them from NMOA meetings and affairs").

³¹⁴ See McClurken 2000 Report at 289.

³¹⁵ See *Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act*, 25 U.S.C. § 1300-k (Pub. L. 103-324, §2, Sept. 21, 1994, 108 Stat. 2156); see also *An Act to restore Federal services to the Pokagon Band of Potawatomi Indians*, 25 U.S.C. 1300j - 1300j-8 (P. L.103-323, Sept. 21, 1994, 108 Stat. 2152). And as the Department is keenly aware, GRB is attempting that angle as well.

³¹⁶ Matthew Fletcher, *The Eagle Returns: The Legal History of the Grand Traverse Band of Ottawa and Chippewa Indians* (2012), Michigan State University Press.

(because Grand Traverse was extorted by the Department), the Secretary ratified the Band's Constitution in March of 1988.³¹⁷

The landscape of tribal recognition shifted exponentially from 1975 through 1994 in Michigan. Sault Ste. Marie was recognized in 1972 by memorandum of the Commission of Indian Affairs (with land placed into trust status and approval of the Sault Tribe Constitution in 1975). 25 C.F.R. Part 54 was promulgated in 1978. Judge Fox's opinion in *U.S. v Michigan* was handed down in 1979, with prior motions of non-reservation Ottawas and Ojibwas rejected because it was ruled that only recognized tribes could litigate those claims. GRB will not restate the entire last portion of Dr. McClurken's 2006 Ethnohistorical Response in rebuttal, but those portions directly address the issues in the PF as far as the appropriate historical context of GRB's dysfunction.³¹⁸

GRB Community Entities – Dysfunction as Evidence of Community

The PF starts down the rabbit hole of modern community by questioning the formation of Grand River Band of Ottawa Nation, Inc., beginning with why the Grand River Bands Descendants Committee suddenly ceased to exist. This committee was formed, at the insistence of the BIA, to assist in the creation of the roll, and this committee ended up participating in BIA hearings regarding the distribution plan, as explained fully in GRB's prior submissions.³¹⁹ The PF conflates these differing committees. The GRB Descendants Committee lost its function when Congress approved the distribution plan in 1976.³²⁰ The PF literally, within a block quote, states the specific reason the Grand River Bands Descendants Committee was merged into the Ottawa and Chippewa

³¹⁷ See also footnote 180.

³¹⁸ See McClurken 2006 Ethnohistorical Response at 231-265.

³¹⁹ See MILS 2006 TA Response at 16; see also McClurken, 2006 Ethnohistorical Response at 189-206; see also McClurken, 2000 Report at 264-265

³²⁰ 1975 Senate Hearing at 22-23 (Statement of the Honorable Philip A. Hart indicating "[t]he Committee was formed at the suggestion of the Bureau of Indian Affairs to represent members of the Grand River Band in settling the distribution controversy and is comprised of members of the various Grand River Bands communities throughout Michigan"). **New Evidence.**

Descendants Committee (“O&C Descendants Committee), because their job was finished.³²¹ The O&C Descendants Committee was created by NMOA in 1972, and remained focused on the 1836 claims:

The Ottawa and Chippewa Descendants Committee was formed in 1972 to represent the Indian parties to the [1836] suit, but the Committee had not yet reached an agreement on a distribution plan. Between 1972, when the initial claim money was about \$10,000,000, and the middle 1980s, when the issue was still unsettled, the sum grew to more than \$30,000,000.³²²

Prior to the merger, those committees operated separately because the jurisdiction of the committees, so to speak, involved different claims. After the Docket 40-K Roll (GRB Descendants Committee - for the 1821 Treaty judgment was completed), the claims for the Treaty of 1836 (O&C Descendants Committee - for Dockets 18-E, 58, 364, and 18-R) remained. The distribution plan for the 1836 claims remained under consideration by all the 1836 treaty bands.³²³ There was still work to do on the 1836 ICC judgment.

Both committees played a role in the fusion of GRB, especially the leaders that served in such capacities, but did not government in the same overarching manner as Units 4 and 5:

The Grand River Committee, Ottawa and Chippewa Descendants Committee, Grand River Bands of Ottawa Nation leadership, and leaders involved in the forming the modern organization, the Grand River Ottawa Council, and the Grand River Bands of Ottawa Indians, Inc., were all a mix of people from Muskegon, Oceana, and Kent Counties.³²⁴

Going back to the promulgation of the initial recognition regulation, Bud Shapard’s advice on the path(s) to recognition, coupled with the subsequent administrative recognition of Grand Traverse, and Ogemakwe Dominic’s passing, led to a perfect storm of dysfunction for several years within GRB. Effectively, the well-functioning NMOA units of the 1960s and 1970s attempted to stay the

³²¹ PF at 72 (noting that, the GRB Descendants Committee “was merged into the O&C desc. Group, as they were already paid and their job was complete as far as the docket 40K went.”).

³²² McClurken 2006 Ethnohistorical Response at 236.

³²³ As distinguished by GRB being the *only* Ottawa bands that were party to the 1821 Treaty.

³²⁴ See Petition at 23.

path of relevance, but the Department's advice crippled the effectiveness of the GRB Units and the NMOA.

Many of the predicaments GRB faced in the early 1980s rests with the convoluted system created by the Department to administratively acknowledge tribes. The late Jim Keedy, who testified to Congress numerous times regarding recognition in Michigan, noted:

Last year [1993] in testimony before the House Sub-committee on Native American Affairs, Vine Deloria, Jr., listed 143 tribes that had been recognized between 1900 and 1950. The process then was a simple act of formalizing a relationship between the federal government and Indian people because of the haphazard way federal services had been applied in the past. **Now the process has become a complex, cumbersome and expensive procedure that effectively terminates Indian tribes.**

The criteria for acknowledging an Indian tribe as set forth in 25 CFR 83 are not the sole criteria for acknowledging all tribes. To apply the criteria to all tribes is inequitable. Bud Shapard, former Chief, Branch of Acknowledgment and Research, stated in testimony before the same House sub-committee on July 8, 1992 that the process set forth in 25 CFR 83 was not meant to apply to all tribes.³²⁵

Mr. Shapard, having direct knowledge of the formation of the initial regulations, was direct in making his point about the creation of the administrative acknowledgment process:

Early on, we had a number of upper-echelon people in the department and our solicitor saying that we knew that these regulations would not cover all the tribes out there, **that there were going to be good viable Indian tribes that were going to drop through the cracks**, and it would be appropriate for these groups to come to Congress for legislative action. **They were definitely not intended to apply to groups that were restored, which were terminated either administratively or through congressional action.**³²⁶

³²⁵ See *Pokagon Band of Potawatomi Indians Act and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act: Hearing before the Senate Committee on Indian Affairs*, 103rd Cong., 2nd Sess. (Feb. 10, 1994) at 67, (Testimony of James A. Keedy, Michigan Indian Legal Services before the Senate Committee on Indian Affairs in support of S. 1066 a bill to reaffirm the federal relationship with the Pokagon Band of Potawatomi Indians (Feb. 10, 1994)).

³²⁶ *Federal Acknowledgment of Various Indian Groups: Hearing Before the Subcommittee on Interior and Insular Affairs of the Comm. on Natural Resources* 102nd Cong., 2nd Sess. (July 8, 1992) at 493 (statement of Bud Shapard, former Chief, Branch of Acknowledgment, Bureau of Indian Affairs, the Department of the Interior).

The rules and regulations quickly become a problem for most of the Ottawa and Potawatomi petitioners from Michigan, but GRB still maintained its community (albeit dysfunctional). The central issue for GRB's community was the distribution plan relating to the 1836 Treaty ICC judgment. This issue severely fractured GRB community relationships with the conflict on the plan to distribute the judgment ("Minneapolis Plan" (per capita) supported by Henry Negake, versus the "Genia Plan" (collective fund for GRB tribal government supported by NMOA)).³²⁷

The PF notes that "between 1987 and 1994...there were at least three different parties claiming to represent a group of descendants of the historic Grand River-area Ottawa Bands led respectively by Henry L. Negake (as "Chief"), Joseph Genia (as "Chairman"), and Ron Yob (as "Chairman")."³²⁸ OFA summarizes these actions as designating the "Ottawa Council Resolution" as the only letter to comply with the Regulations. The PF fails to recognize the demonstration of a tribal community in these actions, perhaps because it may appear atypical to acknowledge the context in which the submissions were made. As noted *supra*, the Regulations provide the *community* criterion can be demonstrated "other evidence" than what is referenced in 83.7(b).

At the risk of sounding facetious, what can be more demonstrative of a tribal community than periods of dysfunction? Tribal nations go through periods of conflict and upheaval consistently. No governmental structure is perfect. The Department (not OFA) and AS-IA are in the best position to understand this type of evidence of community due to actions requested of the Department by federal recognized tribes over the years.

The PF uses a tenor of confusion in referring to the various letters and seems unaware (again) that these letters were submitted during a period of upheaval. This scenario is no different

³²⁷ See McClurken, 2006 Ethnohistorical Response at 236-258 (documenting, in significant detail, the fracture caused by the distribution plan for Dockets 58 and 18-E. The PF seems oblivious at times to the 2006 Ethnohistoric Response and its detailed description of the GRB community in the 1980s); *see also* MILS 2006 TA Response at 48-49.

³²⁸ PF at 76.

than tribal communities, currently recognized by the federal government, sending letters to the Department requesting AS-IA to recognize a certain faction of a tribe after a hotly contested election. The PF attempts to use these letters against a finding in favor of community for GRB in a tone-deaf approach.³²⁹ OFA, in fact, previously recognized conflicts among the *Anishinaabek* in other contexts:

The failure of the effort at recognition was ascribed by one older individual as due to the fact that they didn't have a lawyer and that they were basically unsophisticated in dealing with the government and "didn't know how to work around." Also cited was the feeling that they had fought "each other" too much, without giving any elaboration as to what this meant. Another individual, who was very antagonistic to Ben Peshaba, accused him and his two helpers of having gone off somewhere with the money and not following through. **The reference to conflict may relate to the apparent split at one point between Antoine and Peshaba indicated by a letter from Antoine (1938) stating that Peshaba and Gingway were overthrown and that he and Esther Miller Koon were in office.** Another person also indicated there was a lot of conflict in this period, stating that the "Indians didn't agree on anything at all. They were afraid they would get cheated." The meaning was that there was conflict over whether to seek recognition. In this context, one person stated that the Bureau had gone house to house in the 1930's and asked whether the Indians wanted a reservation. Most were said to have turned it down because they were afraid they would lose the private land.³³⁰

This was the stance of GRB for decades in terms of recognition. GRB didn't seek recognition to reestablish a land base, necessarily because the last time land was promised it didn't exactly go very well. Either way, internal tribal conflicts occur and the Department cannot use this against GRB for purposes of recognition. GRB is remiss to ignore the Department used conflicts (and resolution thereof) in support of Grand Traverse's recognition:

It should be noted that the decision to seek recognition was evidently preceded by a significant amount of community conflict. There does remain some division of the community along religious lines and along geographical lines [like GRB's Units 4 and 5]..., **but these function as distinctions within a community and have been adequately addressed by local political processes.**³³¹

³²⁹ PF at 76.

³³⁰ Grand Traverse Finding, Anthropological Report at 9-10.

³³¹ Grand Traverse Finding, Anthropological Report at 22.

Eventually, we healed and came together.

Congressional Recognition of Pokagon, LTBB, and LRB and Enactment of MILCSA

As the Regulations contemplate, conflict and resolution of those conflicts, is evidence of community.³³² The letters amount to various factions of GRB (who generally wanted the best for GRB) attempting to take control of GRB. These conflicts, however, were resolved in 1994-1995. As opposed to the PF that indicated the “meeting, in October 1994, was an attempt to bring these separate communities of descendants together.”³³³ The PF ignores that this meeting was the olive branch that brought the factions of the same GRB community back together after a tough period of dysfunction. And not separate communities joining together for federal recognition as the PF speculates.³³⁴ The reformation of GRB to its current existence today was solidified in 1995 (which was nearly 30 years ago at this point).³³⁵

Partial attribution of the divide was related to the congressional acts that recognized LTBB, LRB, and Pokagon. The venerable congressman, Rep. Dale Kildee, was the principal sponsor of the legislation to recognize these *Anishinaabek* bands. Rep. Kildee, until the day he passed, was a steadfast advocate for right and wrong, including working to rectify the devastation wreaked by the United States with unfulfilled treaty guarantees. Rep. Kildee approached GRB and would have included GRB in the legislation that Congress passed to recognize LTBB and LRB. GRB, however, was fractionated and remained distrustful of the federal government and thought acknowledgment equated to suppression:

In 1994, I introduced legislation, H.R. 2376, that was passed by Congress and signed into law (P.L. 103-324) that recognized two other Michigan Ottawa tribes whose histories are virtually identical to that of the Grand River: the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. I was proud to have you as a cosponsor of my bill, and I appreciated your support of this

³³² See 25 C.F.R. § 83.7(c)(2)(ii).

³³³ PF at 77.

³³⁴ See PF at 76-79.

³³⁵ See Petition at 183.

important legislation. **Unfortunately, Grand River wasn't included in this legislation because tribal elders feared federal government intrusion if they were recognized.** I want to be clear that I had every intention of including the tribe in the original legislation because of their cultural, social, and historical ties to the land.

* * *

Why is it important that Congress pass an expedited process for Grand River? Let me explain why. In 1997, the Congress enacted P.L. 105-143, **the Michigan Indian Lands Claims Settlement Act ["MILCSA"]³³⁶ which reserved a percentage for the funds appropriated for payment of land claims to "newly recognized or reaffirmed tribes described in section 110."** Section 110 states that eligible non-recognized tribes are those (1) who are signatory to either the 1836 Treaty or the 1855 Treaty, (2) whose members are predominately Chippewa and Ottawa, and (3) who file a documented [Part 83] petition by December 15, 2000.

The Grand River Bands of Ottawa Indians is the only unrecognized Michigan Tribe who meets the requirements of section 110 of the 1997 Act. The Tribe is comprised of descendants of members who signed three treaties: the Treaties of 182[1], 1836, and 1855. The Tribe filed a fully documented petition with the BIA on December 8, 2000, and thus meets the Act's filing deadline.³³⁷

Rep. Kildee's letter explained that unless GRB was recognized by the end of 2005, substantial portion of the set aside for the GRB tribal government would revert to the U.S. Treasury.³³⁸ And unfortunately that's exactly what happened. GRB had not yet attained acknowledgment by 2005, and thus, the funds reverted by the United States Treasury. For purposes of community, however, the Department/OFA needs to acknowledge that the United States held those funds *collectively* in trust for GRB as we were the only tribe that met the criteria in section 110 of MILCSA³³⁹ until reversion (which Rep. Kildee astutely pointed out):

(d) AMOUNTS FOR NEWLY RECOGNIZED OR REAFFIRMED TRIBES OR INDIVIDUALS ON THE JUDGMENT DISTRIBUTION ROLL OF DESCENDANTS HELD IN TRUST.—**Pending distribution under this title to newly recognized or reaffirmed tribes described in section 110** or individuals on

³³⁶ See Pub. L. No. 105-143, 111 Stat. 2652 (1997).

³³⁷ *The Thomasina Jordan Indian Tribes of Virginia Recognition Act and the Grand River Band of Ottawa Indians of Michigan Referral Act*, Hearing before the Senate Committee on Indian Affairs, 109th Cong. 2nd Sess., June 21, 2006, at 221-222 (Appendix - Kildee, Hon. Dale E. Kildee to Hon. Peter Hoekstra, June 28, 2005)(**Emphasis added**). **New Evidence.**

³³⁸ Id at 222.

³³⁹ 111 Stat. 2652, 2663-2664. **New Evidence.**

the judgment distribution roll of descendants, the Secretary shall hold amounts referred to in subsections (a)(1) and (b)(1) in trust.³⁴⁰

Congress requires those funds be set aside for GRB. And while collective funds doesn't necessary satisfy community criteria, Congress actions constitute *de facto* acknowledgment of GRB. The Department even confirmed the funds were held in trust for the beneficiaries (and had been since 1972), whether GRB as a whole if recognized, or for the GRB citizens paid per capita:

For background, the Ottawa and Chippewa Indians were awarded \$10,109,003.55 in Dockets 18-E and 58 and \$25,233.11 in Docket 364 before the Indian Claims Commission. Funds to satisfy the awards were appropriated on October 31, 1972 (88 Stat. 1518) and March 13, 1978 (92 Stat. 107) respectively and **are held in trust for the beneficiaries.**³⁴¹

Since recognition didn't happen at the point, what remained of the collective trust funds held for GRB (for the last 3 ½ decades), was distributed per capita to GRB citizens in 2007.³⁴²

MILCSA was the peak of a process that began in 1972 with the Dockets 53 and 18-E claims and the establishment of the O&C Descendants Committee. By the time MILCSA passed in 1997, Grand Traverse, LTBB, LRB, BMIC, and Sault Tribe were all federally-recognized with GRB remaining the only unrecognized band (as referenced by Rep. Kildee's letter). And unsurprisingly, GRB got the short end of the stick. Chairman Yob participated in hearings relating to the distribution plan at the invitation of the Michigan Agency. Those hearings made it clear the federally-recognized tribes were in control of the process to the exclusion of GRB.³⁴³

Tribal Recognition in Michigan and Marriage Context

Due to the lack of resources and funding, GRB continued to work with MILS to prepare GRB's Petition during this time until submission in 2000 (meeting the deadline contained in the

³⁴⁰ 111 Stat. 2652, 2655 (**Emphasis added**).

³⁴¹ See *Judgment Funds of the Ottawa and Chippewa Indians of Michigan: Hearing Before the Senate Committee on Indian Affairs*, 105th Cong. 1st Sess. at 36 (Nov. 3, 1997)(Appendix, Prepared Statement of Michael J. Anderson, Deputy Assistant Secretary of Indian Affairs, Department of the Interior) (**Emphasis added**).

³⁴² See footnote 273.

³⁴³ "Discrimination" can take many forms, and the Regulations do not define "discrimination." Whether intentional or not, GRB was subjected to discrimination as part of the distribution process as a non-recognized band.

MILCSA).³⁴⁴ OFA issued the TA Letter on January 26, 2005, and the MILCSA deadline expired in December 2005, with Chairman Yob explaining to Congress (in 2007) the negative impacts:

We were placed on the “Ready for Active” list nine months later in February 2007, just four months before the BIA paid out the Judgment Funds to individual members in June 2007. This payment, while welcomed by many of our members who have waited a lifetime for payment, means that the tribe will not receive either the statutory 20 percent of judgment funds or the bonus money for newly recognized tribes authorized by the 1997 Act. **Those funds, about \$3 million, will revert to the U.S. Treasury. For some, this would seem to mean less incentive to pursue expedited recognition, but we disagree. While the time is now past for the Tribe to receive the judgment funds, we feel strongly that the BIA should be held accountable for its failure to act on our behalf and should be required to provide expedited review of our petition.**

The Grand River Bands of Ottawa Indians are in grave danger of losing our Tribe if we are forced to wait another 15, 20 or 25 years for the BIA to act on our petition. The first petitioner on the Ready for Active list was placed there 11 years ago. Our Tribe is the tenth tribal group on that list. **Our children do not have the health and education benefits that were promised in our treaties and that their cousins from Little River and Grand Traverse now enjoy.** Our elders are dying without being sure that the Grand River Bands of Ottawa Indians will survive. **Our hunting and fishing rights are being negotiated by others because the Tribe cannot be at the table due to its unrecognized status.** The Tribe’s jurisdiction over our children under the Indian Child Welfare Act could be eroded and our ability to provide for the reburial of our ancestors’ remains under NAGPRA is also in danger. The State of Michigan is also considering the elimination of its higher education assistance to Michigan Indians. Most Indians in the State are now recognized and can access federal and tribal education benefits.

In fact, there is significant pressure on our members to enroll in other tribes where benefits are available. **Since the judgment funds were paid in June 2007, at least two or three members each week have advised us that they are giving up their membership in the Tribe. They all continue to believe that the Grand River Bands of Ottawa Indians is their tribe, yet they become members at Little River or at Little Traverse or at Grand Traverse in order to be eligible for services. However, not all our members are eligible for membership in these other tribes. The Grand River Bands of Ottawa Indians must survive and to do so it must be recognized by the United States.**³⁴⁵

³⁴⁴ See 111 Stat. 2652, 2664 (stating that in order to eligible for the funds GRB “shall not later than 3 years after the date of the enactment of this Act, submit to the Bureau of Indian Affairs a documented petition for Federal recognition if such a petition is not on file with the Bureau of Indian Affairs.”).

³⁴⁵ *Federal Recognition Process for Indian Tribes*, Hearing before the Senate Committee on Indian Affairs, 110th Cong. 1st Sess., September 19, 2007, (Prepared Statement submitted by Ron Yob, Chairman, Grand River Bands of Ottawa Indians of Michigan for the Senate Affairs Committee at 3-4.)(**Emphasis added**). *New Evidence*.

GRB points to the extensive narrative tying the lower peninsula *Anishinaabek* bands together in terms of historical context. All of Chairman Yob's statements to Congress in 2007 remain true today. Yet, for example, GRB is chastised by OFA for dually enrolled citizens on GRB's list when the circumstances are beyond anything GRB can control and ignores the historical context of the intertwined relationships of *Anishinaabek* in Michigan.³⁴⁶ And those citizens remaining on the GRB base roll still require much needed governmental services and assistance.

In terms of citizenship, the amount of intermarriage between *Anishinaabek* bands over the past few hundred years, in concert with the Durant Roll, permits individuals to be eligible at multiple bands in the lower peninsula of Michigan. This was recognized in the Grand Traverse Finding:

There is a small but significant amount of intermarriage with Grand River Ottawas, a pattern which has existed for a number of generations. On the Durant Roll, and also presently, there seem to generally be a few Grand River people resident in the area.³⁴⁷

As well as the MBPI PF:

Between 1870 and 1910, all marriages of the [MBPI] members were either within the group or to members of Indian groups within Michigan -- primarily to Potawatomi from the Pine Creek settlement in Calhoun County, **to Grand River Ottawa**, and to a lesser extent to Pokagon Potawatomi.³⁴⁸

And such context is specifically referenced and understood in the MBPI FD:

The regulations provide that the historical context of events is to be taken into account in the evaluation. The data did not indicate that persons formerly enrolled with MBPI were, as a group, choosing to join any other single tribe according to a pattern. Rather, they were individual choices based on a variety of factors, **including being listed on a base roll of another tribe in order to maximize choice for themselves and their future generations, or to obtain health benefits. The context was analyzed in light of the out marriage patterns in Michigan tribes, fact that base rolls are being compiled for several Michigan tribes**

³⁴⁶ See "Additional Arguments" section – Unjustified Denial of Access to Docket 40-K Roll.

³⁴⁷ See Grand Traverse Finding, Anthropological Report at 18; *see also* Grand Traverse Finding, Genealogy Report at 4; *see also* Grand Traverse Finding, Report on History at 2.

³⁴⁸ See MBPI PF at 56 (*Summary under the Criteria 83.7 (a-g) and 83.8 (a-d)*, at 7); *see also* MBPI Finding, Historical Technical Report at 4.

simultaneously, the eligibility of individuals for membership in a number of tribes, and the fluidity of Michigan membership patterns.³⁴⁹

The inability of OFA to review and apply this to GRB is infuriating. Instead, the PF states the “evaluation of Petitioner #146’s evidence for the present period was particularly difficult because of the Petitioner’s fluctuating membership between 2000.”³⁵⁰ GRB assumes these retorts to the membership list issues referenced, coupled with the ability to review the evidence GRB submitted in Family Tree Maker, as well as the passage of 22 years, might give OFA pause with regard to the conclusions. A viewpoint the Regulations require OFA to take, and which OFA has taken in the context of Grand Traverse and MBPI.³⁵¹

Today’s GRB

In 2015, GRB acquired real property by land contract in the City of Grand Rapids for tribal governmental offices and acquired the property outright in 2016.³⁵² Since 2016, GRB has utilized the offices for governmental use, to conduct Council meetings, citizen events, and rented some of the space out to small business owners. During the COVID-19 pandemic, however, GRB lost all its paying tenants and has yet to entice back any previous tenants or find new tenants.

Since 1997, GRB has conducted numerous elections of the GRB Tribal Council pursuant to the dictates of the GRB Constitution and By-Laws.

GRB commemorated the execution of the Treaty of 1821 in downtown Grand Rapids, along with a water ceremony in 2021.³⁵³ An article published alludes to the combined history of MBPI and GRB under the Treaty of 1821:

By entering into treaties, you are in a government-to-government binding document,” says John Shagonaby, governmental officer for the Gun Lake Tribe,

³⁴⁹ MBPI FD at 13.

³⁵⁰ PF at 96.

³⁵¹ GRB intends, with concurrence of the PDAS, to resubmit our membership and for that list to be viewed with the appropriate context.

³⁵² GRB Tribal Offices are located at 1310 Front Avenue, NW, Grand Rapids, MI 49504.

³⁵³ Michigan Public Radio, *Commemorating, but not celebrating, the bicentennial of the treaty that ceded West Michigan*, Dustin Dwyer (August 29, 2021). ***New Evidence.***

who was a guest Friday on Stateside. “That treaty is a big deal, because we were recognized at that point as a sovereign nation.”

The Gun Lake Tribe, also known as the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians, later lost that federal recognition as a tribe, along with many other tribes in the U.S. Its leaders fought to regain recognition, and were officially recognized by the federal government in 1999.³⁵⁴

Nimkee Fox (GRB-eligible) sang a drum song, remarks provided by Chairman Ron Yob and Joe Genia, along with U.S. House Representative Racheal Hood.³⁵⁵

GRB will organize and run the 42nd Annual Homecoming of the Three Fires on June 15-16, 2024, at Riverside Park in Grand Rapids. GRB does this free of charge and everybody is invited. Despite this event being a significant external identification of the Grand River Bands by other *Anishinaabek*, OFA calls it a pan-Indian event because participants include all *Anishinaabek* and anybody else that wants to participate.³⁵⁶ GRB will host our *jiingtamok* in mid-June on the Grand River as has been the case for nearly half of century at Riverside Park alone. GRB will run and organize the Hart *jiingtamok* in August one way or another. Either way GRB stands on its existing evidence of community recognizing OFA can bend the Regulations with interpretations negating the centerpiece of our GRB community.

The past 40 years, like the previous 168 years or so, were astoundingly ruthless to GRB. GRB’s status as a sovereign, within the context of the United States, will be reaffirmed at some point, one way or another.

³⁵⁴ *Id.*; GRB considered submitting materials relating to the Treaty of 1821 Commemoration and how we worked with the city of Grand Rapids, Rep. Rachel Hood’s office, the Grand Rapids Museum, etc. But since this GRB event permitted general public attendance and we didn’t limit attendance to those on the Grand River Rolls, it’s doubtful this type of evidence passes muster with OFA to demonstrate a distinct community.

³⁵⁵ Joe Genia walked on June 23, 2023, in Muskegon, Michigan.

³⁵⁶ PF at 86-89.

SUMMARY /LEGAL ANALYSIS

This analysis addresses the community criterion as well as the remainder of the mandatory criteria in the event GRB's eligibility for Unambiguous Previous Federal Acknowledgment remains rescinded. This portion of the analysis stems directly from the PF commentary addressing criterion 25 C.F.R. § 83.7(b) from 1855 to 2024 (at present).³⁵⁷

GRB's new and previously submitted evidence, with this new narrative to accompany the evidence, is robust for the periods from 1855 to present day (2024). Despite OFA's emphasis on social interactions and twisting its interpretation of the Regulations to our detriment, the Regulations provide different avenues to demonstrate *community*. Notably, is the Department's required application of the Canons to resolve any ambiguities in favor of GRB when interpreting undefined terms in the Regulations. GRB's avenue doesn't require us to have a list of every GRB citizen at every event and what color shirt each was wearing to be significant or predominant.

GRB establishes that the Regulations permit GRB to have gaps of evidence in intervals. This portion of the Regulation seems lost with the Department (whether OFA or Solicitors) despite clear indications by the Department at the time of promulgation:

Comment: Extensive comment was received concerning the requirement to demonstrate continuous existence as a tribe since first sustained contact....

Response: **Language has been added to the regulations to make explicit the existing standard that criteria (b) and (c) do not have to be documented at every point in time.** The phrase "generation to generation" has been removed from the definition of continuous. The additional language added to §83.6 concerning standards of evidence clarifies the requirements for demonstrating historical existence. However, in the Department's view it is inappropriate to establish a specific interval during which tribal existence may be presumed. **The significance of an interval must be considered in light of the character of the group, its history, and the nature of the available historical evidence.**^[358] It has been the Department's experience that historical evidence of tribal existence is often not available in clear, unambiguous packets relating to particular points in time. More often, demonstration of historical existence requires piecing together various bits of information of differing importance, each relating to a different historical date.

³⁵⁷ PF at 2.

³⁵⁸ This phrase is fraught with ambiguity.

The purpose of the acknowledgment process is to acknowledge that a government-to-government relationship exists between the United States and tribes which have existed since first contact with non-Indians [that's us]. Acknowledgment as a historic tribe requires a demonstration of continuous tribal existence...Groups known now to have existed as tribes then, were portrayed as not maintaining communities or political leadership, or had their Indian ancestry questioned...³⁵⁹

The Regulations absolutely permit gaps in evidence. Permissible gaps of evidence was recognized in the context of Grand Traverse:

The record is relatively blank between 1910, when the claims payment was made in Traverse City, and 1930. The petition indicates that many individuals left the area in these two decades to seek work in the southern portion of the state. This would be in accord with the general population patterns for the Grand Traverse region, which were influenced by the decline of the lumber industry in the region and the growth of automobile manufacturing in the south (National Park Service 1961).³⁶⁰

GRB's legal path to a favorable finding on community, both historical (if necessary) and contemporary, is demonstrated in multiple ways. During the 1855 to 1908 period, collective efforts were made in solidarity as the "Ottawa and Chippewa Indians of Michigan" which was the fictitious entity created by the United States for purposes of the negotiation of the Treaty of 1836 and the Treaty of 1855.³⁶¹ This fictitious entity was "dissolved" because the *Anishinaabek* bands (Ottawa and Ojibwe) that were party to the 1836 and 1855 treaty consider themselves different.³⁶² The finding for Grand Traverse can be "cut and pasted" with the history of GRB in this context as well:

Cooperative efforts in dealing with the Federal Government are in evidence as early as the 1860's **and the evidence is that by the turn of the century they were substantially socially integrated, with a sense of common interests and considerable intermarriage and overlapping of families.**³⁶³

³⁵⁹ See 59 Fed. Reg. at 9281.

³⁶⁰ Grand Traverse Finding, Anthropological Report at 8; *see also* Grand Traverse Finding, Anthropological Report at 12, (noting that "[t]he record is relatively thin between 1944 and 1970").

³⁶¹ See *United States v. Michigan*, 471 F. Supp. 192, 264 (W.D. Mich. 1979).

³⁶² See McClurken, 2000 Report at 60-63.

³⁶³ Grand Traverse Finding, Anthropological Report at 20 (**Emphasis added**).

Additionally, these collective efforts were (whether formal or informal) made by leaders, recognized by the band members at the time, and regarding matters of extreme consequence for band members.³⁶⁴ GRB provides evidence, additionally, demonstrating these collective efforts were previously acknowledged by federal courts, Congress, the Department, as well as OFA. In other words, that history is established and GRB is a part of it.

Similar actions of the GRB community took place during the assembling of the Durant Roll. The *collective* efforts of GRB, via the “Ottawa and Chippewa Indians,” resulted in an act of Congress allowing claims to proceed in the U.S. Court of Claims.³⁶⁵ This congressional act serves several purposes for a showing of community. This act provides evidence of: (1) external identification of GRB; (2) denomination of Congress of the entity; (3) collective rights in tribal funds (entire purpose of the litigation); and (4) named collective native identification for more than 50 years (exactly from Treaty of 1855). The process following the Court of Claims was Congress directing the preparation of a roll to accurately pay the judgment of *collectively* held trust funds.

The Durant Roll, the preparation of, is evidence of community for the period 1909 through 1947, along with the documents and records of meetings surrounding attempts to organize under the IRA. As Durant began his work, he found GRB and the other bands, generally where he expected to find them, and still operating as he had recalled (kin-based, led by *ogemuk* and headmen).³⁶⁶ Durant separated the “Ottawa and Chippewa Indians” in the manner they were already recognized (*i.e.* Grand River, Grand Traverse, Little Traverse, Mackinac, and Sault Ste. Marie), and in turn, demonstrated a clear external identification of GRB during that period.³⁶⁷

³⁶⁴ 25 C.F.R. §§ 83.7(c)(1)(ii), (c)(1)(v) and 83.7(c)(2)(iii).

³⁶⁵ See Act of March 3, 1905, 58th Congress, 33 Stat. 1048, 1081-1082 (1905).

³⁶⁶ Grand Traverse Finding at 5; see McClurken, 2006 Ethnohistoric Response at 118-119; see also McClurken, 2000 Report at 170, 171, fn. 413.

³⁶⁷ See generally Lantz.

After the completion of the Durant Roll, GRB leaders (Jacob Cobmoosa and Sampson Robinson) sustained efforts to litigate additional treaty claims.³⁶⁸ Although the efforts were largely unsuccessful in terms of another congressional reference act to the Court of Claims, the evidence submitted (including the Power of Attorney³⁶⁹) show who was in GRB's distinct community.

GRB supplied evidence of the federal agents conducting meetings regarding reorganization of GRB communities after the IRA was passed. These federal agents traveled to the Grand River Area to conduct such meetings with GRB leaders in Oceana County and Muskegon.³⁷⁰ Then John Collier visited the GRB Community in Grand Rapids in 1935 and met specifically with GRB leaders.³⁷¹ Federal officials attested to the continued social solidarity and political existence of the Grand River Bands and documented support that GRB was eligible for reorganization.³⁷²

Despite this attestation of eligibility, the federal government stuck to an opinion that only current natives living on reservations, were permitted to organize pursuant to the IRA.³⁷³ As such, no lower peninsula *Anishinaabek* band was permitted to organized under the IRA other than Saginaw Chippewa.³⁷⁴ The exact evidence used for the favorable Grand Traverse Finding is evidence GRB submitted as well, and similar evidence was used for the positive determination with NHBP (as MBPI as piggybacking on NHBP's IRA petitions).³⁷⁵ GRB leaders were able to

³⁶⁸ See footnotes 173-175; see also McClurken, 2006 Ethnohistoric Response at 119-139 (analyzing significant documentation and evidence supporting the efforts of Jacob Walker Cobmoosa during the period after the Durant Roll through the enactment of the IRA); see also Petition at 12-14, 112-126; see also McClurken, 2000 Report at 204-221.

³⁶⁹ See Petition at 12; see McClurken, 2006 Ethnohistorian Response at 102-110.

³⁷⁰ McClurken, 2000 Report at 222-223.

³⁷¹ McClurken, 2000 Report at 226.

³⁷² McClurken, 2000 Report at 225-229.

³⁷³ McClurken, 2000 Report at 223-224.

³⁷⁴ McClurken, 2000 Report at 231. And even in that case, Saginaw Chippewa didn't constitute a historic band, but it was just whatever natives were living on that reservation; not the makeup of the actual Saginaw, Black River, and Swan Creek treaty bands.

³⁷⁵ See footnotes 189-190.

mobilize the GRB community for treaty claims petitions as well as the IRA lobbying. These actions of GRB leaders and the community constitute a demonstration of *community*.³⁷⁶

The creation of the NMOA allowed GRB to engage in political activities (demonstrating community) which united the *Anishinaabek* 1836/1855 bands once again, but at the same time GRB operated and acted autonomously from the other Ottawa bands. The autonomy was recognized at every level (tribal, state, and federal) because of the ICC Docket 40-K claims required it (1960s). GRB is in a distinct category of bands within the grouping of *Anishinaabek* treaty signatories as the only Ottawa bands to sign the Treaty of 1821. As well as the negotiation of the Docket 40-K distribution plan with the Department and Congress (1970s), followed by the preparation of the Docket 40-K (late 70s early 80s).

NMOA Units 3, 4, 5, 6, and 7 were each comprised of a majority of GRB for decades. For purposes of *community* under the Regulations, the Units 4 (Grand Rapids area) and 5 (Muskegon area) outline our historical territory with the Grand River Area (as modified/limited by Congress and OFA).³⁷⁷ Unit 3 eventually morphed into MBPI (Allegan/Barry), whereas Unit 7 transformed into LRB (Mason/Manistee). Aside from the geographic evidence of GRB Units 4 and 5, all GRB (over the age of 21) were permitted to vote on the issues that dealt specifically with GRB to resolve conflicts. Voting also served to impress upon the Department and Congress that GRB's specific governmental actions relating to the distribution plan would not be ignored.³⁷⁸ This is another example of *de facto* congressional recognition of GRB by acceptance of our demands over the strenuous objections of the Department at that time.

³⁷⁶ See 25 C.F.R. §§ 83.7(c)(1)(i), (c)(1)(ii) and (c)(2)(iii).

³⁷⁷ The makeup of Unit 6 was a majority of GRB in an urban setting and included many non-GRB Ottawas and Ojibwas outside of the Grand River Area to the auto industry population changes.

³⁷⁸ See entirety of Response portion entitled "1948 to 1983" for detailed analysis.

Furthermore, meeting minutes, attendance lists, resolutions, mailing lists, and distribution plan hearing transcripts, all provide corroborating evidence of the autonomous nature of GRB in the context of the NMOA to demonstrate community. The culmination of the GRB efforts on Docket 40-K resulted in Congress passing a law with a clear denomination of GRB, entitled: “[a]n Act to provide for the disposition of funds appropriated to pay a judgment *in favor of the Grand River Band of Ottawa Indians* in Indian Claims Commission docket numbered 40-K, and for other purposes.”³⁷⁹

The contemporary community section (1984 to 2024) is initially complex due to internal conflict within GRB stemming from the divide in the distribution of the Dockets 53 and 18-E ICC judgments. It’s unfortunate, but at the same time provides solid evidence for contemporary community and ultimately the resolution of the conflict, plaguing GRB politics during the 80s and early 90s.³⁸⁰

The strongest evidence, however, is provided by the nearby *Anishinaabek* bands themselves. Recognition on a government-to-government basis from the nearby bands should constitute prima facie evidence due to a presumption of opposition due to economic development competition.³⁸¹ Ultimately, GRB can show, from a legal perspective, unambiguous previous Federal acknowledgment. In turn, the Department is only required to overturn the PF’s finding against GRB’s modern community, which GRB does with the support of our *Anishinaabek* family.

³⁷⁹ 90 Stat. 2503 (1976). These GRB actions, whether by unit or GRB itself, constitutes: (1) a clear denomination of GRB by Congress; (2) identification as a native entity by the federal government; (3) identification as a native entity by the NMOA itself (native organization); (4) another instance showing a named collective native identity for a period of 50 years or more; (5) demonstration of political influence (GRB membership considered issues to be of great importance and voting autonomously showed the internal conflicts over groups goals which lead to voting on issues relating to the distribution plan on several occasions, as well as settling disputes) = unambiguous previous Federal acknowledgment.

³⁸⁰ See 25 C.F.R. § 83.7(b)(2)(v) as modified by 25 C.F.R. § 83.7(c)(2)(ii)(settling disputes between members by mediation).

³⁸¹ See 25 C.F.R. § 83.7(b)(1) and §83.7(c)(1), both permitting use of “other” evidence to satisfy evidence. If there is a question on what constitutes “other” evidence because it’s undefined, the Canons require the Department to resolve this in GRB’s favor allowing “other” evidence from nearby tribes to support a favorable finding of contemporary community.

CONCLUSION

In summary, GRB is the main character in its own version of “Groundhog’s Day.” Treaties are not optional despite how the United States disregarded implementation of them for the past couple of centuries. Due to the amount of litigation to enforce treaties, statutes, and/or regulations by native people and their advocates, there is a full-bodied area of case law on interpretation of federal law. And the crux of those opinions is that all ambiguous provisions must be resolved in favor of natives such as GRB. The Indian Canons of Construction didn’t occur by chance. Case after case revealed testimony and documentation exhibiting how U.S. negotiators took every opportunity to successfully fleece natives in the execution of the treaty, and with attempted to enforce implementation (or lack thereof). Treaties contain **guarantees**.

OFA is applying the standard in a way that ignores the GRB historical structure. OFA is obligated to take historical context into account. The question is not “who is in the community” and “what are they doing to interact,” but rather “is the community/group petitioning all part of the “Grand River Bands of Ottawa” and is there a consistent line between the people making up the petitioning group and the group that was last recognized. THE ANSWER IS YES.

**ADDITIONAL ARGUMENTS OF THE GRAND
RIVER BANDS OF OTTAWA INDIANS**

REVERSAL OF THE TECHNICAL ASSISTANCE LETTER'S DETERMINATION ON § 83.8

The TA Letter, dated January 26, 2005, begins with OFA making the required determination as outlined under 25 C.F.R. § 83.8(b) finding that the Petitioner is eligible to proceed under § 83.8:

*This evaluation finds that GRB is eligible to proceed under §83.8, which modifies the requirements of the acknowledgment criteria in §83.7 by reducing only the burden of evidence for some criteria.*³⁸²

GRB was nothing short of astonished upon reading the reversal of the TA Letters determination on unambiguous previous Federal acknowledgment. And remain astonished as GRB is the only denied petitioner to have to prove historical community after failing to show modern community. Certainly, we can appreciate the provisional nature of the finding, but the Petitioner assumed (incorrectly, once again) that OFA might consider letting the Petitioner know of this fact over the past 18 years since the TA Letter was issued. Fortunately for GRB, the PF itself is a “provision” finding and should be reversed.

Despite the Regulations requiring notification, the PF makes no mention of any formal notification to the Petitioner:

“...Petitioners that fail to demonstrate previous Federal acknowledgment after a review of the materials submitted in response to the technical assistance review **shall** be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration.”³⁸³

³⁸² TA Letter at 1 (*emphasis added*).

³⁸³ 25 C.F.R. § 83.10(c)(2)(***Emphasis added***); *see also* See 59 Fed. Reg. at 9282, noting a specific response by the Department regarding notification after the technical assistance response review in relation to a practical question of how and when:

Comments: Several commenters raised the practical question of when and how it would be demonstrated that the petitioner was in fact the same as the previously acknowledged tribe.

Response: The determination under paragraphs 83.10(b)(3) and 83.10(c)(2) that a group was previously acknowledged will only be a determination that past government actions constituted unambiguous Federal acknowledgement as a tribe. It will not be a determination that the criteria for acknowledgment have been met by the petitioning entity since the last point in time that the tribe it claims to have evolved from was acknowledged. **If during the preliminary technical assistance review it becomes apparent that the petitioner cannot be linked with the previously acknowledged tribe, the petitioner will be advised...**(*Emphasis added*).

At no point prior to reading it in the PF, was GRB notified of this reversal.

As previously established, the TA Letter was issued in 2005, and the Petitioner submitted materials directly in response to the TA Letter in 2006.³⁸⁴ OFA indicated in the TA Letter that “GRB will be given an opportunity to update the petition materials in its response to this TA and immediately before active consideration.”³⁸⁵ As a reasonable person might conclude that the PF was a significant deviation from the path the Petitioner assumed it was heading:

This PF, limited to criterion § 83.7(b), does not further evaluate Petitioner #146’s claims for unambiguous previous Federal acknowledgment. Consistent with the TA review letter’s provisional finding on previous acknowledgment, the Department’s review of criterion § 83.7(b) initially focused only on evidence of community “at present,” in line with the requirement set forth in § 83.8(d)(2). Nevertheless, this PF includes a review of community not only at present but also for earlier time periods, dating back to 1855 (the year of the Treaty of Detroit). *“The Department is providing a more comprehensive review of criterion §83.7(b) to Petitioner #146 because, as discussed in a section below, the Petitioner’s materials were insufficient to meet criterion § 83.7(b) at present and the Petitioner may have to show instead that it meets criterion §83.7(b) “from last Federal acknowledgment until the present,” pursuant to §83.8(d)(5).*³⁸⁶

A (legally required) heads up would have been appreciated. The last the Petitioner knew (officially) is that GRB was eligible to be evaluated under § 83.8. Other than the consistent extension notices send by OFA, that last substantive correspondence we can locate was the 2013 notification of being placed on the active consideration list,³⁸⁷ with any legally obligated notifications about previous federal acknowledgment apparently cast aside.³⁸⁸ The determination made by OFA in the TA Letter formed the basis for the submission of materials in 2006. If GRB knew of the contemporary community issues, GRB would have had a different viewpoint and game plan to what materials were to be submitted. OFA, instead, moved the goalposts without telling us.

³⁸⁴ See generally MILS 2006 TA Response; see also McClurken, *Grand River Bands of Ottawa Indians: Ethnohistorical Response* (2006).

³⁸⁵ TA Letter at 12.

³⁸⁶ PF at 2.

³⁸⁷ See Letter from Lee Fleming to Chairman Ronald Yob (December 1, 2013).

³⁸⁸ TA Letter at pgs. 1 and 4.

The Petitioner may never know why exactly the evidence to meet the criterion pursuant to § 83.8(d)(2) was insufficient as the PF does not address the issue as to how the evidence was insufficient. The Regulations clearly allowed the Petitioner to submit additional materials to address previous Federal acknowledgment deficiencies during the active consideration period but that opportunity was taken away (illegally) from the Petitioner. Even so, GRB has supplied the Department with a surplus of evidence to reinstate the previous Federal acknowledgment determination, and a favorable modern community finding.

As mentioned before, we are not aware of any type of formal communication from OFA since 2005 (but prior to issuance of the PF) that indicates GRB's evidence was not sufficient to further evaluate the Petitioner's strong claims of previous Federal acknowledgment.³⁸⁹ Despite the disclaimers throughout the TA Letter, Petitioner is unable to locate language that permits OFA to renege on previous Federal acknowledgment determinations made in the TA Letter in the absence of formal notification and an opportunity to supplement.³⁹⁰

³⁸⁹ 25 C.F.R. § 83.8(b) states "A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to §83.10(b)..."

³⁹⁰ The 2015 Regulations omit this notification requirement for deficiencies in response(s) to a technical assistance letter. *See* 25 C.F.R. § 83.28. The 2015 Regulations, however, imply notification at this stage as the regulations require a response from a petitioner. Absent a response, OFA will move forward with review of the petition with the evidence already received.

UNJUSTIFIED DENIAL OF ACCESS TO DOCKET 40-K ROLL

Additional documents, held by the federal government and under the custodianship of the Department, cannot be accessed directly by the Petitioner. These are federal documents that can directly speak to community and other criterion. The 1974 Docket 40-K Transcript was part of the lead up to the enactment of the legislation for Docket 40-K in 1976.³⁹¹ Although the PF states that “[t]he claim for Docket 40-K was settled in 1968 and was paid out beginning in 1976,³⁹² it took a couple of years for the claims to be paid out (not to mention the funds were held in trust for those GRB citizens under the age of 18). Additionally, 25 C.F.R. Part 72 (the “GRB 40-K Roll”) was promulgated by DOI and was in effect until 1986 to process the Docket 40-K claims despite what the PF indicates.³⁹³ Evidence regarding our community extends into the “at present” period of the PF with the GRB 40-K Roll extending time for enrollment into that period. The GRB 40-K Roll is critical evidence in favor of the Petitioner but is also evidence the Petitioner is unable to acquire.

GRB sent a request to OFA on August 3, 2023, for “OFA (or DOI, whomever it may be) to request from the Michigan Agency, Bureau of Indian Affairs, copies of all documents relating to the preparation of the roll (including the roll itself) regarding the Distribution of Judgment Award Funds awarded to the Grand River Band of Ottawa Indians by the Indian Claims Commission in Docket 40-K.” The response from OFA, dated January 29, 2024, states:

In regard to your request for OFA’s assistance with retrieving documents on file with the Michigan Agency of the Bureau of Indian Affairs, please direct your request directly to the agency office. Because that office is the custodian of the requested records, it is in the best position to locate the records and review them for any protected information prior to release. *See* 43 C.F.R. § 2.3(b) (Stating that, “[t]o make a request for Department records, you must write directly to the bureau that you believe maintains those records.”).

³⁹¹ 90 Stat. 2503 (1976)(*An Act to provide for the disposition of funds appropriated to pay a judgment in favor of the Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 40-K, and for other purposes*).

³⁹² PF at 64.

³⁹³ 42 Fed. Reg. 26652 (May 25, 1977)(to be codified at 25 C.F.R. Part 72)(“Preparation of a Roll of Persons of Grand River Ottawa Indian Blood to be used as the basis to distribute judgement funds.”). ***New Evidence.***

The 1993 motion picture called “Groundhog’s Day” featuring Bill Murray instantaneously comes to mind.

The Petitioner sent both Freedom of Information Act (“FOIA”) and non-FOIA requests over the years, to the Michigan Agency,³⁹⁴ the AS-IA office, and the Midwest Region. The requests were rejected each time with citations to the Privacy Act of 1974. GRB has yet to see these rolls. It appears that GRB representatives attempting to obtain rolls (whether direct attempts or through attorneys) seems to be a trend over the decades.³⁹⁵ GRB was able to ascertain what general information the BIA/DOI documents included when a member application was eligible for payment, but additional documents provided to the BIA would include name, address, roll number, and genealogical information as well.³⁹⁶

Our assumption, based upon the tone of the PF, is that OFA will maintain that these rolls will not provide evidence of a distinct community,³⁹⁷ because they are simply individual files from a decendancy based payment. The fact of the matter is that these rolls provide direct evidence at best, and corroborating evidence at the very least, of the current rolls of the Petitioner and therefore are critical to the path to recognition this Rebuttal has formed. Application of the data from this roll is documentary evidence of community, at present, especially when combined with the new submissions regarding the autonomous and separate nature of the Petitioner from the NMOA.

Moreover, this data can be used to document and prove geographical, marriage, and citizenship list verification. A key component that is missed with OFA, is the overlap of familial

³⁹⁴ See *Letter to Tom Hartman, Bureau of Indian Affairs, from Ron Yob and James A. Keedy* (September 15, 1998)(noting that a previous non-FOIA request was denied from 1997 from Ann Bolton of the Michigan Agency office). **New Evidence.**

³⁹⁵ *Letter to Arthur B Honnold from Robert Dominic* (January 25, 1950)(“I inquired if it was possible to secure a copy of the Durant Roll for our use as a basis for a new roll...”).

³⁹⁶ See *Michael A. Fairbanks, Superintendent, Michigan Agency, to Mr. Frank Compo*, Notice of Roll Number and Receipt of Application (Sep. 23, 1977); see also *Michael A. Fairbanks, Superintendent, Michigan Agency, to Mr. Frank Compo*, Notice of Eligibility (Feb. 7, 1979). **New Evidence.**

³⁹⁷ See TA Transcript at 176 (“MR. HAIT: Sure. Eligibility for Docket-40K funds was based on descent and blood quantum, and not on membership in a distinct community, at the time of the distribution.”).

connection to Michigan *Anishinaabek* nations. Marriages/unions of *Anishinaabek* should basically be assumed in terms of community under the Regulations. As an anecdotal illustration, take a couple of native lawyers (that are biological brothers) and are currently enrolled in two separate Michigan tribes (one is Grand Traverse and the other is MBPI). In fact, these two brothers once evaluated the enrollment criteria of several tribes in Michigan and discovered (in theory) they were eligible for enrollment at seven different federally-recognized tribes. This is largely in part to the use of the Durant Roll as an indicator of eligibility, but also because the history of intermarriage between the many *Anishinaabek* bands with Ottawas marrying Potawatomis, Ottawas joining with Ojibwas, and Ojibwas courting Potawatomis (since time immemorial).

To further illustrate this point, we have the story of Leopold Pokagon (and as a pretense to maybe why, absurdly, the Pokagon Band would have never met the Part 83 criteria):

The classic Anishinaabe example is the story of Leopold Pokagon. Leopold, born into an Ottawa or Ojibwe community in the late eighteenth century in northern lower Michigan, married a Potawatomi woman from the St. Joseph River basin. He moved south to live with her family, which was one of the most prominent families in the region. Leopold developed influence and authority over time, was adopted by the local tribal community, and eventually represented his community in the fateful 1833 treaty council. That treaty resulted in the forced removal of all the Michigan and northern Indian Potawatomis to Kansas and later Oklahoma—except for Leopold’s band, which the United States allowed to remain in Michigan due to his negotiating tactics and skills. And so the federally recognized Indian tribe known as the Pokagon Band of Potawatomi Indians is named after someone who started his life as an Ottawa or Ojibwe Indian.³⁹⁸

One could only imagine the discussion ensuing regarding historical analysis of the Pokagon Band, but OFA never even opened the boxes containing Pokagon’s petition:

Last year, I visited the Bureau of Acknowledgement and Research office to check on the status of our [petition] and documents. They were in two boxes of material fulfilling the letter of the 25CFR83 Regulations. The Director located the boxes after some search. They were on the floor...unopened. Even though we have done our documentation in great detail, we must await those which submitted a letter of

³⁹⁸ *American Indian Tribal Law*, Matthew Fletcher, 2nd Ed. (2020), Wolters Kluwer, 185-186.

intent prior to the Pokagons. Number 78 means that we could be retained on hold for the next twenty years.³⁹⁹

GRB digresses, but all information that can be demonstrated to show the GRB distinct community,⁴⁰⁰ seems (at times) to almost be more important to OFA than the other volumes of documentary evidence provided on GRB's community or in other petitions. Perhaps that is why OFA utilized the Potawatomi judgement rolls for MBPI (which was viewed as favorable evidence in the MBPI finding):

1978 ICC judgment distribution award (Potawatomi). The Michigan Agency, BIA, provided BAR with a copy of a descendency roll (dated 1984) prepared for Michigan Potawatomi in 1978 in connection with the 1978 Potawatomi claims judgment award by the ICC.^[401] This roll contained the names of 3,670 lineal descendants of Michigan Potawatomi entitled to share in the award. The information columns included those for identity number, name (including maiden name and any previous names), gender, birthdate, base roll relation, enrollment date, and identity numbers of the person's father and mother.⁴⁰²

The roll provided by the Michigan Agency to the BAR with MBPI is almost analogous to the type of roll the Docket 40-K Roll is and what information it contains. The inconsistency between usage of very similar judgment rolls, but only utilized in one situation and not the other, stinks of incongruent treatment by the Department when the situations are placed side by side with MBPI.

If precedent is to mean anything, the Docket 40-K Roll must be reviewed, and applied in the same manner it was to MBPI. The MBPI Finding states:

³⁹⁹ *Michigan Indian Recognition, Hearing before the Subcomm. on Native American Affairs of the Comm. on Natural Resources*, 103rd Cong., 1st Sess. 125 (Sept. 17, 1993)(written testimony of Thomas W. Topash, Pokagon Band Potawatomi Member to Gentlemen of the House Committee (Sept. 15, 1993). (Sept. 14, 1993).

⁴⁰⁰ See MBPI Finding at 49; See Also MBPI Finding, Genealogical Technical Report at 26-28 (indicating the judgment rolls, including the 1978 ICC Roll, was not only used as information MBPI's community, but the report also uses the data from the HPI Petition, and tracks it against the MBPI Petition to distinguish them).

⁴⁰¹ *Department of the Interior, Bureau of Indian Affairs, Potawatomi Nation of Indians*; Plan for the Use and Distribution of the Potawatomi Nation Judgment funds in Dockets 15-C, 29-A and 71; 29-E; 15- P, 29-N and 306; 29-D, 1S-D, 29-B and 311; IS-I, 29-G and 308; 216, 15-L and 29-1; 128, 309, 310, IS-N, 0, Q and R, and 29-L, M, 0 and P and 150#, 29-C and 338 before the United States Court of Claims (August 24, 1983).

⁴⁰² MBPI PF, Geotechnical Report at 3.

These folders documented the connection of each to the ancestor listed on the 1904 Taggart Roll. The remainder of the MBPI membership consists of direct descendants of members who were living in 1978.⁴⁰³

It's also understood that OFA will view our newly submitted membership list for the smallest of error only to disavow any OFA errors. Either way, GRB can trace **ALL** of the current membership list to the Docket 40-K Roll (as eligible because we are denied access to the records) as well as the Durant Roll.

⁴⁰³ Id. at 3.

LOSS OF ACCESS TO GRB'S GENEALOGY DATABASE

GRB remains convinced DOI has the requisite materials already in hand to enter a finding that the evidence submitted demonstrates with a reasonable likelihood as to the validity of the facts that the Petitioner meets the mandatory criteria. The developments and discussion of the TA Meeting, and its corresponding transcript ("TA Meeting Transcript"), reveal OFA failed to consider specific genealogical information due to a lack of "access" by OFA:

DR. MCCLURKEN: An in-house question. I assume that you have prepared a database of -- based on the genealogy that we submitted in Family Tree Maker 4, and that you have already done this analysis because you have told us that we are insufficient; is that true?

DR. FLAVIN: So the -- the question about the database -- funny that you ask that question. We are using, primarily for criterion D, a document database. We are not using the -- as much of the genealogical information as we would under criterion E. And so we --

DR. MCCLURKEN: Have you augmented the original Family Tree Maker file that was submitted by the Tribe?

MR. HAIT: I can -- so we actually lost access, while reviewing this, to our software and were unable to use the database that we originally had. But we were able to reconstruct a lot of it. So it's not a Family Tree Maker database. We do have a dataset where we evaluated genealogical claims under criterion E. At least in terms of identifying the lineages that were presented to us. But we do not have, like, an augmented Family Tree Maker database for this petition, as we have in, perhaps, past petitions.

DR. MCCLURKEN: Okay. I asked because Wendi says that we need to show how many people living in the counties are Ottawas and how many aren't, and then you'll decide if it's significant or not. And given the way your response is written, it seemed to me that you had already done that, you had already discounted the level of evidence that was presented.

(Emphasis added).⁴⁰⁴

The fact OFA “lost access” to a critical component of the Petitioner’s submission and evidence used, whether directly or indirectly, the distinct community of the Petitioner leaves us wondering what OFA was actually using for these purposes. Mr. Hait indicates OFA was “able to reconstruct a lot of it” but that statement provides no comfort for the Petitioner without the ability to base that statement with evidence. The fact that the OFA team lost years of research imputed by former OFA researchers by losing access to the database is troubling enough, however, compounded the situation by failing to inform the Petitioner.

The Petitioner received the “curated data set” and viewed the material from OFA on January 31, 2024. Upon examination of the OFA’s reconstructed data set, we discovered many disconcerting issues. OFA has listed data for 4,458 individuals. The database, via Family Tree Maker, the Petitioner provided to OFA names 1,909 individuals. The OFA database includes the names of nearly 2,000 more than our Petition submission with 1,909 individual GRB ancestors. The Petitioner’s previous submission from 2006 includes only the ancestors of GRB people listed in the member files we reviewed in 2005. By that time, many people who descended from GRB ancestors had already enrolled at Grand Traverse, Gun Lake, LRB, LTBB, and Pokagon.

Moreover, the OFA spreadsheet lists the names of every GRB person whose names appear on every known census, including several that were not available to us in 2005. These include the 1950 United States Census, a 1973 Register (we assume for a Docket 40-K hearing). OFA also used the GRB list for the Docket 40-K payment that likely had even more names of people whose descendants are now part of other tribes.

⁴⁰⁴ See *TA Transcript* at 47:11-22; 48:1-21; It’s also unclear at what point OFA lost access to the Petitioner’s submitted database. A December 12, 2013 letter from OFA (see footnote 132) lists the OFA team working on the Petition as Dr. Mark Schoepfle, and Alycon Pierce, Dr. Aldo Salerno. Although the Petitioner cannot confirm the current status of those researchers, none of those individuals attended the TA Meeting or appeared to take part in the generation of the PF.

The OFA Excel spreadsheet does not show the relationships – births, deaths, and marriages -- between families that demonstrate continuity of community from treaty times to the present. OFA requested this database in in the Family Tree Maker form so they could easily find the many critical human connections that are evidence for the community. Further, they specifically asked that we prepare the database using the 2004 version of Family Tree Maker so that the information we sent could not be breached. OFA lost much of the data their staff accused us of ignoring to create a “curated data set.” The Petitioner has updated the 2005 database to work with the 2019 version of Family Tree Maker and that database is submitted with this Response.

Overall, the lack of “access” to this database renders the entire PF suspect. An equally troubling aspect is that OFA failed to notify the Petitioner of the loss of access. Our review of the excel spreadsheet indicates much data we submitted was lost and the ability easily track ancestries was also lost for purposes directly relating to analyzing GRB’s community. And the data that was lost was replaced with twice the number of descendants that GRB never indicated we were providing evidence as part of the Petition. Of course, the OFA team would have difficulty in understanding our evidence containing a data set for approximately 2,000 additional descendants.

The information compiled by OFA after the loss of access to the Family Tree Maker database we provided, as well as the lack of notification, calls into question the sufficiency of OFA’s conclusions. While a seemingly drastic request, the entire PF is compromised and should be rescinded and replaced with the positive finding for acknowledgment.

ALDO SALERNO

In 2021, GRB Chairman Yob received a package containing a letter from Dr. Aldo Salerno. Dr. Salerno is a former OFA staff member and served as the editor and historian on the draft finding for the Petitioner from 2001 to 2017. Dr. Salerno penned a letter to Secretary of the Interior Haaland in 2021 detailing his work on the Petition, and how GRB not yet receiving a finding in favor of recognition was an injustice he was willing to go public with. Dr. Salerno's correspondence contained a detailed analysis of why the Petitioner should have received a finding for acknowledgment:

Unfortunately, the Grand River Band of Ottawa Nation has suffered similarly at the hands of the Office of Federal Acknowledgment. When I left [OFA], my team and I had drafted and sent to the Solicitor for review a 275-page proposed finding on the tribe in which the staff had also reached majority, affirmative conclusions on all seven of the mandatory criteria for federal acknowledgment. The draft's findings were supported by over 375 references and over 75 pages of bibliographical citations. Despite the positive finding and the strong evidence to support it, the petition is currently suspended, and the Grand River Band of Ottawa Nation is still awaiting a decision after 8 long years of active consideration.⁴⁰⁵

Anybody that has worked with tribes over the past 30 years or so are probably able to identify certain lawyers/solicitors with the AS-IA office and at the Department that the proposed favorable finding was sent to for review (which is just another barrier to recognition). Dr. Salerno goes on to note:

The finding I helped to produce in 2017 on the Grand River Band from my research (275 pages of analysis with almost 375 citations) supported the arguments I have laid out above. The report involved over 5 years of analysis by the research team, which included the work and input of five OFA staffers. The finding went through three full drafts and two full peer reviews, with a large majority of the OFA staff supporting acknowledgment. Under the reasonable likelihood standard, the Grand River Band supplied a combination of evidence sufficient to meet the criteria for acknowledgment. The Assistant Secretary for Indian Affairs also has precedent for acknowledging the Grand River Band in the 1980 finding for Grand Traverse Band of Ottawa and Chippewa, the first petitioner recognized by the Department under the federal acknowledgment regulations. That precedent shows that the Assistant

⁴⁰⁵ Letter from Dr. Aldo Salerno to Chairman Ron Yob (May 21, 2021). ***New Evidence.***

Secretary should acknowledge the Grand River Bands of Ottawa as an Indian tribe given the evidence in the record.⁴⁰⁶

Dr. Salerno's grace permitted the Petitioner to outline these allegations formally through this Response but offer insight as to our contentions as to our evidence, arguments, and application of those items to the criteria. Good, bad, or indifferent, the Department's vacillation relies upon the political administration holding office. With the Petitioner gaining knowledge of such process and that findings favoring acknowledgment were generated, and the level of work that was done to that end only to have the PF issued in such an unsubstantial manner, only serves to strengthen our resolve.

For Dr. Salerno to speak out in this manner, with his professional integrity at stake, should open the eyes of the Department. Dr. Salerno, additionally, indicates GRB's Petition contains sufficient evidence supporting a favorable determination. The Petitioner also notified the Department of this disconcerting issue under cover of separate correspondence.

⁴⁰⁶ *Letter from Dr. Also Salerno to Hon. Deb Haaland (April 29, 2021). **New Evidence.***

2008 CARL ARTMAN GUIDANCE

In issuing the PF based only one of the seven mandatory criteria, DOI utilized Carl Artman-era “*Guidance and Direction Regarding Internal Procedures of May 23, 2008*,” to avoid issuing findings on all seven of the mandatory criteria.⁴⁰⁷ The Petitioner notes to the Assistant Secretary/PDAS that this is a truly tortured reading of the Artman Guidance. Foremost, the Petitioner (in the Standard of Review section) notes that at no point does the PF actual evaluate and analyze whether the evidence submitted establishes a “reasonable likelihood” as to the validity of the facts presented. At each and every turn, the PF simply notes that the evidence submitted by the Petitioner is “insufficient” to show community.

Notably excluded from the PF’s reference to the 2008 OFA Guidance is that the ability for OFA to issue a finding on only one of the criteria is that “this process is most appropriate when the deficiency becomes apparent during the initial stages of active consideration.”⁴⁰⁸ The ‘most appropriate’ angle was referenced by the Solicitor to defend the use of this “guidance:”

MR. FLETCHER: Yeah., there's one other item I'd like to bring up. So -- it concerns the guidance, the AS-IA guidance from May 23, 2008, specifically regarding the one criterion finding here.

My guess, you know, generally assume everybody's aware, but the last formal submission that Grand River had would have been 2006. You know, put on active consideration, I don't know -- a couple years later, 2010, somewhere around there, I can't remember the dates off the top of my head. But this 2008 guidance, which would have been a couple years after Grand River's last submission. And it's quoted in the finding in part -- but what I've always focused on here is that, "The process for doing a one criterion finding is most appropriate when the deficiency becomes apparent during the initial stages of active consideration."

And I would really like to get somebody's take on what on Earth initial stages of active consideration must mean. Thanks.

⁴⁰⁷ See 2008 OFA Guidance at 30146.

⁴⁰⁸ See 2008 OFA Guidance at 30147 (Emphasis added).

MR. PARTESOTTI: I'll touch base on this and it's a fair point, and it was subject to a lot of deliberation within OFA and with us as well in SOL. And I don't have a specific number of years that active -- or the initial stages refers to.

I think what I would note in that quote that you just read aloud is that although a one criterion finding is, "most appropriate," in a specific stage, like early on in active consideration, we still felt that it was appropriate in this case, specifically to flag these items for you sooner rather than later, given just how long it has taken to give you an answer just on this one criterion.

And so it, you know -- in internal discussions, we thought that it was appropriate. I think other members of the OFA staff might have some additional comments on that. But we didn't read that guidance as precluding us from proceeding with a one criterion finding, even if we are no longer in the initial stages.

MR. FLETCHER: So it -- I mean, my guess, just for this instance, it can mean at least a dozen years, I suppose.

MR. PARTESOTTI: I think we would acknowledge that it's not in the initial stages of active consideration. Yeah. I mean, I'm -- I think that's a fair point, or a fair observation about what it says about when it's most appropriate to use. We just thought that it was also appropriate to use now, so that we could have this meeting sooner rather than later.⁴⁰⁹

Even in the most liberal of interpretations 10 years should hardly be considered “the initial stages” of the active consideration period of the Petitioner. The 2008 OFA Guidance also provides for reconsideration by the Assistant Secretary if, following an evaluation of the evidence and argument submitted during the comment period, it is determined that the Petitioner meets the criteria, the AS-IA will issue an amended proposed finding evaluation all seven criteria,⁴¹⁰ or alternatively, issue a finding for acknowledgment.

⁴⁰⁹ See TA Transcript at 231-233

⁴¹⁰ Id.

25 C.F.R. § 83.3(c)

The PF summarizes the analysis for modern community (1984 to 2024) with a parting shot indicating GRB should address “§ 83.3(c), which prohibits acknowledgment of ‘[a]ssociations, organizations, corporations or groups of any character than have been formed in recent times.’”⁴¹¹

The full text of 25 C.F.R. § 83.3(c) provides:

Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations. **The fact that a group that meets the criteria in §83.7 (a) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary’s final decision.**

GRB can understand how it can be difficult to ascertain the status of a tribe from an office in Washington D.C., however, GRB’s evidence specifically outlines what occurred with the fractions the developed as part of the negotiation of the distribution plan for Dockets 53 and 18-E. The legal entity that was formed in 1994 was very clearly created to hone unity amongst the factions. OFA attempts to muddy the waters when in fact, the division created by the competing plans and subsequent re-unification, provides strong evidence of our distinct GRB community. The late GRB leader Joe Genia said it best because “when you are a kin-based society your extended family are your constituents.”⁴¹² Whether OFA or the Department views GRB as a native community certainly has impact upon us. But even facing the prospect of not attaining federal recognition, GRB will still be here. GRB was here before any of us walked this earth, and we will be here after, whether the United States recognizes us.

⁴¹¹ PF at 95-96.

⁴¹² Petition at 178-179.

SOURCES CITED

Petition Documents

Constitution and By-Laws of the Grand River Bands of Ottawa Indians (Dec. 1, 1997).

Michigan Indian Legal Services, “*Grand River Bands of Ottawa Indians: Petition for Federal Acknowledgment*” (Dec. 7, 2000, with errors corrected).

Dr. James M. McClurken, “*Grand River Bands of Ottawa Indians: History, Society, and Culture, 1615-1990*” (Nov. 14, 2000).

Michigan Indian Legal Services, “*Grand River Bands of Ottawa Indians’ Response to Technical Assistance Letter dated January 26, 2005*” (June 7, 2006).

Dr. James M. McClurken, “*Grand River Bands of Ottawa Indians Ethnohistorical Response to Office of Federal Acknowledgment Technical Assistance Letter, dated 26 January 2005*” (June 7, 2006).

Court Opinions

Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Atty for W. Dist. of Michigan, 198 F. Supp. 2d 920 (W.D. Mich. 2002), *aff’d sub nom. Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Atty. W. Div. of Michigan*, 369 F.3d 960 (6th Cir. 2004).

Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Atty. W. Div. of Michigan, 369 F.3d 960 (6th Cir. 2004).

Robert Dominic, et. al., as the Representatives and on behalf of all members by blood of the Ottawa Tribe of Indians, and the Ottawa Tribe, and Guy Jennison, Bronson Edwards, and Gene Jennison, as Representatives of the Ottawa Tribe v. U.S., 2 Ind. Cl. Comm. 461 (1953).

Robert Dominic, et. al., as the Representatives and on behalf of all members by blood of the Ottawa Tribe of Indians...v. U.S., 6 Ind. Cl. Comm. 414 (1958).

Robert Dominic, et. al., as the Representatives and on behalf of all members by blood of the Ottawa Tribe of Indians v. U.S., 19 Ind. Cl. Comm 95 (1968).

Santa Clara v. Martinez, 436 U.S. 49 (1978).

Scotts Valley Band of Pomo Indians v. United States Department of the Interior, 633 F. Supp. 3d 132 (2022).

The Ottawa and Chippewa Indians of the State of Michigan v. United States, 42 Ct. Cl. 240 (1907).

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 S.Ct. 499 (1954).

United States v. Michigan, 471 F. Supp. 192 (W.D. Mich. 1979).

Federal Records

American Indian Policy Review Commission, Final Report (May 17, 1977).

- *Task Force Ten: Terminated and Nonfederally Recognized Indians, Final Report to the American Indian Policy Review Commission* (October 1976).

Annual report of the Commissioner of Indian Affairs, for the year 1871, Richard M. Smith to Clum, Acting COIA (Sept. 18, 1871).

Annual report of the Commissioner of Indian Affairs, for the year 1886, Mark Stevens to John Adkins (Sept. 1, 1887).

Plan for the Use and Distribution of Potawatomi Nation Judgment Funds Awarded in Dockets 15-K, 29-J, and 217 and Dockets 15-M, 29-K and 146 Before the Indian Claims Commission (April 5, 1978), 43 Fed. Reg. 15789 (April 14, 1978).

Department of the Interior, Bureau of Indian Affairs, Potawatomi Nation of Indians; Plan for the Use and Distribution of the Potawatomi Nation Judgment funds in Dockets 15-C, 29-A and 71; 29-E; 15- P, 29-N and 306; 29-D, 1S-D, 29-B and 311; IS-I, 29-G and 308; 216, 15-L and 29-1; 128, 309, 310, IS-N, 0, Q and R, and 29-L, M, 0 and P and 150#, 29-C and 338 before the United States Court of Claims (August 24, 1983), 48 Fed. Reg. 40567 (September 8, 1983).

Memorandum from R. Lavis, Assistant Secretary–Indian Affairs to Deputy Minneapolis Area Director: Addendum to Results of Research Report of April 22, 1974, and Amended Recommendation of disposition of Judgment Funds, Dockets 18-E and 58, Ottawa and Chippewa Nations of Indians, and also, Dockets 18-R and 364 (Aug. 23, 1978).

Summary Under the Criteria and Evidence for Final Determination for Federal Acknowledgment of the Cowlitz Indian Tribe (February 14, 2000)(65 Fed. Reg. 8436).

Proposed Finding Against Acknowledgment of the Grand River Bands of Ottawa Indians, Petitioner #146.

Recommendation and summary of evidence for Proposed Finding for Federal acknowledgment of the Grand Traverse Band of Ottawa and Chippewa Indians, 44 Fed. Reg. 60,171 (Oct. 18, 1979), as adopted by 45 Fed. Reg. 19321 (March 25, 1980).

Summary under the Criteria and Evidence for Proposed Finding for Federal Acknowledgment, Little Shell Tribe of Chippewa Indians of Montana (July 14, 2000)(65 Fed. Reg. 45394).

Summary Under the Criteria and Evidence for Final Determination Against Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana (October 27, 2009) (74 Fed. Reg. 56861).

Summary under the Criteria and Evidence for Proposed Finding, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, (June 23, 1997) 62 Fed. Reg. 38,113 (July 16, 1997).

Summary Under the Criteria and Evidence for the Final Determination for Federal Acknowledgment of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, (June 23, 1997) 63 Fed. Reg. 56,936 (Oct. 23, 1998).

Notice and Transcript of PUBLIC HEARING REGARDING USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS, CLAIMS, Docket No. 40-K, Grand Rapids, Michigan, May 18, 1974.

Office of Federal Acknowledgment to Ron Yob, Technical Assistance (Ta) letter, January 26, 2005.

122 Cong. Rec. H 12180 (Oct. 1, 1976).

Federal Acknowledgment of Various Indian Groups: Hearing Before the Subcommittee on Interior and Insular Affairs of the Comm. on Natural Resources 102nd Cong., 2nd Sess. (July 8, 1992).

Morris Thompson, Commission of Indian Affairs to Solicitor, Status of Grand River Ottawa descendants regarding eligibility for Federal Indian Service (Feb. 11, 1976).

Michigan Indian Recognition, Hearing before the Subcomm. on Native American Affairs of the Comm. on Natural Resources, 103rd Cong., 1st Sess. 125 (Sept. 17, 1993).

Pokagon Band of Potawatomi Indians Act and the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act: Hearing before the Senate Committee on Indian Affairs, 103rd Cong., 2nd Sess. (Feb. 10, 1994).

Distribution of Funds to Cowlitz and Grand River Band of Ottawa Indians, Hearing Before the Subcommittee on Indian Affairs of the Senate Comm. on Interior and Insular Affairs, 94th Cong. 1st Sess. (Sept. 26, 1975).

Ottawa Indians Judgment Distribution Bill, Hearing before the Subcommittee on Indian Affairs of the House Comm. on Interior and Insular Affairs, 94th Cong. 2nd Sess. (Mar. 4, 1976).

The Thomasina Jordan Indian Tribes of Virginia Recognition Act and the Grand River Band of Ottawa Indians of Michigan Referral Act, Hearing before the Senate Committee on Indian Affairs, 109th Cong. 2nd Sess. (June 21, 2006).

Judgment Funds of the Ottawa and Chippewa Indians of Michigan: Hearing Before the Senate Committee on Indian Affairs, 105th Cong. 1st Sess. (Nov. 3, 1997).

Federal Recognition Process for Indian Tribes, Hearing before the Senate Committee on Indian Affairs, 110th Cong. 1st Sess. (September 19, 2007).

House Report 103-621 (1994).

Senate Report 103-260 (1994).

Senate Report 94-577 (1975).

Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.* (1947).

Amended Notice of Decision for the Fee to Trust Application for the Jijak Camp and Walker-Larkin (Settlement) parcels, Midwest Regional Director Diane K. Rosen to Hon. David K. Sprague (Sep. 3, 2014).

Letter to Honorable Thurlow “Sam” McClellan, Grand Traverse Band of Ottawa and Chippewa Indians re: Fee-to-Trust Decision of Tara Sweeny, Assistant Secretary – Indian Affairs (March 31, 2020).

Memorandum re Federal Jurisdiction Status of the Grand Traverse Band of Ottawa and Chippewa Indians to Tara Sweeney, Assistant Secretary – Indian Affairs (March 27, 2020).

Memorandum re Federal Jurisdiction Status of the Little River Band of Ottawa Indians to Tammie Poitra, Midwest Regional Director (Aug. 13, 2020).

William Petoskey, et al. v. United States, Docket No. 27,978, May 27, 1905. General Jurisdiction Case Files, RG 123, National Archives.

Federal Statutes/Regulations/Guidance

Treaty of Chicago, 7 Stat. 218 (Aug. 29, 1821).

Treaty of Washington, 7 Stat. 490 (Mar. 28, 1836).

Treaty of Detroit, 11 Stat. 621 (July 31, 1855).

Compact of June 6, 1838.

Act of March 3, 1905, 33 Stat. 1048 (1905).

Act of the Restoration to Market of certain Lands in Michigan, 17 Stat. 381 (1872).

Act to amend the act entitled “An act for the Restoration to Market of certain Lands in Michigan,” 18 Stat. 516 (1875).

Act extending the time within which homestead entries upon certain lands in Michigan may be made, 19 Stat. 55 (1876).

Act to provide for the disposition of funds appropriated to pay a judgment in favor of the Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 40-K, and for other purposes, 94th Cong., 90 Stat. 2503 (1976).

An act to provide for the division, use, and distribution of judgment funds of the Ottawa and Chippewa Indians of Michigan pursuant to dockets numbered 18-E, 58, 364, and 18-R before the

Indian Claims Commission (a/k/a Michigan Indian Land Claims Settlement Act), Pub. L. No. 105-143, 111 Stat. 2652 (1997).

Act to restore Federal services to the Pokagon Band of Potawatomi Indians, 25 U.S.C. 1300j - 1300j-8 (P. L.103-323, Sept. 21, 1994, 108 Stat. 2152).

Guidance and Direction Regarding Internal Procedures of May 23, 2008, 73 Fed. Reg. 30146 (May 23, 2008).

Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act, 25 U.S.C. § 1300-k (Pub. L. 103-324, Sept. 21, 1994, 108 Stat. 2156).

Preparation of a Roll of Persons of Grand River Ottawa Indian Blood to be used as the basis to distribute judgement funds, 42 Fed. Reg. 26652 (May 25, 1977).

Procedures for Establishing That an American Indian Group Exists as an Indian Tribe, 59 Fed. Reg. 9280 (February 25, 1994).

Published Sources

Michigan Public Radio, *Commemorating, but not celebrating, the bicentennial of the treaty that ceded West Michigan*, Dustin Dwyer (August 29, 2021).

Restatement of the Law, *The Law of American Indians* (Am. Law Inst. 2021).

Felix Cohen, *Handbook of Federal Indian Law* (2012 ed.).

Index of Native American Vital Records (Births, Deaths, Marriages), Section 2: 222 Marriages 1858-1962.

Matthew Fletcher, *American Indian Tribal Law*, 2nd Ed. (2020), Wolters Kluwer.

Matthew Fletcher, *The Eagle Returns: The Legal History of the Grand Traverse Band of Ottawa and Chippewa Indians* (2012), Michigan State University Press.

Matthew Fletcher, *Politics, History, and Semantics: The Federal Recognition of Indian Tribes*, 82 N.D. L. REV. 487, 502-518 (2006).

Matthew Fletcher, *Race and Tribal Nationhood*, 11 WYO. L. REV. 295, 313 (2011).

Raymond C. Lantz, *Special Agent Horace B. Durant's 1907 Durant Roll Field Notes*, Heritage Books, Inc (2014).

Other

The transcript generated from the July 31, 2023, Technical Assistance Meeting shall be referred to as the “*TA Transcript On-the-Record Meeting for Petitioner Number 146, the Grand River Bands of Ottawa Indians.*”

U.S. v. Michigan, Helen Hornbeck Tanner papers, 1930s-2009, Deposition of Waunetta Dominic (Draft), Bentley Historical Library, University of Michigan, Ann Arbor.

Private Collection of Robert and Waunetta Dominic

- *Letter from [Robert Dominic] to Charles Rogers* (Mar. 25, 1949).
- *Letter from Robert Dominic to Mr. Cornelius Bailey* (May 12, 1949).
- *Letter from Mr. Cornelius Bailey to Robert Dominic* (May 1949).
- *Letter from A.B. Honnold to Robert Dominic* (May 31, 1950).
- *Letter from Robert Dominic to Mr. Arthur Honnold* (June 7, 1950).
- *Letter from Virginia Chingman, Grand River Unit 5 Secretary to R. Dominic* (Dec. 28, 1950).
- *Letter from Robert Dominic to Joshua Shagonaby* (Feb. 24, 1951).
- *Letter from Robert Dominic to A.B. Honnold* (April 4, 1952).
- *Letter from Robert Dominic to Hon. Henry M. Jackson* (May 19, 1971).
- 5th Annual Council Meeting, Minutes, June 20, 1953.
- NMOA Executive Council Meeting (Aug. 13, 1960)(Grand Rapids, Mich.).
- Unit #5 Meeting, minutes (May 13, 1963)(Muskegon, Mich.).
- NMOA Notice for 15th Annual Meeting (May 25, 1963).
- NMOA Notice for 15th Annual Meeting (May 25, 1963).
- 17th Annual Council Meeting, Minutes (October 16, 1965).
- Registration [for 17th Annual Meeting],” (October 16, 1965).
- 21st Annual Council Meeting (June 21, 1969).
- List for “Grand River Band (only),” NMOA 21st Annual Meeting (June 21, 1969).
- Special Meeting, Grand River Band of Ottawa Indians, minutes, June 6, 1970 (L.C. Walker Arena, Muskegon, Mich.).
- Special Meeting, Grand River Band of Ottawa Indians, Registration List for GRB Special Meeting, June 6, 1970 (L.C. Walker Arena, Muskegon, Mich.).
- 24th Annual Council Meeting, Attorney Contract (June 12, 1971).
- 24th Annual Council Meeting, Resolution 125 (June 12, 1971).
- 1972 GRB Mailing List (with corresponding Unit identifier).

Private Collection of June Dart

- Special Meeting of the Grand River Band of Ottawas,” (July 20, 1968).
- Special Meeting, Grand River Band of Ottawa Indians, minutes, May 22, 1971 (Fountain School, Grand Rapids, Mich.).
- Fountain School Attendance List, GRB Special Meeting May 22, 1971.

Private collection of Joe Genia

- Special Meeting, Grand River Band of Ottawa Indians (June 6, 1970).
- Notice of Special Meeting, Northern Michigan Ottawa Association (December 1, 1971).
- Special Meeting, Grand River Band of Ottawa Indians, notes, December 1, 1971 (L.C. Walker Arena, Muskegon, Mich.).

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Resolution 22-1361 (A Resolution in Support of Federal Acknowledgment for the Grand River Bands of Ottawa Indians) (March 22, 2022).

Little Traverse Bay Bands Resolution 07119902 ((July 11, 1999).

Nottawaseppi Huron Band of the Potawatomi, Resolution 06-16-22-08 (A Resolution Supporting Michigan Senate Resolution 151 Urging the United States Department of the Interior to Approve the Petition of the Grand River Bands of Ottawa Indians for Federal Acknowledgment) (June 16, 2022).

Constitution of the Little River Band of Ottawa Indians.

Michigan Senate Resolution No. 151 (A resolution to urge the United States Department of Interior to approve the petition of the Grand River Bands of Ottawa Indians for federal acknowledgement) (June 23, 2022).

Michigan House Resolution No. 345 (A resolution to urge the United States Department of the Interior to approve the petition of the Grand River Bands of Ottawa Indians for federal acknowledgment) (September 28, 2022).

Letter to Tom Hartman, Bureau of Indian Affairs, from Ron Yob and James A. Keedy (September 15, 1998)(FOIA Request).

Appendix A - Grand River Bands - Durant Roll Location List
(19 GRB Ogemuk/Bands - Page Numbers from *Lantz*)

The locations of post offices/cities/etc., referenced in the Durant Field Notes put the vast majority of the “Grand River Bands” within the Grand River Area (**bolded**) (which at this time would have included MBPI and LRB areas with the “GRV/GRB” portion of the roll (after family number 49):

Elbridge, Muskegon, Walkerville, Crystal Valley, Lattin, Hart, Grand Rapids, Holton, Hesperia, Cobmoosa, Newaygo, Montague, Millerton, Grand Haven, Holland, Tustin, Custer, Fountain, Honor, Freesoil, Bradley, Door, Star City, Manistee,

Ne-be-nay-ke-zhick (419-430)

Walkerville	Millerton
Lattin	Tustin
Fountain	Muskegon
Hart	Grand Haven
Freesoil	Newaygo
Grand Rapids	Copemish
Custer	Fern

Maw-beece (430-439)

Mt. Pleasant	Crystal Valley
Copemish	Hart
East Lake	Custer
Harlan	Empire
Fountain	Chief Lake
Saginaw	Luther
Lattin	Millerton
Honor	

Me-tay-wis (439-445)

Fountain	Freesoil
Bradley	Omena
Door	Suttons Bay
Hamilton	Custer
Star City	

Aish-ke-baw-gosh (445-457)

Walkerville	Millerton
Freesoil	Lattin
Manistee	Custer
Remus	Elbridge
Suttons Bay	Cobmo[o]sa
Cross Village	Chief Lake
Star City	Brutus

Shaw-be-quo-ung (457-466)

Millerton	Bradley
Star City	Dorr
Mt. Pleasant	Honor
Crystal Valley	Walpole Island
Athens	Fountain
Custer	Elbridge

Pay-baw-me (466-479)

Hart	Brutus
Hamilton	Newaygo
Bradley	Fountain
Freesoil	Lattin
Copemish	Missankie
Mt. Pleasant	Crystal Valley
Millerton	Honor
Walkerville	Chief Lake
Custer	Petoskey
Northport	

Maish-key (479-488)

Bradley
Omena
Fountain
Millerton
Freesoil
Custer
Petoskey
Muskegon
Chief Lake
Honor

Aish-quay-o-say (488-492)

Fountain
Freesoil
Lattin
Custer

Pe-Nay-Se (492-517)

Grand Haven	Freesoil
Hesperia	Star City
Chippewa Lake	Walpole Island
Traverse City	Newaygo
Benton Harbor	Hartford
Millington	Muskegon
Holton	Fife Lake
Custer	Grand Rapids
Honor	Holland
Charlevoix	Saugatuck

Pay-Quo-Tush (517-522)

Millerton

Waw-be-gay-kake (522-528)

Lattin

Pay-shaw-se-ga (528-545)

Grand Haven	Honor
-------------	-------

GRAND RIVER BANDS RESPONSE TO PROPOSED FINDING

Custer
Walkerville
Montague
Fountain
Chief Lake
Mt. Pleasant

Newaygo
Cobmosa
Mt. Pleasant
Freesoil

Walkerville	Millerton
Cob-moosa	Petoskey
Elbridge	Beaver Island
Muskegon	Freesoil
Grand Rapids	Honor
Lattin	Mt. Pleasant
Montague	Custer
Hart	

Kaw-gay-gaw-bo-we (545-553)

Fountain	Cross Village
Star City	Alden
Freesoil	Omena
Charlevoix	Mt. Pleasant
Honor	Rapid City
Custer	

Naw-gaw-ne-quo-ung (553-559)

Fountain
Freesoil
Ludington
Copemish
Bear Lake
Grand Rapids
Canada

Maish-ke-aw-she (559-561)

Lattin
Custer
Fountain

Ching-gwa-she (561-568)

Hart
Lattin
Custer
Mt. Pleasant
Harbor Springs

Aw-ke-aw-she (568-572)

Alvin
Sagoning
Pinconning
Alpena
Oscoda

Me-tay-o-mig (572-581)

Beal City
Coleman
Mt. Pleasant
Rosebush
Lattin
Weidman
Walpole Island

A-ken-bell (581-592)

Bradley
Walpole Island
Freesoil
Hartford
Mt. Pleasant
Chippewa

Appendix B - Grand River Bands – 1965 NMOA Meeting GRB Breakdown

The 1965 NMOA Registration List, dated October 16, 1965, contains eight numbered pages and the list consists of approximately 213 names with addresses. NMOA-wide vote included 128 persons. GRB highest vote total was 81. A survey of the Grand River Area related addresses is as follows:

Muskegon (proper):	24
Cantu (made motion on Resolution 105), Shalifoe, Stone, Wabindato, Compo	
Oceana County/Northern Muskegon County (Hart, Shelby; Whitehall, Montague, Holton):	11
Battice (seconded motion on Resolution 105), Burmeister, Lewis	
Grand Rapids (Sparta/Ionia):	9
June Gardner, Francis Wakefield, Shebonga	
Detroit:	6
Carney (seconded motion on Resolution 104), Bailey, Shomin	
Lansing (DeWitt):	4
G. Laws (motion- Res 103); J. Pamp (seconded motion-Res. 101); V. King (motion-Res. 104).	
Grand Haven:	3
Shomin	
Ludington:	2
Campeau	
Petoskey: (Waunetta Dominic; Grace Mulholland)	2
Flint/Swartz Creek: (William Hennessy Jr. and Sr.)	2
East Jordan (Antoine)	1
Marine City (Cutshaw)	1
No address but GRB (Margaret Compo/Owen Smith)	2
Grand River Area:	49
Other areas:	18
	<u>Total GRB Voters: 67</u>

October 16, 1965, NMOA Minutes – Record of Voting on Resolutions

Resolution 101 Voting:	81	0	(GRB only)
Resolution 102 Voting:	128	0	(NMOA-wide vote)
Resolution 103 Voting:	71	0	(GRB only)
Resolution 104 Voting:	61	0	(GRB only)
Resolution 105 Voting:	62	0	(GRB only)
Resolution 106 Voting:	45	16	(GRB only - 61 total votes)

Appendix C - 1974 DOI Docket 40-K Meeting GRB Breakdown

The TRANSCRIPT for the PUBLIC HEARING REGARDING USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS, CLAIMS, Docket No. 40-K, Grand Rapids, Michigan, May 18, 1974, conducted by the Department of the Interior (by Solicitor Elmer Nitzschke), contains several attestations to GRB Ottawa descent. A survey of the Grand River Area related addresses is as follows (only approximations):

Muskegon (proper):

Alma Vargas	
Mr. and Mrs. Rudolph (Randolph) Vargas	
Stella Gibson	
Raymond Shagonabe (Muskegon Heights)	Muskegon: <u>25</u>
Ray Carey	
Emily Cantu	Oceana/N. Muskegon: <u>13</u>
Philip Cantu	
Marie Cantu	Grand Rapids: <u>83</u>
Elizabeth Cantu	
Bob Cantu	Pentwater: <u>2</u>
Ray Cantu	
Lorraine Chingman (and 3 children)	Ludington: <u>1</u>
Virginia Adams	
Linda Carey	Grand Haven: <u>1</u>
Bernice Jager	
David Jager	Lansing: <u>6</u>
Barbara H.	
Becky Stalz?	Detroit: <u>2</u>
Chris Collins	
Mrs. [Doris] Stone	Petoskey <u>1</u>
Joseph Shawboose	
P.W. Stone (+ families)	MBPI: <u>5</u>
	Grand Traverse: <u>16</u>

**Oceana County/Northern Muskegon County
(Hart, Shelby; Whitehall, Montague, Holton):**

Sally Norwood (Hart)	
Mr. and Mrs. Jessie Delgado (Hart)	
Anna Haven (Hart)	
Margaret Gordan (Walkerville)	
Mitchell/Mamie Battice (Hart)	Total Grand River Bands <u>125</u>
Gertrude Baker (Hart)	
Dorothy Palome/Pablome (Hart)	Total Other: 30
Rose Shalifoe (Whitehall)	
Ike Battice (Hart)	Grand Total: <u>155</u>
Roger Shalifoe (Montague)	
Eric Olsen (Whitehall)	

Grand Rapids:

Ruth Bussey
Charles Bailey (Grandville)
Mabel Shomin
Gordon Shomin

B. Stone (Walker)

June Gardner (Dart/Rittenhouse) (36 family “all Grand River Ottawa” living in Grand Rapids)

Isaac and Susan Genereaux (Full bloods – 6 children/15 grandchildren)

15 signatures from Grand Rapids (unsure if GRB or not so did not include)

Bruce Hinmon

Chester Dart

16 Grand Rapids (surnames: King, John (3), Cogswell, Evans, Gibbs, Genereaux, Fisher)

Detroit:

Ethel Peacock

Florence Ramirez

Lansing (DeWitt):

Gladys Laws

Angeline Shomin

Brink

Mildred Shomin

Marilyn Shananaquet

Charles King

Grand Haven:

Leonard Vargas (Spring Lake)

Pentwater:

Anthony Chingman

[Gloria] Chingman

Ludington:

Linda Shrader

Petoskey: Waunetta Dominic

No address

Shagonaby (Bennett)

Shagonaby (Johnson)

Shagonaby (Essmyer)

Probable MBPI (but still eligible):

Grace Peters, Elmer Peters Jr., Dale Peters, Irma Jean Bixler, Mariam (Peters) Jarman

Probably GTB (maybe eligible):

Josephine and Raymond Bailey

14 people (Sutton's Bay/Williamsburg)