# GAMING ON OFF-RESERVATION RESTORED AND NEWLY-ACQUIRED LANDS

# OVERSIGHT HEARING

BEFORE THE

## COMMITTEE ON RESOURCES
## U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

Tuesday, July 13, 2004

**Serial No. 108-101**

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://resourcescommittee.house.gov

U.S. GOVERNMENT PRINTING OFFICE

94-995 PS WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# OVERSIGHT HEARING ON GAMING ON OFF-RESERVATION RESTORED AND NEWLY-ACQUIRED LANDS.

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**Tuesday, July 13, 2004**
**U.S. House of Representatives**
**Committee on Resources**
**Washington, D.C.**

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The Committee met, pursuant to notice at 10:05 a.m., in Room 1324, Longworth House Office Building, Hon. Richard W. Pombo presiding.

Present: Representatives Pombo, Young, Tauzin, Duncan, Jones, Gibbons, Walden, Hayworth, Osbourne, Flake, Rehberg, Kildee, Abercrombie, Pallone, Kind, Inslee, Tom Udall, Mark Udall, Baca, and Herseth.

## STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Chairman POMBO. The Committee on Resources will come to order.

The Committee is meeting today to hear testimony on the issue of gaming on off-reservation restored and newly-acquired lands.

Under Rule 4(g) of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. This will allow us to hear from our witnesses sooner and help members keep their schedules. Therefore, if other members have statements, they can be included in the hearing record under unanimous consent.

Today, it is my hope to receive testimony that sheds a clear light on how the Indian Gaming Regulatory Act applies to certain situations in which a tribe seeks to operate a gaming establishment on newly-acquired trust land. We are going to focus on situations where the trust lands are not within or adjacent to a tribe's existing reservation and on trust lands sought by tribes that have no reservation. On October 17, 1998, the Indian Gaming Regulatory Act was signed into law by President Ronald Reagan. This law has had a dramatic impact on Indian country by providing a regulatory framework within which tribes exercise their inherent sovereign authority to operate gaming establishments in States where gaming is permitted.

Because of gaming, some of the most poverty stricken members of society have seen economic, social, cultural, and medical benefits

never before imagined. This has meant new operations for jobs, housing, education, health care, and cultural preservation. On the other hand, it has been pointed out that in passing IGRA, Congress did not promise that gaming would be an economic boon for all tribes in all parts of the country. The date of enactment of IGRA, October 17, 1988, is important to remember. The Act generally prohibits gaming on lands placed into trust by the Secretary of Interior after this date.

As with most laws, there are several exceptions to this rule. These exceptions have recently turned out to be very complex in application and sometimes confusing to the public. This is because different tribes have different legal and historical circumstances surrounding their applications to place newly-acquired lands into trust. Furthermore, a number of tribes are split as to the merits of gaming on newly-acquired lands, especially in cases where a tribe seeks to place land in trust in an area to which it has no aboriginal or legal ties.

Finally, States and local governments have mixed views on this issue as well. Today's hearing should provide more clarity about how IGRA is being applied, giving members of the Committee an idea of how to address concerns raised by witnesses and by others who submit their comments for the hearing record.

I would now like to recognize Mr. Kildee for his opening statement.

[The prepared statement of Mr. Pombo follows:]

**Statement of The Honorable Richard W. Pombo, Chairman, Committee on Resources**

Today it's my hope to receive testimony that sheds a clear light on how the Indian Gaming Regulatory Act applies to certain situations in which a tribe seeks to operate a gaming establishment on newly-acquired trust land. We're going to focus on situations where the trust lands are not within or adjacent to a tribe's existing reservation, and on trust lands sought by tribes that have no reservation.

On October 17, 1988, the Indian Gaming Regulatory Act was signed into law by President Ronald Reagan. This law has had dramatic impacts in Indian Country by providing a regulatory framework within which tribes exercise their inherent sovereign authority to operate gaming establishments in states where gaming is permitted. Because of gaming, some of the most poverty-stricken members of society have seen economic, social, cultural, and medical benefits never before imagined. This has meant new opportunities for jobs, housing, education, health care, and cultural preservation.

On the other hand, it has been pointed out that in passing IGRA, Congress did not promise that gaming will be an economic boon for all tribes in all parts of the country.

The date of enactment of IGRA—October 17, 1988—is important to remember. The Act generally prohibits gaming on lands placed into trust by the Secretary of the Interior after this date. As with most laws, there are several exceptions to this rule. These exceptions have recently turned out to be very complex in application, and sometimes confusing to the public. This is so because different tribes have different legal and historical circumstances surrounding their applications to place newly-acquired lands into trust.

Furthermore, a number of tribes are split as to the merits of gaming on newly-acquired lands, especially in cases where a tribe seeks to place land in trust in an area to which it has no aboriginal or legal ties. Finally, states and local governments have mixed views on this issue as well.

Today's hearing should provide more clarity about how IGRA is being applied, giving members of the Committee an idea of how to address concerns raised by witnesses and by others who submit their comments for the hearing record.

## STATEMENT OF THE HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KILDEE. Thank you, Mr. Chairman, and thank you very much for having this hearing. As one who helped write IGRA a few years ago, I know it is not a perfect bill, but I think it was a good bill following the Cabazon decision, and we do know that many tribes have achieved some economic stability because of this, and I am very happy that you are having this hearing and very happy for your deep interest in Indian matters, Mr. Chairman.

Mr. Chairman, last month this committee held a hearing on the land settlement bills of the Bay Mills community and the Sioux St. Marie tribe, two tribes located in my State of Michigan. I expressed at that time my strong opposition to those bills because I believe that congressional approval of land settlement legislation should be approved carefully and should not include provisions that would serve to undermine the Indian Gaming Regulatory Act, IGRA, and would promote bad public policy regarding Indian land claim settlements. In addition, I voiced my concern that these bills would allow off-reservation Indian gaming at lands several hundred miles away from the tribe's existing reservations where they have no historical ties.

I am aware of proposals before this committee that, if approved, would circumvent the Department of Interior's administrative process for taking lands into trust for tribes and would avoid the process for approving the use of that land for off-reservation gaming purposes for land acquired after October 17, 1988. Mr. Chairman, I would much rather develop a thoughtful and participatory plan to deal with this issue than have this committee take action on legislation on a piecemeal basis.

I look forward to hearing from the witnesses today so that we can begin a dialog, and again, I thank you for having this hearing.

[The prepared statement of Mr. Kildee follows:]

### Statement of The Honorable Dale E. Kildee, a Representative in Congress from the State of Michigan

Mr. Chairman, last month this committee held a hearing on the land settlement bills of the Bay Mills community and the Sault Ste. Marie tribe, two tribes located in my state, the State of Michigan.

I expressed my strong opposition to those bills because I believe that Congressional approval of land settlement legislation should be approached carefully and should not include provisions that would serve to undermine the Indian Gaming Regulatory Act (IGRA) and would promote bad public policy regarding Indian land claim settlements.

In addition, I voiced my concern that these bills would allow off-reservation Indian gaming on land several hundred miles away from the tribes existing reservations where they have no historical ties.

I am aware of proposals before this committee that, if approved, would circumvent the Department of the Interior's administrative process for taking land into trust status for tribes and would avoid the process for approving the use of that land for off-reservation gaming purposes for land acquired after October 17, 1988.

Mr. Chairman, I would much rather develop a thoughtful and particpatory plan to deal with this issue than have this committee take action on legislation on a piecemeal basis.

I look forward to hearing from the witnesses today so that we can begin the dialogue on this issue. Thank you.

Chairman POMBO. Thank you. I would now like to introduce our first witness, The Honorable Jim McCrery of Louisiana's Fourth District.

Let me take the time to remind all of today's witnesses that under Committee Rules, oral statements are limited to 5 minutes. Your entire written statement will appear in the record.

Mr. McCrery, I want to welcome you to the Resources Committee. It is great to have you in here. If you are ready, you can begin.

**STATEMENT OF THE HON. JIM McCRERY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Mr. MCCRERY. Thank you, Mr. Chairman, and I want to thank the Committee for undertaking this mission to explore IGRA and the potential ramifications of IGRA if no changes are made in that underlying law. I come to you today out of fear that if no changes are made in the current law, we risk having a proliferation of gambling in this country that hasn't been explored properly or in depth, and I don't think that we would like the results. The reason I have this fear is because of a personal experience in Louisiana fairly recently dealing with a federally recognized tribe, the Jena Band of Choctaw. And let me say at the outset, I don't blame for 1 minute the Jena Band for trying to establish land in trust for the purpose of operating gaming facilities where they did. They were operating under what they believed to be the law and were acting in what they believed to be the interest of their tribal members.

Having said that, though, I think that the law needs to be changed to make it clear that similarly situated tribes would not even try to take into trust land as far away from their traditional service area, land that by their own admission when they were applying to become a federally recognized tribe was not their historical lands. In fact, they said in their application for Federal recognition that the Choctaws that were in the region that I will talk about in a minute were not part of the Jena Band. The Jena Band came from Mississippi and therefore they were completely separate and ought to be recognized as a separate Federal tribe, and they were. But now, when it came time to try to bring land into trust for the purpose of operating gaming facilities, they said, Oh, no, we have historical ties to that area; the Choctaws were there. Yes, the Choctaws were there, but not the Jena Band of Choctaws.

So if you look at the map that I have displayed here, it will give you a visual representation of the kinds of distances we are talking about. If you will see the three light-colored parishes or counties in the middle of the state, one of those parishes, the easternmost, has a black dot in the middle of it. That black dot is Jena and LaSalle Parish. That is where most of the members of the tribe live, and that three-parish area was designated as their administrative service area by BIA when the tribe was federally recognized.

The Jena Band initially tried to take land into trust down on the very southwest corner of the State. You see a black dot in the very southwest corner. That is Vinton, Louisiana, right on the Texas border. Why did they want to go to Vinton? Because Texas has no gambling, has no casinos, and so it is a great market. There are

existing casinos in that area operated by for-profit corporations, and so it is a logical place to want to establish a gaming operation. The problem is it is more than a hundred miles away from their traditional service area. The BIA eventually turned down that application, not necessarily because of the distance, but because of defects in the compact that was agreed to with the Governor.

When that was turned down, they then turned their attention to another location about a hundred miles away in my congressional district, Logansport, Louisiana up in northwest corner of the State. Once again, you can see it is right on the Texas border, a great place for a casino because of Texas, the Dallas market and so forth, but it is a hundred miles away, almost a hundred miles away from their traditional service area.

So it is clearly forum shopping. They are clearly looking for the best market for their casino without regard to their administrative service area, to their historical lands. That, to me, is wrong. If we allow that, if we continue to allow that—and by the way, the BIA recommendation was in the case of Logansport to approve it, and they did approve it. Thankfully, the Governor of the State, the new Governor, doesn't approve of it. So I don't think it is going to happen. So now I am told that the tribe is looking into their administrative area for locating a casino, and I think that is swell. Give them land in trust in their administrative service area. They can build a casino and get after it, but we ought not allow tribes all over the country to go wherever they want to build a casino.

That is my point. I thank you for your attention.

[Mr. McCrery's response to questions submitted for the record follows:]

**Response to questions submitted for the record by The Honorable Jim McCrery, a Representative in Congress from the State of Louisiana**

**Question 1: When tribes seek to enter already established gaming areas, doesn't that create an unlevel playing field since tribes are not subject to state regulations; are not subject to the restrictions placed on riverboat gaming; do not pay state taxes, etc?**

Yes. Tribes may operate casinos without the burden of negotiating state regulatory processes and also benefit from their tax exempt status, whereby they are able to forgo paying state and federal gaming and income taxes. In Louisiana, for example, Indian casinos avoid paying a state tax of nearly 22 percent of the adjusted gross of all gaming revenues. This gives tribes the advantage of having more revenue to invest in the promotion and expansion of their operation.

They are also exempt from other state regulations such as those that limit the size and scope of a casino operation. In Louisiana, the majority of state licensed casinos are located on riverboats that, by law, cannot be larger than 30,000 square feet. However, tribes may construct land based casinos with no restriction on how large a casino they may build. This "unlevel" playing field also affects local, parish, and state governments which rely on tax revenues from casinos for administering government programs.

**Question 2: What is your position on "reservation shopping" and "off-reservation gaming?" What should be the national policy?**

I believe that the approval of the Jena's off-reservation site sets a terrible national precedent. I do not believe that, in passing the Indian Gaming Regulatory Act (IGRA), Congress intended to unequivocally endorse off-reservation sites and I certainly do not believe that we intended the law to allow tribes to forum shop for the best location for a casino.

If we are to revisit IGRA, I believe we should define more clearly the exceptions by which a tribe may build a casino on newly-acquired lands. I believe tribes should be limited to constructing casinos on lands within their traditional service area or

on land where they have a proven historical connection. This should remain true for landless tribes who seeking to build a casino as part of their initial reservation.

**Question 3: What is your view on the Jena's latest effort to establish gaming in their home area?**

During a meeting with the tribe, I told the chief of the Jena Band that I would not oppose efforts to build a casino in their traditional service area.

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Chairman POMBO. Thank you.

Mr. MCCRERY. I would be glad to answer any questions.

Chairman POMBO. Just on the specifics of this, the area where they currently are, where their trust lands are, is that a sparsely populated area?

Mr. MCCRERY. It is. It is a rural area. There is an urban area right in the center of the State in Rapides Parish, which is the biggest of the three parishes. Right in the center of that parish is Alexandria, Louisiana, which the city itself—I am estimating, but I believe the population of the city itself is 50 to 60 thousand people, and Rapides Parish is probably 80,000, 90,000 people. So the LaSalle Parish is a very rural parish. Grant Parish is mostly pine trees, but Rapides Parish is an urban parish.

Chairman POMBO. On the two areas that you have there where they attempted to have land taken into trust for a casino, would it have not made more sense if they were going to do this to go into an area that already had existing casinos?

Mr. MCCRERY. Well, obviously that is why they were going there.

Chairman POMBO. Yes.

Mr. MCCRERY. Because it is a proven market. What I think we have to ask ourselves, though, is should we allow an Indian tribe with no historical roots in those areas, no tribal lands established in those areas, to just willy nilly go into competition with taxpaying for-profit entities that have been established there and proven the market. I don't think that is a good idea.

Chairman POMBO. Thanks.

Mr. Kildee, do you have any questions?

Mr. KILDEE. Just briefly.

Whether it be Indian gaming or non-Indian gaming, both entities look at marketing, and one of the elements of marketing, of course, is access. Is there an interstate running through the light area there, those parishes? Is there an interstate highway running through there?

Mr. MCCRERY. Yes, sir. Interstate 49 runs diagonally northwest to southeast through Rapides Parish.

Mr. KILDEE. OK. Because that would be more of a positive marketing thing if there is no interstate. Very often in his history of our country—and I share your concerns. I expressed those last week, and I think we are trying to see whether we should be settling these things here in this committee or use the power that the BIA has, and then ultimately, of course, we have to approve any extinction of claims, land claims, but we do know historically very often Indians were isolated and put in very remote places. Very often that does create problems because of their isolation, but the fact that there is an interstate here would indicate that there is access to their proposed casino.

I just want to make that point and thank you very much for your testimony.

Mr. MCCRERY. Thank you, Mr. Kildee. There is no question that marketing possibilities exist and transportation exists. From Shreveport to Alexandria is about a little over an hour, I would say an hour and 20 minutes by interstate. Likewise, from Baton Rouge to Alexandria is only an hour and a half by interstate, all interstate. So there are marketing possibilities there, but don't be misled. The reason they went to the northwest corner and the southwest corner is because the market is proven there and Texas is right there. You have the Houston market that comes over because they have nowhere else to go. They have no casinos in Texas. So they come to Louisiana. That is why we have casinos in Shreveport and Bossier City. That is why they have them in Lake Charles, because of the Texas market.

There is no question that those markets are more favorable than central Louisiana. I don't deny that, but I question the policy of allowing Indian tribes to just go where the best market is regardless of where their reservation is, regardless of where their historic roots are, and just set up a casino. That, to me, doesn't make good policy sense. We don't allow for-profit taxpaying entities to go anywhere they want and set up casinos. They have to go to a State, first of all, that has legalized it. Indian tribes don't have to do that. On their reservation, they can establish a casino even in a State that does not allow gambling in the general economy.

So I just question whether we want to endorse a policy that allows Indian tribes that are treated differently from every other gambling operation to go wherever they want to set up a casino.

Mr. KILDEE. Mr. Chairman, if I could.

Chairman POMBO. Yes.

Mr. KILDEE. You mentioned that an Indian tribe could establish a casino willy nilly wherever they wanted even if the State did not permit gaming. That is not the case. What the Cabazon decision said is that if a State outlaws gaming or a form of gaming, then they can outlaw it all over, but if they only regulate it, then State regulations do not apply on sovereign territory. We have to be very careful not to minimize the true nature of the sovereignty, because it is sovereign territory.

Now, Hawaii, for example, and Utah, they outlaw gaming, period, and therefore Indian gaming is not permitted there. So the Cabazon decision was very clear on that.

Mr. MCCRERY. It is, but those cases are very rare. Most States do regulate some form of gambling, and again, I would point out that the two locations where they were trying to establish a casino were not on their reservation, were not on tribal lands. They were seeking to take land into trust more than a hundred miles away and almost a hundred miles away in the other instance from their administrative service area, which is clearly where their roots are. They said so in their application for recognition, and so I think it is tantamount to forum shopping and allowing Indian tribes to willy nilly set up shop wherever they want to if you don't do something to constrain that in the current law.

Mr. KILDEE. Just to get back to my original point about the Cabazon decision, we had a Governor of Rhode Island a few years

ago who wanted to block and had succeeded in blocking an Indian tribe from gaming, saying that he felt that gaming was not healthy for Rhode Island, yet they have a lottery. I said, If you think it is not healthy, why don't you outlaw your own lottery? He said because we need the money. So Indians might need the money also.

Mr. MCCRERY. And I hope that they are very successful in operating a casino in their administrative service area. I encourage them to move forward with that. I have no objection to that.

Mr. KILDEE. Thank you.

Chairman POMBO. Mr. Hayworth.

Mr. HAYWORTH. Thank you, Mr. Chairman. Let me welcome my colleague from the Ways and Means Committee, and, indeed, as I welcome the gentleman from Louisiana and look around the room, I see many who were with us on a night, if memory serves, my second term in Congress, my first on the Ways and Means Committee, dealing with the whole question of taxation of tribal enterprises and, of course, the Committee found, the majority of members on both sides of the aisle joining together, that Article I, Section 8 of the Constitution outweighed any type of report from the GAO.

But one of the real concerns you again raise before this committee, Mr. McCrery, and it deals with exactly where are the proper general venues; if we accept the notion of sovereignty and we have recognition, where, in fact, are the proper venues for gaming enterprises. You touched on this and perhaps it is more appropriate in and we will go in depth with our second panel, but I just want to make sure I understand. The BIA issued a finding or rendered a decision that would allow this particular tribe to go, in your opinion, out of venue, that is to say to open a new venue apart from tribal lands. You obviously are not pleased with that decision. I just want to get on the record not so much their reasoning, because we will hear from the BIA in a second, but why you believe that reasoning is incorrect.

Mr. MCCRERY. I believe it is incorrect because a hundred miles is too far to allow a tribe to go from their historical roots, from the area that was set up by the Federal Government as the administrative service area, which I presume the Federal Government believed would ultimately lead to lands taken into trust for a reservation in their administrative service area. There had to be some rationale for putting their administrative service area in central Louisiana, and I will say that in the BIA decision denying permission to go forward in the southwest Louisiana location, there was language in the denial letter from BIA expressing concern about the distance from their administrative service area. Unfortunately, that same concern didn't seem to matter much in the second one when they approved it in northwest Louisiana.

And I will say, too, parenthetically here, I thought the BIA, frankly, gave short-shrift to concerns that were being expressed by the surrounding communities for the northwest Louisiana location. Now, clearly, the economic interest in Shreveport and Bossier City were opposed to the location of the Indian casino because of the tax revenues from the taxpaying casinos in Shreveport-Bossier. So they clearly had economic interests. They were trying to protect those economic interests. I admit that and they would too.

But they were undertaking at the time the decision came down, which was issued right before Christmas Day, that would have shed more light on some of the questions that had been raised about the economic consequences of the location of the casino there, public infrastructure that was available, all questions that had been raised by local entities that had not been properly vetted in my view by the BIA, and these economic interests had hired an outfit from California to do a complete study and were going to give the results of that study to BIA for their study, and the BIA said we don't need that; we will just go ahead and approve it; we have sufficient evidence before us.

So I did think the BIA gave rather short-shrift to those interests in that area, but basically, Mr. Hayworth, I believe that Indian tribes that want to establish casinos need to do it in the area where they have a reservation, where they have their historical roots, and again, you will hear from a panel, the next panel and the panel after, from the Jena Band. They will probably contend that they do have historical roots in that area, and they are entitled to their opinion. My research shows the opposite, and again, if you will take a look at their application for recognition, they disavowed any connection to the Choctaws that were actually in northwest Louisiana.

So I just think it is too far. If we allow this, then we stand the danger of seeing Indian casinos pop up all over the country, and I don't think that will be good for the country.

Mr. HAYWORTH. Well, Mr. McCrery, I thank you very much for the points you make and a chance to amplify again. I do look forward to the testimony on the additional panels, both with BIA and from the Jena Band and from the National Indian Gaming Association. So I think it is good that we are having a variety of opinions offered here today, and, Mr. Chairman, I thank you for bringing this up. I thank all of those who attend, because as we talked about on that fateful night so many years ago, it is important for everyone concerned to get on the record and give us some background.

So in that spirit, again, I thank you, Mr. McCrery, and I thank you, Mr. Chairman.

Mr. MCCRERY. Thank you.

Chairman POMBO. Mr. Abercrombie.

Mr. ABERCROMBIE. Thank you.

Mr. McCrery, just a couple of things. I find it real interesting that we are one of the States that outlaw gambling, much to the delight of my good friend from Nevada, because at least two hotels in Las Vegas make their money off everybody in Hawaii who flies in and leaves all the money that we get from tourism in Nevada.

The idea here about taxpaying entities—and you don't really have to answer this. I want to make some observations. If you care to reply to it, it is OK. Is the argument against it that it is just not just off the reservation or the administrative area or whatever your reference is to, and perhaps those who are paying taxes; is the idea they are not paying taxes? Because it is a free enterprise system. If an Indian tribe wants to establish a casino somewhere and wants to pay the taxes, you wouldn't have an objection then, would you?

Mr. MCCRERY. Not if they adhered to the existing laws in the State with respect to establishing a casino. No, I would have no objection.

Mr. ABERCROMBIE. Yes, because that is all under the compact and under the gaming law and so on. Is one of the principal objections then simply that one pays taxes and one doesn't?

Mr. MCCRERY. It is a principal objection when we allow a nontaxpaying entity to use that advantage in the marketplace.

Mr. ABERCROMBIE. OK.

Mr. MCCRERY. Without any constraints, yes.

Mr. ABERCROMBIE. Fair enough, because one of the arguments—

Mr. MCCRERY. Especially with respect to gambling which is a very tightly regulated industry.

Mr. ABERCROMBIE. Sure. We have all kinds of regulations. This is one of the reasons that I am such an adamant supporter of the Jones Act, because all these cruise ship lines don't pay any taxes, but we don't seem to have any objection. We let them advertise all over the place. They compete with all the other tourist venues in the country that do pay taxes. They are foreign owned. They are foreign flagged. They have foreign employees. We have offshore manufacturers. We don't take tax these people. They are crawling all over the Congress right now. I guess it is your committee. They are probably beating on your door right now, wondering where you are, trying to get you to give them some kind of a break.

We have foreign investment in this country. People come from elsewhere and invest in this country, but the cruise ships have always irritated me because they don't pay taxes, and we have the cruise ships operating in Hawaii now. They started on July 1st. They obey all of the health laws, environmental laws, labor laws, and they are paying taxes, and they are American flagged and American sailed right now.

So I just wanted to make sure that if a tribe wants to invest in a casino and meets all of the other elements necessary under the law and are willing to pay taxes, then would it be your opinion that they should be treated, then, like any other investing entity?

Mr. MCCRERY. Yes.

Mr. ABERCROMBIE. OK.

Mr. MCCRERY. If Indian tribes want to form a corporation and develop a casino under the laws of the State, that is fine with me.

Mr. ABERCROMBIE. OK. Thanks. That means a lot.

The other thing, Mr. Chairman, is just an observation, because I think that Representative McCrery makes a good point about historical roots and then Representative Kildee made that point that in terms of historical roots, many of the tribal entities were driven out of places that they were before. So historical roots sometimes can take two or three different spots, as it can for many of us in this room. My ancestors were driven out of Scotland by the English, and they were so smart, they went to Ireland, and that is why they ended up in Canada and then the United States.

Mr. KIND. And you were so smart to end up in Hawaii.

Mr. ABERCROMBIE. And, of course, as you well know, I was about to say I was born, of course, in Buffalo, but I am short, not slow, and I got to Hawaii. So I think the key here probably is the question of investment and whether the investment can be seen as

being fair competition. If it is, then I think anybody ought to be able to compete regardless of where their historical roots are.

Thank you.

Thanks, Mr. McCrery. I appreciate your candor.

Mr. MCCRERY. Thank you.

Chairman POMBO. Further questions?

Mr. Kind.

Mr. KIND. Thank you, Mr. Chairman. Mr. Chairman, I do want to thank you and the Ranking Member and members of this committee for holding this very important hearing. Obviously from Wisconsin with many of the nations located in my State, this is an issue that does come up with quite regularity, some initiated by the tribes themselves as far as off-gaming reservation opportunities, some being initiated by local communities who are dealing with high chronic unemployment, economic development issues, trying to stimulate the economic activity in their own area, and they are looking to some of the success that has occurred with some of the nations within Wisconsin to help generate some economic development plans.

So this hearing, again, from multiple view points, I think can be very helpful for our committee as we wrestle with off-gaming reservation issues, and there is a law in place, IGRA 88, that sets forth the process or the procedure for moving from FITA trust and setting up these type of opportunities for sovereign nations that exist within our own country.

Just for a point of clarification, I thank my colleague from Louisiana for his testimony here today, because this does offer a nice little case sample of a lot of the issues that are arising in many other states throughout the Nation. But just for a point of clarification, does Louisiana right now have their own state-run lottery?

Mr. MCCRERY. Yes, we do.

Mr. KIND. So you are one of the 40 States that do, and we are looking at the possible inclusion of two more States that are moving forward on it. Based on your testimony, it is also my understanding that your Governor had opposed the site proposal in southwestern Louisiana.

Mr. MCCRERY. No.

Mr. KIND. She didn't?

Mr. MCCRERY. The old Governor.

Mr. KIND. The old Governor?

Mr. MCCRERY. The immediate past Governor, I should say.

Mr. KIND. OK.

Mr. MCCRERY. In fact, entered into a compact with the Jena Band to establish land in trust in Vinton. It was OK with him, the new Governor, but then when that compact was declared illegal by the BIA based on the agreement with the State to pay fees to the State and local governments, then they shifted their attention to northwest Louisiana. And in their defense, the Governor, the sitting Governor at that time, told them that he would not cooperate with them if they didn't go to some parish that had approved gambling, and the parishes in their administrative area had not approved gambling. So they were kind of under the gun to look someplace else, although I believe they could have pursued a different

section of the Federal law to get a casino in that administrative area without the Government.

Mr. KIND. The BIA has approved a northwest location now, hasn't it?

Mr. MCCRERY. They did approve right before Christmas the Logansport location, and the current Governor, who just took over, is opposed to that.

Mr. KIND. But the former Governor was in favor of that location?

Mr. MCCRERY. Well, the former Governor said he wouldn't object as long as they went to a parish that had approved some form of gambling.

Mr. KIND. What about community support in both locations? Could you refresh the Committee on whether there was local community support for those?

Mr. MCCRERY. Yes. And bear in mind that Logansport and DeSoto Parish had not approved casino gambling. They had approved video poker, and so that qualified as some form of gambling. The Logansport area and DeSoto Parish—DeSoto Parish is a rural area, and its economy is not very good. They need jobs in that area. So they ended up being supportive, although I will say by a vote of six to five of the parish governing board, the police jury, we call it. They narrowly voted six to five in favor of endorsing this project.

But I would say probably if you took a vote in DeSoto Parish, a majority of the people in DeSoto Parish would have said yes, we want the casino, because it meant jobs. Conversely, the areas just north of DeSoto Parish, which are much more populated, Caddo Parish and Bossier Parish, Shreveport and Bossier City, where we have five existing casinos on river boats—they don't sail. They just sit there. It is a long story.

Mr. KIND. Just a couple more issues.

Mr. MCCRERY. They opposed it, obviously.

Mr. KIND. Just from the basis of your testimony, I get the sense that there is some dispute in regards to the historical claim of the Jena Band in regards to these locations.

Mr. MCCRERY. Yes.

Mr. KIND. We will probably hear some testimony in regards to that as well. What about any opposition of nearby tribes? Was there some conflict with other existing tribes in the area, or did that exist?

Mr. MCCRERY. There was some, but I think generally the other tribes were supportive. I think there was maybe one tribe that had some objections, and they may have been left over from the Vinton choice, because that particular tribe that I am talking about has a casino inland, so to speak, from Texas, and the Jena Band's casino would have been direct competition for that Indian tribe's casino. So they objected, and I think there may have been some hard feelings left over from that. So they objected. But I think, generally, the other tribes were OK.

Mr. KIND. OK. Mr. Chairman, I see my time has expired. I want to thank you again for holding this hearing today.

Chairman POMBO. Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman, and I was sorry to see my friend from Hawaii, formerly of Buffalo, formerly

of Canada, formerly of Ireland, and formerly of Scotland, leave. I wanted to thank him for making Nevada as successful as it is.

And coming from Nevada, Mr. Chairman, obviously I am very pro-gaming. It is our number one industry in the State, and I think like the rest of us here, none of us would oppose a tribal casino anywhere as long as it met the same standards. We would all welcome them to compete with the rest of us as well, and I think that is fair. But we years ago set up IGRA as a means to provide economic opportunity for business growth in the Native American community that I think is very important, and I think it would be a mistake, maybe even an irresponsible mistake, for us to set a precedent by passing legislation which would circumvent the Indian Gaming Regulatory Act right now to give an unfair advantage over one side versus the other.

I do agree with Mr. McCrery that, you know, there are things that need to be looked at in this area, but I really don't have a question because my friend from Hawaii set the standard, and he said if the tribe is going to meet the same standards and the regulatory requirements, pay the same taxes, then we should all welcome it and encourage that type of business expansion, and I think that is correct as well.

I would just like to ask unanimous consent, because I missed the early part of the hearing, Mr. Chairman, to submit a written opening statement for the record. With that, I will yield back the balance of my time.

Mr. MCCRERY. Mr. Gibbons, let me respond.

Chairman POMBO. If the gentleman would suspend, without objection, the opening statement will be included and all Members' opening statements will be included.

[The prepared statement of Mr. Gibbons follows:]

**Statement of The Honorable Jim Gibbons, a Representative in Congress from the State of Nevada**

Mr. Chairman, first I would like to thank you for providing the Committee with yet another opportunity to address the very important issue of Native American gaming, and the potential ramifications this booming industry may have on lands issues nation-wide.

I would like to take this opportunity to reiterate some of the more pressing points I made at the opening of the June 24th Hearing on a similar issue regarding my strong opposition to allowing Indian Tribes to "reservation shop" in order to set up illegitimate gaming operations.

However, for the record, I should stress that I am not opposed to legitimate Native American gaming in general—I support every Americans' right to pursue success and prosperity in business—within the bounds of law and common decency.

I have very serious concerns with allowing Indian tribes to abuse the privileges granted to them in Indian Gaming Regulatory Act by seeking private legislative favors in the form of land swaps so that they may establish casinos on non-ancestral lands.

Mr. Chairman, the issue we are examining today is one that may have a tremendous impact on the State of Nevada and our number one employer: Gaming.

If Congress takes the unprecedented path of passing bills designed to help tribes acquire non-ancestral lands solely for the purpose of gaming, my constituents and their livelihoods will certainly suffer.

I harbor a deep concern with any bill designed to provide a certain unfair advantage to one business-seeking group or entity over all others who follow the letter of the law in the pursuit of their business opportunity.

If Congress were to move forward with any reservation-shopping legislation, we would be giving a tremendous advantage to the Native American gaming community, leaving the non-Native American gaming entities, like those in Nevada, to operate in an unfair and biased business atmosphere.

It would be terribly irresponsible for us to set the precedent of passing any legislation designed to circumvent the IGRA process and give one tribe an unfair advantage over all other tribes and non-Native American business interests.

I believe that IGRA provides the Native American community with a tremendous opportunity for business growth and it would be in all of our best interests to stand firm and maintain the legislation and preserve its original intent.

With that, Mr. Chairman, I will say that I look forward to hearing from our witnesses today and to engaging them in some questions at the appropriate time.

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Mr. GIBBONS. Thank you, Mr. Chairman.

Chairman POMBO. Certainly.

Mr. MCCRERY. Let me just point out something that I haven't said yet, and it relates to Mr. Abercrombie's statement, Well, if they all conform to the same regulations and so forth. Under the Louisiana law, the casinos in southeast Louisiana and northwest Louisiana are under some size constraints and other constraints that the Jena Band's casino would not be under. They would not be limited in terms of their size. They would not be limited in terms of other facilities that they could have joining the casino, and the other for-profit entities operating as casinos in Louisiana are constrained by Louisiana law, and the thing that would put them at a particular competitive disadvantage is the size constraint. They can have only so many square feet of gambling space in their casinos. That would not apply to an Indian casino in Louisiana.

Mr. GIBBONS. Well, Mr. McCrery, I think there are other issues as well that come into play here, and I know that we see in Nevada many casinos have a very small margin of profit in many of these, and that it takes a larger operation in order to be even successful. So as you divide up the pie of people who are coming to that form of entertainment from around the country, the more you put competition in there, the smaller that profit margin gets, and to have an opportunity to compete without having to pay the same property taxes, the same business tax, same State tax on profits, etc., comply with the same regulation, have the same restrictions in terms of signage and setbacks and frontage and requirements gives an definite advantage over the other and makes it very difficult for those people who have large investments as well in some of these operations to meet those obligations.

So I would agree that if everybody wants to compete on an even field, that is welcomed, but again, we established IGRA to provide economic opportunities which allow for them to have some of those exclusions, and I think it was a well-intended piece of legislation that should be met and continued today.

Thank you, Mr. Chairman.

Chairman POMBO. Mr. Pallone.

Mr. PALLONE. Mr. Chairman, I want to ask a question, but I just wanted to say, generally speaking, I agree with Mr. Gibbons that we should be following IGRA and its principles, and I think that the notion that somehow there is some kind of, you know, rush that we are going to have all these casinos in areas that are not on existing reservations is probably a little overblown. I don't think that there is any mad scramble to do a lot of this off-reservation activity.

The problem that I see, though, is that, you know, I like to give credence to the State and the local municipality if they, in fact,

favor gaming and we have had a lot of situations. As you know, Connecticut is probably the worst example where a tribe legitimately—I think of the Eastern Pequots as one example where a tribe legitimately deserves recognition. They meet all the criteria. The BIA has announced it, and this State is opposed to it because they don't want gaming. So it is hard. I think you have to look at these individually and not have sort of overall themes that this is not right or that is not right.

So the one thing that bothered me, and this is the question I wanted to ask, you said a hundred miles is too far to go, because as some of my colleagues have mentioned, you know, we have tribes in eastern States, including my own, that were forced all the way to Oklahoma, halfway across the country. So to say that there should be a distance, I don't think you can say as an absolute that any particular distance is too far away. I think you have to look at the history.

Let me give you an example, and this will be my question. If there was a tribe, for example—I mean, all the Oklahoma tribes pretty much or most of them had roots along the eastern seaboard. What if one of them decided that they wanted to go—I will use the State of Vermont. I think that was Algonquin, but let us say that there was a tribe out in the Midwest that decided they wanted to have a reservation in Vermont and they had all the historical indications to show that they were originally in Vermont, were forced out by U.S. Government policies. The Governor of Vermont, local municipality says we would like to have back and establish a reservation on their traditional homeland. I mean, would you have a problem with that?

Mr. McCrery. No. There are existing guidelines for the Bureau of Indian Affairs to use for the establishment of reservations, for land in trust, for administrative service areas, and I think they should continue to use those guidelines and provide sovereignty in those areas where appropriate.

Mr. Pallone. And I think that is my only point here, which is that we have to follow the IGRA guidelines. We have to certainly say that the tribe has historical roots to any land that they want to acquire, but if the local towns and the State are not opposed to it and it fits all that, then I don't see any reason why it shouldn't be allowed, and I think you agree.

Mr. McCrery. I agree. All I am asking this committee to do is look at IGRA, examine it with an eye toward what I think is a potential problem. You may be right. There may be no rush to do this in other parts of the country. I don't know. It is not my committee's jurisdiction, and I haven't spent a lot of time on this other than this one instance, but I am here just to give you the benefit of the example in my State and in my district, and I think it is worth exploring, and that is why I think this hearing is a great idea, and if at the end of the hearing, the collective wisdom of this committee is IGRA works just fine the way it is, hey, I am happy.

But I am concerned. I am expressing that concern today. I think this committee ought to listen to that concern and consider it and either make some changes—maybe it is just as simple as saying that distance from administrative service areas or traditional reservation or whatever should be one of the considerations that the

BIA and the Department of Interior makes in making a decision. I don't know.

Mr. PALLONE. Thank you.

Thank you, Mr. Chairman.

Mr. MCCRERY. Thank you.

Chairman POMBO. Further questions for the witness?

Mr. Tauzin.

Mr. TAUZIN. Mr. Chairman, I would be remiss if I didn't welcome my—

Mr. MCCRERY. And I would be remiss if I didn't welcome you. It is good to see you back.

Mr. TAUZIN. It is good to be back.

Mr. MCCRERY. Yes.

Mr. TAUZIN. And it is good to be back with my dear colleagues on both sides of the aisle in the House room where I have worked for nearly a quarter of a century, and this has been a hard few months for me to be away. I watched you on television, by the way, from the hospital.

Mr. MCCRERY. Oh, yes.

Mr. TAUZIN. And it was really ugly, I have to tell you.

Seriously, Jim, I wanted to thank you for coming before our committee. You and I have a slightly different view on this and we have expressed it publicly and privately and have had many discussions about it, but I wanted to thank you for your service to our State and for your deep involvement in many issues that confront not only Louisiana, but the Nation, and your service on the Ways and Means Committee and your deep and abiding friendship on a personal level. I just wanted to express that publicly to you.

Mr. MCCRERY. Well, thank you.

Mr. TAUZIN. And welcome you to the Committee.

Mr. MCCRERY. I appreciate it.

Mr. TAUZIN. Thank you, Mr. Chairman.

Chairman POMBO. Thank you, Mr. McCrery.

Mr. MCCRERY. Thank you.

Chairman POMBO. Now I would like to call up our next witness, Aurene Martin, the Principal Deputy Assistant Secretary for Indian Affairs. She is accompanied by George T. Skibine, Director of Indian Gaming Management at the BIA.

Is the Director with us?

Ms. MARTIN. He is.

Chairman POMBO. All right. Are you going to answer questions?

Mr. SKIBINE. Maybe, yes.

Chairman POMBO. Then sit up there.

If I could have you both stand and raise your right hand.

[Witnesses sworn.]

Chairman POMBO. Thank you. Let the record show they both answered in the affirmative.

Welcome back to the Committee.

Ms. Martin, we can begin with you.

**STATEMENT OF AURENE M. MARTIN, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF INTERIOR; ACCOMPANIED BY GEORGE T. SKIBINE, DIRECTOR, INDIAN GAMING MANAGEMENT, BUREAU OF INDIAN AFFAIRS**

Ms. MARTIN. Good morning, Mr. Chairman and members of the Committee. My name is Aurene Martin, and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of Interior. I would like to thank the Committee for the opportunity to present the views of the Department of Interior on our application of the Indian Gaming Regulatory Act to off-reservation gaming acquisitions.

Before I discuss the Indian Gaming Regulatory Act and its requirements, I would like to note that this issue has received considerable attention within the Department. We have discussed at length what the Department's obligations are under the Act and where the Secretary has discretion to make certain determinations. We do not take this responsibility lightly and, in fact, make decisions only after extensive deliberation and a careful look at the law.

Contrary to popular belief, tribes cannot simply buy a parcel of land anywhere and set up a gaming establishment. They must meet a number of requirements before they can operate Class III gaming. They must acquire land in trust. They must meet one of the requirements or exceptions contained in IGRA for gaming on off-reservation lands, and the tribe must have a valid state tribal compact that authorizes them to game on those lands. It sounds easy, but any one of these processes can take years, and many tribes have been unable to meet all of these requirements and begin the operation of gaming.

The Indian Gaming Regulatory Act generally provides that gaming can occur on all lands held in trust on behalf of a tribe prior to October 17, 1988. After that date, off-reservation lands may only be used for Class III gaming where two actions occur: One, the Secretary makes what is known as the two-part determination, a determination that gaming on the parcel is in the best interest of the tribe and that it is not detrimental to the surrounding community; second, the Governor of that State must concur with the Secretary's determination or the two-part determination fails and gaming is not authorized.

Within the Department, we have had extensive debate on our responsibility with regard to the two-part determination and what, if any, discretion the Secretary may have in making the determination. In part, this has been driven by our questions with regard to tribal applications for lands that are far from their current reservations and whether IGRA contemplated limiting the distance a tribe can go from their reservation. Ultimately, we determined that IGRA contemplated this type of gaming and intended to establish a balance in which States have the ability to control whether those types of facilities may be built. We have also determined that the Secretary's discretion in making the two-part determination is limited to the objective determinations she is required to make, that is if it is in the best interest of the tribe and whether it would be a detriment to the surrounding community.

There are three additional exceptions to the prohibition on gaming on Indian lands acquired after October 17, 1988 and which are located off reservation. Tribes may game on off-reservation lands after that date in the following instances: if the lands are acquired by the tribe as a settlement of a land claim, if the lands are acquired by the tribe that is newly recognized and they are to be deemed part of our initial reservation, and if the lands are restored to a tribe that was previously recognized but for some reason was later not recognized and their recognition has been restored.

There have been a number of FITA trust acquisitions in which one of the exceptions apply. Again, the Department does not take its responsibility to determine whether a tribe's FITA trust acquisition meets one of the exceptions lightly and has made those determinations very conservatively. To date, the Department has not negotiated a land claim settlement which contemplated a land transfer for gaming purposes and its terms. The Department also feels that a tribe should have geographical, historical, and traditional ties within an initial reservation site, and with regard to restored lands, the Department believes that legislation should designate the location of those lands or that the lands in question must have geographical and historical connection to the tribe and a temporal relation to the restoration of the tribe's recognition.

However, each of these determinations is made on a case-by-case basis. As part of or discussion regarding the application of the off-reservation provisions of IGRA, the Department discussed the advisability of adopting a blanket policy with regard to those acquisitions. We ultimately determined that adopting a blanket policy would not be appropriate because each application is different and the situation of each tribe with respect to the local community and the State in which it is located is unique.

I would like to note that IGRA does not authorize the Department to take lands in trust status. It merely outlines the situations in which lands may be used for gaming purposes. In every one of the situations listed above, the lands in question must also be acquired in trust pursuant to the regulatory process outlined in 25 CFR Part 151, our regulations for processing lands to become trust lands.

In addition to setting out the process for review of a FITA trust application, the regulations require that the Department comply with NEPA and with the Department of Justice standards for title review; and finally, to open a Class III establishment, the tribe must have a valid Class III tribal state compact. This is a document executed by a tribe in a State to govern the operation of Class III gaming by the tribe. It outlines the role each will play in the gaming operation and its regulation. Once agreed to, the compact must be approved by the Department and published in the Federal Register to be valid. Any one of these processes can and often do take years to complete. The failure of a tribe to make it through any one of the processes will keep them from operating Class III gaming.

The Department believes that IGRA sets out a balanced framework for the operation of Class III gaming. It allows a State and a tribe to come to agreement regarding whether Class III gaming may be operated within a State and further gives the States pow-

ers to absolutely deny a tribe the ability to operate gaming on lands acquired off reservation and subject to a two-part determination after October 17, 1988.

Again, I would like to thank the Committee for the opportunity to testify and I would be happy to answer any questions.

[The prepared statement of Ms. Martin follows:]

**Statement of Aurene M. Martin, Principal Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior**

Good morning, Mr. Chairman and Members of the Committee. My name is Aurene Martin, and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. I am pleased to be here today to discuss the role of the Department in implementing Section 20 of the Indian Gaming Regulatory Act of 1988 (IGRA).

Before discussing our role in implementing Section 20 of IGRA, I want to address a common misconception regarding this statutory provision: Section 20 of IGRA does not provide authority to take land into trust for Indian tribes. Rather, it is a separate and independent requirement to be considered before gaming activities can be conducted on land taken into trust after October 17, 1988, the date IGRA was enacted into law. The basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to a tribe, or by Section 5 of the Indian Reorganization Act of 1934 (IRA), which authorizes the Secretary to acquire land in trust for Indians "within or without existing reservations." Under these authorities, the Secretary applies her discretion after consideration of the criteria for trust acquisitions in our "151" regulations (25 CFR Part 151). However, when the acquisition is intended for gaming, consideration of the requirements of Section 20 applies before the tribe can engage in gaming on the trust parcel.

In enacting Section 20, Congress struck a balance between tribal sovereignty and states' rights. Specifically, Section 20(a) provides that if lands are acquired in trust after October 17, 1988, the lands may not be used for gaming, unless one of the following statutory exceptions applies:

(1) The lands are located within or contiguous to the boundaries of the tribe's reservation as it existed on October 17, 1988;
(2) The tribe has no reservation on October 17, 1988, and "the lands are located...within the Indian tribe's last recognized reservation within the state or states where the tribe is presently located;"
(3) The "lands are taken into trust as part of: (i) the settlement of a land claim; (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition."
(4) There is also a specific exception for lands taken into trust in Oklahoma for Oklahoma tribes.

Since 1988, the Secretary has approved 32 applications that have qualified under these various exceptions to the gaming prohibition contained in Section 20(a) of IGRA. I have attached to my testimony a document listing the various tribes that have qualified under the exceptions since October 17, 1988.

The decision of whether land that is either already in trust, or that is proposed to be taken into trust for gaming, qualifies under any of the exceptions I just mentioned is made on a case-by-case basis. Through case-by-case adjudication, the Department has developed criteria to determine whether a parcel of land will qualify under one of the exceptions. For instance, to qualify under the "initial reservation" exception, the Department requires that the tribe have strong geographical, historical and traditional ties to the land. To qualify under the "restoration of lands" exception, the Department requires that either the land is either made available to a restored tribe as part of its restoration legislation or that there exist strong historical, geographical, and temporal indicia between the land and the restoration of the tribe. The Department's definition of restored land has been guided by fairly recent federal court decisions in Michigan, California, and Oregon.

Finally, an Indian tribe may also conduct gaming activities on after-acquired trust land if it meets the requirements of Section 20(b) of IGRA, the so-called "two-part determination" exception. Under Section 20(b)(1)(A),

(1) gaming can occur on the land if the Secretary, after consultation with appropriate state and local officials, and officials of nearby tribes, determines that a gaming establishment on newly-acquired land will be in the best interest of

the tribe and its members, and would not be detrimental to the surrounding community, but

(2) only if the Governor of the state in which the gaming activities are to occur concurs in the Secretary's determination.

Since 1988, state governors have concurred in only three positive two-part determinations for off-reservation gaming on trust lands: the Forest County Potawatomi gaming establishment in Milwaukee, Wisconsin; the Kalispel Tribe gaming establishment in Airway Heights, Washington; and the Keweenaw Bay Indian Community gaming establishment near Marquette, Michigan.

Currently, there are eight applications for two-part determinations under Section 20(b)(1)(A) pending with the Bureau of Indian Affairs for sites in New York, Wisconsin, Michigan, and California. Many more applications are rumored to be in development but have not bee submitted to the Department, including potential applications from tribes located in one state to establish gaming facilities in another state. It is within the context of this emerging trend that Secretary Norton has raised the question of whether Section 20(b)(1)(A) provides her with sufficient discretion to approve or disapprove gaming on off-reservation trust lands that are great distances from their reservations, so-called "far-flung lands."

We have spent substantial effort examining the overall statutory scheme that Congress has formulated in the area of Indian self-determination and economic development. This includes a careful examination of what Congress intended when it enacted Section 20 (b)(1)(A). Our review suggests that Congress sought to establish a unique balance of interests. The statute plainly delineates the discretion of the Secretary, limiting her focus to two statutory prongs. Also, by requiring that the Governor of the affected state concur in the Secretary's determination, the statute acknowledges that in a difference of opinion between a sovereign tribe and an affected state, the state prevails. Further, at least on its face, Section 20(b)(1)(A) does not contain any express limitation on the distance between the proposed gaming establishment and the tribe's reservation, nor is the presence of state boundaries between the proposed gaming establishment and the tribe's reservation a factor.

Our review indicates that the role of the Secretary under section 20(b)(1)(A) is limited to making objective findings of fact regarding the best interests of the tribe and its members, and any detriment to the surrounding community. Therefore, while the trust acquisition regulations provide broad discretion, Section 20(b)(1)(A) does not authorize the Secretary to consider other criteria in making her two-part determination, thus limiting her decision-making discretion to that degree.

This concludes my remarks. I will be happy to answer any questions the Committee may have. Thank you.

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[The Department of the Interior's response to questions submitted for the record follows:]

**Response to questions submitted for the record by the Bureau of Indian Affairs, U.S. Department of the Interior**

**QUESTION 1: In 1988, with in the passage of the Indian Gaming Regulatory Act (IGRA), Congress sought to limit tribal Gaming to existing tribes and reservations, and provided limited exceptions for newly recognized and landless tribes. Congress did not anticipate the major expansion in tribal gaming and certainly did not envision the latest trend of tribes seeking gaming "off-reservation" and distant from their reservation or traditional service area. Please identify, for the Committee, where "off-reservation" gaming exists today, and where it is proposed today by Class II and Class III gaming.**

ANSWER: The following chart provides an overview of the approved "off-reservation" gaming acquisitions since the enactment of the Indian Gaming Regulatory Act. This chart does not include restored lands or lands taken into trust as part of the initial reservation.

| | TRIBE | CITY, COUNTY & STATE& DISTANCE FROM THE RESERVATION | ACRES | DATE APPROVED |
|---|---|---|---|---|
| 1 | **Forest County Potawatomi**<br>25 U.S.C. 2719 (b)(1)(A)<br>Governor's Concurrence<br>07/24/90 | Milwaukee,<br>Milwaukee County,<br>Wisconsin<br>250 miles from the Reservation | 15.69 | 07/10/90 |
| 2 | **Kalispel Tribe**<br>25 U.S.C. 2719 (b)(1)(A)<br>Governor's Concurrence<br>06/26/98 | Airway Heights,<br>Spokane County,<br>Washington<br>60 miles from the Reservation | 40.06 | 08/19/97 |
| 3 | **Keweenaw Bay Indian Community**<br>25 U.S.C. 2719 (b)(1)(A)<br>Governor's Concurrence<br>11/07/00 | Chocolay Township,<br>Marquette County, Michigan<br>70 miles from the Reservation | 22.28 | 05/09/00 |

The following chart provides an overview of the proposed "off-reservation" gaming acquisitions. This chart does not include land in a traditional service area or on or adjacent to the Tribe's reservation.

| | TRIBE | CITY, COUNTY & STATE | ACRES | DISTANCE FROM THE RESERVATION |
|---|---|---|---|---|
| 1. | Tule River Indian Tribe of California | Tulare County, California | 39.9 Acres (Acquired in trust in 1994) & 34.9 Acres | 6 miles from the Reservation |
| 2. | Elk Valley Rancheria of California | Del Norte County, California | 203 Acres | 1 mile from the Reservation |
| 3. | St. Regis Band of Mohawk Indians of New York | Town of Thompson, Sullivan County, New York | 66 Acres | 350 miles from the Reservation |
| 4. | Stockbridge Munsee Community of Wisconsin | Town of Thompson, Sullivan County, New York | 333 Acres | 1035 miles from the Reservation |
| 5. | Keweenaw Bay Indian Community of Michigan | Negaunee Township, Marquette County, Michigan | 80 Acres | 65 miles from the Reservation |
| 6. | Bad River Band of Lake Superior and St. Croix Chippewa Indians of Wisconsin | Beloit, Rock County, Wisconsin | 25 Acres | 339 miles (BR) & 332 miles (SC) from the Reservation |
| 7. | Cayuga Nation of New York | Monticello Raceway, Sullivan County, New York | 29.31 Acres | 345 miles from Nation's service area |
| 8. | Fort Mohave Tribe of Arizona | Needles, San Bernandino County, California | 300 Acres | 2.5 miles from the Reservation |
| 9. | Timbasha Shoshone of California | City of Hesperia, San Bernandino County, California | 58 Acres | 100 miles from the Reservation |
| 10. | Menominee Tribe of Wisconsin | Dairyland Park, Kenosha, Wisconsin | 223 Acres | 190 miles from the Reservation |

**QUESTION 2: What is the DOI's position on "reservation shopping" and "off-reservation gaming"?**

ANSWER: Secretary Norton has raised the question of whether Section 20(b)(1)(A) provides her with sufficient discretion to approve or disapprove gaming on off-reservation trust lands that are great distances from their reservations, so-called "far-flung lands."

Under 25 U.S.C. § 2719(b)(1)(A), gaming can be conducted on newly-acquired off-reservation trust land if the Secretary, after consultation with the Indian tribe and appropriate state and local officials, including officials of nearby tribes, determines that a gaming establishment on the land would be in the best interest of the tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the state concurs in the Secretary's determination.

We have carefully examined what Congress intended when it enacted Section 20 (b)(1)(A). Our review suggests that Congress sought to establish a unique balance of interests. The statute plainly delineates the discretion of the Secretary, limiting her focus to two statutory prongs. Also, by requiring that the Governor of the affected state concur in the Secretary's determination, the statute acknowledges that in a difference of opinion between a sovereign tribe and an affected state, the state prevails. Further, at least on its face, Section 20(b)(1)(A) does not contain any express limitation on the distance between the proposed gaming establishment and the tribe's reservation, nor is the presence of state boundaries between the proposed gaming establishment and the tribe's reservation a factor.

Our review indicates that the role of the Secretary under section 20(b)(1)(A) is limited to making objective findings of fact regarding the best interests of the tribe and its members, and any detriment to the surrounding community. Therefore, while the trust acquisition regulations provide broad discretion, Section 20(b)(1)(A) does not authorize the Secretary to consider other criteria in making her two-part determination, thus limiting her decision-making discretion to that degree.

**QUESTION 3: Please identify for the Committee how many tribes are currently seeking recognition today?**

ANSWER: As of July 1, 2004, there are 236 groups seeking to be acknowledged as Indian tribes. Of the 236, 130 have only submitted letters of intent, 69 have submitted partial documentation, 10 are no longer in touch with the Department, 5 will need Congressional legislation to go through the process, and 22 groups are the Department's immediate workload. Of the 22 groups, 6 are under active consideration and 13 are on the "Ready, Waiting for Active Consideration" list. Three groups are in the post-final decision appeal process.

**QUESTION 4: How many tribes are seeking tribal gaming now?**

ANSWER: There are 23 pending applications from federally recognized tribes to take land into trust for gaming purposes.

**QUESTION 5: How many are seeking gaming on their reservation or traditional service area and how many are seeking gaming off-reservation or on land distant from their traditional service area?**

ANSWER: There are 13 federally recognized tribes seeking gaming on their reservation or traditional service area, and 10 Federally recognized tribes seeking gaming off-reservation or on land distant from their traditional service area.

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Chairman POMBO. Thank you, Ms. Martin. I have a whole bunch of questions I want to ask you, but I am going to try to limit it.

What is the BIA's policy on the conversion of lands to trust status for the purpose of gaming when there is substantial local community opposition to proceeding with that? How do you handle that?

One of the things in California that has really made this an issue in recent years is different tribes trying to bring land into trust in a community that is very much opposed to that, and that is having an impact on all of the Indian gaming operations in California. What is your overall policy when it comes to that?

Ms. MARTIN. Well, it specifically depends on the situation that we are confronted with. In the off-reservation context, it makes a great deal of difference to us, especially with respect to the two-

part determination. If a local community is opposed to it, then there is more of a chance that we may not go through with the two-part determination because there is more of a chance that the Governor will not consent to that two-part determination, but where one of the exceptions might apply or if it is on reservation, then there is more of a chance that we would look at what the tribe's needs are in that specific instance. Where it is on reservation, I think we have more of an inclination to approve a FITA trust transfer, because it is within the confines of the tribe's sovereign area.

Chairman POMBO. If you could as a follow-up to this hearing, could you provide for my office a written update on the status on the Menominee Band of Milwaukee Plymouth proposal to convert lands to trust status? If you could just provide that to me in writing, specifically what is the current involvement of the Sacramento Region BIA office and what will the role of the Washington office be after the application is submitted. I would appreciate it if you could provide that for me.

Ms. MARTIN. I would be happy to do that. I would like to note for you that all gaming acquisitions must be approved by the Assistant Secretary or the Assistant Secretary's designee. So that would have to come to us.

Chairman POMBO. OK. Also, in your written testimony, you say that you have attached testimony, a document listing the various tribes that have qualified under the exception since October 17, 1988. You did not submit that, and if you could provide that for the record, that document for some reason didn't come with your testimony.

Ms. MARTIN. I would be happy to do that.

Chairman POMBO. Thank you.

Further questions? Mr. Inslee, questions?

Mr. INSLEE. No.

Mr. Young.

Mr. YOUNG. Is this thing on?

Chairman POMBO. Yes.

Mr. YOUNG. I can never tell because I am the only guy in the world that doesn't have a red light, of all people.

Chairman POMBO. I usually turn it on.

Mr. YOUNG. I figured you did.

Ms. Martin, I only have a couple of small questions. You know I am very interested in a couple—by the way, I am the last author of this legislation. Mr. Udall and I worked on this for a purpose, and it has been a success. That was 1900, I think, just after Custer, if I am not mistaken, and we were trying to pay for the war at that time.

But anyway, we thought and we were correct that this was an opportunity for those who lived in reservations to, in fact, establish an economic boost for not only the reservation but the future generations of the Indian tribes, and I am very proud of that legislation; but I have had a great deal of interest over the years following the tribes that have applied and how they have followed the rules, and that to me is crucially important, the rules and the definition of the BIA and interpretation of IGRA. And I have the tribe of the Wyandottes, for instance, and I have called you personally

and then I have called Mr. Griles and I have called Ms. Norton, and every one of you have told me I will get back to you when we get more information.

This has been 6 months, actually a year, because there is a great injustice that occurred in Kansas which I do not appreciate, because my interpretation, because of the decisions made by the BIA, they had every legal right to start the casino, which they did, and then by action of a preliminary finding, the Attorney General for the State of Kansas attacked, confiscated, arrested the product of the casino, and now we have had a new court decision that said he was totally out of line. I think this could have been avoided if there has been a sound decision made previous to the action of the Attorney General, and I just would encourage yourself and your attorney to be more up to speed about very hot issues, and that has not occurred.

So somebody down there had better get their act together and respond, especially when the Vice Chairman and former Chairman of this Committee makes an inquiry, and that is all it was and it did not happen. Would you like to respond to that?

Ms. MARTIN. Well, first of all, I would like to apologize for any lack of communication we have had with you. The situation with regard to the Wyandotte has been a very long time in the making, and the last time I did check on this, there was a determination that was pending before the National Indian Gaming Commission, which I believe was made and resulted in the action you have described.

Mr. YOUNG. No. It was a preliminary finding, and the action was taken by the Attorney General, and the court has ruled him totally out of line.

Now, are you aware of that, Counsel?

Mr. SKIBINE. I am not counsel, but—

Mr. YOUNG. Well, somebody better know the answer to that.

Mr. SKIBINE. But we are aware of the Wyandotte situation. Essentially, when the BIA made a determination initially—well, it goes back several years. The BIA had made a determination that the tribe was—the acquisition of that parcel was contiguous to the tribe's reservation and therefore would qualify on their under IGRA as Indian lands, but then that determination was essentially overturned by a court decision.

Mr. YOUNG. And then the courts returned it.

Mr. SKIBINE. Well, then what did was we—returned to us for determination whether the acquisition was mandatory, and we made a determination that the acquisition of this land was mandatory under an Act of Congress, but in making that determination, we did not make the determination the tribe could game on the land. We only made the determination that tribe—that we had to take the land in trust for that tribe under that Act of Congress, and in the Federal Register Notice that we published, we specifically stated that the BIA was not making a determination that the tribe could be—

Mr. YOUNG. And did not deny it.

Mr. SKIBINE. We didn't make a decision.

Mr. YOUNG. There was no decision made.

Mr. SKIBINE. There was no decision made on that.

Mr. YOUNG. This is where I still suggest, Ms. Martin, that you and your colleagues down there have to keep, especially when a Congressman makes the inquiry, up to speed on where we are going and what is going to happen, because what has happened I think is a terrible injustice. Under Section 20, they are totally eligible, and I just think someone has dropped the ball, and as an author of IGRA, because of other pressures, if they follow the rules and follow the steps forward set forth in—and it is, in fact, classified tribal lands and the courts have ruled that it is, then you have a responsibility to respond, and you did say that to the Chairman, that you would respond on the side of the tribe, not opposition to, especially pressure brought by other individuals and other tribes.

See, I am one of these people that I told other people that do not like gambling, if you don't like gambling, I will eliminate it all, but one cannot be right for one and wrong for the other. It is universal, and that was the intent of IGRA. I just want to suggest that. You know, just because one tribe has gambling here and they oppose it because another tribe wants it over here, then eliminate them both, but don't allow one tribe to dominate another tribe and say, No, you can't have it, but we have ours and we don't want yours.

Now, someone said the market is not there. Mr. Gibbons said the market is not there. I will be one of the first ones to agree. There ought to be a lot of studying in the gaming issue because it is very high overhead industry. Before you get involved in it, then they ought to make a decision, yes, it is economical or it is not. But I don't think it is right for the BIA to take sides with an existing operation against another side.

Let the free market decide that. That is just a statement, not a question. Let the free market decide it. But I would suggest anybody in this room that is interested in gambling, check the overhead. It is not the money-maker people think it is. It is extremely expensive, high overhead, and the returns are not that great, but that is their decision under IGRA. It is not the decision of anyone else.

I yield back the balance of my time.

Chairman POMBO. Further questions?

Mr. TAUZIN. Mr. Chairman.

Chairman POMBO. Mr. Tauzin.

Mr. TAUZIN. Thank you, Mr. Chairman.

Ms. Martin, later on today, we are going to hear from Principal Chief Norris of the Jena Band on Choctaws in Louisiana. My colleague was here to testify as to his perspective on that incredible journey they have been through with the Interior Department and the State of Louisiana.

I wanted to make a couple of points and then ask you a couple of questions. First of all, you hear from them a pretty sad story in which this landless tribe trying to acquire land in trust in a community that wanted them, wanted their presence, has been blocked, essentially, and they are now in the situation that the only way they can possibly succeed in their application is to go back to the service area where the Government has correctly pointed out the community doesn't want their presence as a gaming facility, and they literally applied to your department with thousands of pages of documents indicating their historic presence in the com-

munity that wants their presence, and yet the Department has declined to take the land as part of the initial reservation for this tribe, to take it into trust that they might proceed.

My position from day one has been exactly as Chairman Young's position, the author of the legislation. We are keenly aware that existing facilities in Louisiana, both Indian gaming facilities and private commercial gaming facilities were launching a huge federally funded operation here in Washington, D.C., which the press has commented on rather extensively lately, launching this huge heavily funded lobbying organization designed to block this particular tribe from establishing land in trust to be able to compete with the gaming facility and to earn some revenues for the tribe in a community that desperately wanted them, wanted the employment, wanted the facility there, has effectively now been blocked.

Our position from day one was don't let it happen like that; let it be settled on its merits; consider the thousands of pages of historic documents indicating their physical and historic presence in the area they want to establish this land in trust and make a decision.

Instead, you will hear today from the Jena Tribe, and I quote: "While we provided these materials to the Department nearly two years ago, we are not aware that Interior has considered the merits of our request in any serious fashion. Instead, the Department declined to take the land in trust as part of the initial reservation as restored lands." Instead, the Department went through the two-part determination and left this tribe in a position where the Governors, both the last Governor and the incumbent Governor, have both failed to respond and therefore blocked the capacity of this tribe to locate in the area in which they have tried to get these lands restored, and they are left now to going back to an area where the communities don't want them.

What I see here is what Chairman Young sees. I see a situation where we have authorized Indian gambling, rightly or wrongly. We have authorized commercial gambling in our State, rightly or wrongly. You can have a good debate over that, but we have done it. The incumbents organize. They hire expensive lobbyists and they block any competition, and so they keep a landless tribe like the Jena Choctaws from ever having a chance. They block them at every turn.

The Department had a chance to consider their information and to solve this dilemma. Instead, as the tribe will testify today, they are not aware that "Interior has considered the merits of our request in any serious fashion". If that is correct, if that is a correct statement, then I am led to the conclusion that the politics of money and competition have defeated this tribe in its only chance to succeed, and if that is true, that is pretty sad. That is really pretty sad.

So within the couple of seconds I have left, would you please comment, Ms. Martin? Is that what happened? Why hasn't the Department seriously considered the historic documentation? Why hasn't the Department responded to this tribe's request to have the land taken in trust as part of their initial reservation?

Ms. Martin.

Ms. MARTIN. When the Jena Band came to us about their acquisition near Logansport, they had a number of requests that they were making. They wanted the land to be considered initial reservation or, in the alternative, they wanted it to be considered for a two-part determination.

Mr. TAUZIN. Sure. Right.

Ms. MARTIN. They, I thought ultimately, I thought—this was their decision. They ultimately decided that they would pursue the two-part determination after we had long discussions about the historical record.

A two-part determination does not require us to go through the historical analysis. It merely requires that we make the finding with regard to the best interest of the tribe and the detriment to the surrounding community.

Mr. TAUZIN. If I can stop you there, did they decide to go to the two-part determination—my recollection is that they decided to go that route because it was pretty clear you weren't going to seriously consider an application to take it into trust as an initial reservation. Is that correct?

Ms. MARTIN. We felt that the historical documentation that they had provided to us was tenuous.

Mr. TAUZIN. But you made no ruling.

Ms. MARTIN. We did not.

Mr. TAUZIN. But you pretty well signalled them we are not going to do this for you. Right?

Ms. MARTIN. We signalled that there would be a lot more work that would have to be done for us to make a historical determination.

Mr. TAUZIN. And are they correct in saying that you did not consider the merits of their request in any serious fashion? Is that correct?

Ms. MARTIN. Well, they opted to go for the two-part determination.

Mr. TAUZIN. So you stopped considering it?

Ms. MARTIN. We stopped considering it. They have not renewed their request to have us consider it.

Mr. TAUZIN. But again, here is the impression I got when you all were going through that, was that, you know, there was a pretty strong signal that, Look, you are not going to succeed here; you better go try something else; you better go talk to the Governor and work with the Governor, and we will work with the two-part determination; if the Governor is willing to negotiate a compact with you, then you can go forward. And the Governor's term was about to end, and I will tell you what my impression was. My impression was that the high-paid political lobbyists over here in Washington, D.C. representing the competitors to this tribe's application figured out that if they could just push this thing long enough, just stop it from happening long enough, that the incumbent Governor would be gone, the one who had agreed to negotiate a compact, and there would be a new Governor and then they could block it, they could block the two-part determination.

And as you recall, the only request my office ever made was of you was don't let that happen, give them an answer on their request in time enough for the Governor to make the determination.

You know when the answer came in? The answer came as the Governor was preparing to depart the mansion and the new Governor was coming in, and there was no time left to do the negotiations and work out a compact, which was, as you know, a very serious, contentious negotiation, requiring the Governor and the tribe to make agreements that didn't affect the other tribes in the State adversely.

It looks to me, it just looks to me, that the competitors from a financial standpoint were able to drag this thing out long enough so that the only option for this tribe was a two-part determination granted them at moment when the Governor was coming in who wouldn't consider them at all, and now they are left with an impossible situation—I want to go back to their service area—where the parishes have already voted not to cooperate with them. It is just an ugly mess and it smells to high heaven. It smells to me like high-paid lobbyists were able to delay this thing in a way that it ended up guaranteeing the failure of this landless tribe to do what other tribes are doing, and I am in the same position as Mr. Young. Once we authorize, once we say you can do this, we ought to treat all of them fairly. We ought not let the incumbent high-paid lobbyists around here work the system in a way—this bizarre Alice in Wonderland system in some cases, Mr. Young—to work it in a way that ends up with an unfair result.

I think we have an unfair result here. That is my personal view. I kind of differ with my friend from Shreveport on this, but if it did come out unfairly, I just want you to know how disappointed I am at the process, and perhaps maybe there is some way to salvage this in a way that has more fairness to it; but again, it is not out of prejudice for the Jenas or prejudice against the Coushattas or anybody else in our State. It is simply to make sure that the system works fairly and that money doesn't drive the answer simply because money can work the process and delay it in a fashion that ends up with a negative result for a tribe. That is my problem, and I think that happened in this case, and I know you have a different view, and I accept that and I respect that. I just think that some people worked this very carefully and very creatively in a way that guaranteed this landless tribe would not succeed, and that is not, in my opinion, very fair.

Thank you, ma'am.

Chairman POMBO. The gentleman's time has expired.

Mr. Duncan.

Mr. DUNCAN. Ms. Martin, I had to be at another subcommittee meeting hearing, so I haven't heard all of the testimony, but Chairman Young has pointed out some problems and Chairman Tauzin just said that he thinks money and lobbyists are controlling too much of this process. You end up your testimony by saying: "Our review indicates that the role of the Secretary under Section 20(b)1(a) is limited to making objective findings of fact regarding the best interest of the tribe and its members and any detriment to the surrounding community."

What I am wondering about, do you feel that your authority—do you have any regulatory authority if there are abuses? For instance, I have been given an article from "Time Magazine" from a year and a half ago that says most of the revenues are going to

non-Indians and it tells about a group of Table Mountain Indians where some of the members of the tribe are getting an average of $350,000 each while some of the other members of the tribe are getting nothing. Are there any problems in this program right now that you see?

Ms. MARTIN. Well, with respect the amount of money that goes outside of the tribe, the Indian Gaming Regulatory Act does place a limit on the amount of money a tribe can pay to a gaming contractor. It sets that limit. I think it is at 30 percent of the tribe's net gaming revenues.

With respect to how much money a tribal member might be paid under a per capita distribution, that is something that we do handle within the Department of Interior, and I would defer to Mr. Skibine to talk a little bit about that, the review of those plans, the RAPs.

Mr. SKIBINE. You mean the Revenue Allocation Plans?

Ms. MARTIN. Well, you were asking about the different amounts of money that tribal members might get.

Mr. DUNCAN. All I am asking—I don't know as much about this as many of these other members do, and I am just wondering. We are starting to see some articles about abuses or problems within the whole system, and I am just wondering do you see any problems or abuses within the system, and if so, do you feel that your department or you have the authority to correct those abuses or those problems, or do you think the system is just working perfectly the way it is now. That is all I am asking.

Mr. SKIBINE. Let me try to respond. With respect to articles that allege that contractors and management companies are getting too much money, I think this is an issue that is regulated by the National Indian Gaming Commission, and we are not here—we are not the National Indian Gaming Commission. So I think that if there was a witness from the NIGC, that would be the proper person to respond to that.

With respect to taking land into trust and to Section 20 determinations, I have handled these issues since 1995, and as a career employee, we have never ever seen improprieties in the submission by tribes for taking lands into trust or by seeking the views of the opposition. Our determinations are made on the record, and we have never been aware that there is a problem. As far as we are concerned, the process of making the Section 20 determination does work well, and I think that if we look at our record since 1988 or since 1995 when I was there, I think it is documented that we have made all of these decisions on the record. Some of them have been positive for tribes. Some of them have been negative, but that is the way it goes based on the factors that we consider.

So we do not think that with respect to the issues regarding taking land into trust that there really is a problem.

Mr. DUNCAN. Well, let me ask another question.

Mr. SKIBINE. Yes.

Mr. DUNCAN. When you all read about all these megamillions going to lobbyists, were you surprised, and do you agree with Chairman Tauzin that money and lobbyists are too much in control of this whole system or this whole process?

Ms. Martin, what do you say about that?

Ms. MARTIN. Well, when we first heard about that, I was shocked at the amount of money was that was mentioned in the articles, completely shocked, but the way that IGRA is designed, a tribe is able to spend the money that they make through gaming on specific items that they deem are important to their governmental operations or to the best interest of their tribe.

Mr. DUNCAN. You mentioned some limits within the law. Do you think we should put a limit on the amount of money that can be paid for lobbying activities?

Ms. MARTIN. I don't know that that can be practically done. That would mean that we would have to go into every single tribe that operates gaming and take a look at exactly what they spend their money on and determine if that is appropriate or not, and I don't know that if that is a practical way to—

Mr. DUNCAN. That would be a pretty easy thing to find out. The media seems to find it out pretty easily.

My time is up. Thank you very much.

Chairman POMBO. We can get into that issue at another time, but unless you want to start limiting the amount of money that corporations can spend on lobbying and everything else, I think you better leave this one alone.

Mr. YOUNG. Especially if any of you are looking to the future.

Chairman POMBO. Are there further questions?

Moving right along, Mr. Gibbons.

Mr. GIBBONS. Thank you, Mr. Chairman. I don't plan to become a lobbyist after I leave here anyway.

Let me ask a question, Ms. Martin, that under Section 20 of IGRA which requires some sort of consultation before land can be taken into trust in non-heritage or non-ancestral lands for another tribe, that consultation with other tribes, how much of that consultation is relied upon in your organization for a determination of whether or not to take that land into trust?

Ms. MARTIN. We haven't been directly confronted with that kind of situation while I have been at the Department, but it is my understanding that we have in the past looked at that, and I would defer to Mr. Skibine who has handled one of those cases.

Mr. SKIBINE. We do consultation with tribes that are located within 50 miles of the proposed site, and they provide submission and we look at it very carefully and it becomes part of the record. What we do not do is, for instance, if there is a tribe with a casino within 50 miles, in our view, competition alone is not going to be a determining factor as to whether to approve this application.

Mr. GIBBONS. So if one tribe established a casino on trust land in an area that was lucrative for casino operations in that area, then you would not oppose one or several other tribes moving in and creating their casinos on adjacent land to that tribe; there would be no justification in your mind to deny these other tribes the same opportunity that had been created for the previous tribe that was there?

Mr. SKIBINE. We will look at the record. We will look, but in itself, if another tribe is located and said, Hey, we have a casino this area, therefore you have to disapprove this because it is going to competition, that alone will not be sufficient for us to agree.

Mr. GIBBONS. All right. By itself, it wouldn't be, but how much does it weigh in your consideration in granting that?

Mr. SKIBINE. Well, there is no set percentage on how much it weighs. We just consider it and we carefully look at the arguments that they are making.

Mr. GIBBONS. Have you ever denied a tribe from taking land into trust on the basis of someone objecting to it because it would be competition?

Mr. SKIBINE. Well, I think during the Hudson Dog Track issue in the previous Administration, the Administration disapproved a request from three tribes in Wisconsin to take land in trust in Hudson, Wisconsin, and in part, it was made because of the fact that, from what I recall, there were tribes in between that were objecting to this application based on competition.

Mr. GIBBONS. Ms. Martin, who in the National Indian Gaming Commission audits the payments and the operations of these casinos in order to determine how much of the money is being actually spent in either contractors or management firms? Who does the auditing of that operation?

Ms. MARTIN. Well, the Commission operates and has several different—I am not intimately familiar with the Commission, but they do have different divisions and they do have, I believe, an audit division that does review those audits.

Mr. GIBBONS. So they can determine whether or not the amount that is being paid to these management firms is appropriate in terms of the profitability or the income that is coming into the casino?

Ms. MARTIN. Yes, I believe.

Mr. GIBBONS. Now, if there is a contract in there, does the contract dictate or does the standards of profitability—in other words, who is making one money on this? What I am worried about is the opportunity for mischief to be created where these management firms are taking advantage of a tribe on one of the casinos? What makes that determination?

Ms. MARTIN. Well, I think that IGRA sets out a basis or a limit on the amount of money that a contractor can collect.

Mr. GIBBONS. It caps it.

Ms. MARTIN. It caps it.

Mr. GIBBONS. It caps it, but it doesn't tell you when there is less profit whether or not they are taking advantage of them.

Ms. MARTIN. Well, I believe that the cap is on net revenues so that all of the funds above net revenues are profit for the tribe at least.

Mr. GIBBONS. Let me real quick-like ask a quick question. There has been press reports lately due to disputes over who is eligible for tribal membership, including reports of lengthy and extensive litigation over the issue of tribal memberships. Do you have any views on why individual Indians would engage in disputes over tribal membership, including the payment of high legal fees to obtain a tribal membership in one tribe that they may or may not yet be a member of? Why are they engaged in that sort of activity?

Ms. MARTIN. Well, I don't know for every single person what their motivation might be. There are, I think, some particular cases where tribal members may receive per capita payments and a per-

son may want to be eligible for one of those payments, and so they would seek membership because of that.

Mr. GIBBONS. OK. Why would they resist it would be the alternative.

Ms. MARTIN. I would like to comment, though, on your question with regard to the location of a gaming facility and whether we would allow or disapprove of a FITA trust application within the area of another off-reservation facility. We haven't had to directly address that question in terms of FITA trust applications, but we have had a number of concerns with regard to gaming compacts that have come before us and expressed a geographic limitation on competition from other tribes coming in, and it is of great concern to us at the Department, but we do not feel that IGRA allows us to disapprove a compact in those circumstances.

Mr. GIBBONS. Well, IGRA doesn't provide for any limitation, geographic limitation, does it?

Ms. MARTIN. It does not provide for a limitation, but it does not prohibit a limitation.

Mr. GIBBONS. Thank you, Mr. Chairman.

Chairman POMBO. Any further questions?

Mr. Young.

Mr. YOUNG. By the way, Ms. Martin, I want to compliment you on your professionalism before this group. That is always a pleasure. So I want to compliment you, but I do have one question.

On the Section 20 determination, does the Department of Interior or IGRA make that determination, or is it both?

Ms. MARTIN. Well, IGRA delegates that determination to the Secretary, but it limits her consideration to two factors: the best interest of the tribe, which can be based on a number of factors, that is what we expect the economic benefit to be to the tribe, whether there will be employment opportunities afforded to the tribal members because of the operation, if there is going to be an increase in our other associated services such as health care or education. The other finding the Secretary has to make is whether it is a detriment to the local community, that is were there going to be environmental factors that make it a negative.

Mr. YOUNG. What you are saying is IGRA makes a recommendation to the Department of Interior. In conjunction, you make the determination, or do you make the determination individually?

Ms. MARTIN. We make the determination based on IGRA.

Mr. YOUNG. You make the determination.

OK. That is all I have.

Chairman POMBO. Mr. Walden.

Mr. WALDEN Thank you, Mr. Chairman.

In my district, the Warm Springs Tribe is looking at acquiring some land and putting it into trust so that can they can petition the Governor and open a casino in a community that is about 17 miles in the land that they already have pre-IGRA in trust. That is land is on the side of hill in the Columbia Gorge National Scenic Area. They could, as I understand it, go ahead and construct a casino on land that is already within the scenic area that they have had in trust pre-IGRA.

Ms. MARTIN. As long as they have a valid tribal State compact that authorizes them to game on such a location.

Mr. WALDEN All right. So the Governor would still have to approve whether or not they could locate the land they already have in trust pre-IGRA?

Ms. MARTIN. Unless they already have a tribal state compact that authorizes that, they would have to go to the Governor.

Mr. WALDEN. OK. I know they do have gaming already on the reservation, but I don't know that it allows for more than one facility. In this situation, though, the concern is that the land they have acquired is in a neighboring community that actually is supportive of having this facility constructed as opposed to my hometown that wasn't. The land that they have pre-IGRA is my hometown and up on a hill. This is off in a port area. I guess I am just wondering what the process is in these circumstances. I am assuming that they petition you, as they have, I believe, and that then if it is benefit of the tribe, both economically and if the community is supportive, it sounds like from what I am hearing today, those are the big barriers. Is that right? They still have to get the Governor's approval. I realize that.

Ms. MARTIN. Right. Those would be key factors in our making the two-part determination, but it would ultimately also have to be concurred in by the Governor, and then they would also have to have the compact.

Mr. WALDEN All right. If people outside of this community where they are looking at acquiring the land have objections, what role is there for them to play?

Ms. MARTIN. We would look at their comments, weigh them in the consideration, but if the immediate community that is affected really wants to have the gaming, I think that might be—we would take more consideration of that into effect, and, in fact, that is some of what happened with the Jena two-part determination. The immediate community wanted the casino while surrounding communities, actually communities that were quite a bit further away, objected to it. Ultimately, we looked at the local community that was immediately affected.

Mr. WALDEN So the local community's input has greater weight than a neighboring community?

Ms. MARTIN. Yes.

Mr. WALDEN And you still use as the other criteria the affect on the tribe economically?

Ms. MARTIN. Yes, we do.

Mr. WALDEN Which would allow them to come in. Is there anything else that weighs in beyond those two points as major considerations?

Ms. MARTIN. No. It is those two factors, and, in fact, the lengthy discussion we had with regard to whether we could consider distance was a result of our concerns with distance altogether. We looked at the legislative history of IGRA and what the letter of the law says, and we concluded that we could not look at other factors.

Mr. WALDEN I see.

All right. Thank you, Mr. Chairman.

Thank you for your answers.

Chairman POMBO. Thank you.

No further questions.

Mr. Pallone.

Mr. PALLONE. Mr. Chairman, I just am having difficulty because I have the fisheries hearing going on at the same time, and know I mentioned that to you, if we can avoid that in the future.

I just wanted to ask—you know, I made a statement in the beginning that there doesn't seem to be an explosion of off-reservation Indian gaming, but could you tell us how many applications for taking lands into trust for off-reservation gaming have actually been since 1988 and for how many applications have you actually made a determination?

Ms. MARTIN. I believe that the total number of applications we received is somewhere around 43. We have made—well, we have made positive determinations in 31 of those cases, but there has been State concurrence.

[Mr. Skibine confers with Ms. Martin. ]

Ms. MARTIN. Well, State concurrence on off-reservation two-part determinations, there have only been three since 1988.

Mr. PALLONE. OK. And then you also mention—I wasn't here. Again, I was at the fisheries hearing—with this two-part determination, I was told by my staff that you made some statement about how they don't look or they don't pay a lot of attention to historical roots, and I know that Congressman McCrery mentioned that, and that was one of the questions that I asked him as well. Is that true that they don't pay attention to that, and why is that the case, if it is?

Ms. MARTIN. Well, with regard to the two-part determination, again, we went through a lengthy analysis of the legislative history and what the letter of the law says, and we concluded that as with distance, which is a concern, IGRA does not authorize or contemplate our looking at a tribe's historical ties with regard to a two-part determination. We do, however, look at those historical ties when we look at the exceptions, the land claim settlement, restored lands, or initial reservation proclamations.

Mr. PALLONE. So your decision not to look at it that much or not to pay too much attention is based on the statute itself?

Ms. MARTIN. It is and the legislative history behind where we can't find guidance within the letter of the law.

Mr. PALLONE. OK. Thank you.

Chairman POMBO. No further questions.

I want to thank the witnesses for their testimony and remind you that there will be further questions that will be submitted in writing. If you could answer those in writing for the Committee, I would appreciate it.

Ms. MARTIN. Sir, could I say one more thing, please?

Chairman POMBO. Yes.

Ms. MARTIN. I just wanted to—I see Chairman Tauzin is back in the room, and I just wanted to let you and the Committee know that I was the decisionmaker on the Jena Band two-part determination, and I can guarantee to you absolutely that there was no influence of high-priced lobbyists in my decision, either to make or not make the decision, and that, in fact, the other side has accused me of trying to help the tribe before the Governor went out of office.

Mr. TAUZIN. Would the gentleman yield?

Chairman POMBO. Mr. Tauzin.

Mr. TAUZIN. Yes. I thank you for that statement. I want to clear the record too. I would never, as I said, ever suggest that there was influence on your office or that you yielded to influence. My concern was that this thing, the process, is so long, so complicated that people can—with the exercise of proper finances, they can help drag out a process, and my complaint from day one about the way this thing was going was not about how it would come out, because should have been a subjective decision made on the basis of the evidence before the Interior Department. That is all I ever asked for. My prime concern was that people were going to drag this process out and they were going to use whatever they could do in order to keep you guys from making a decision in time for the Governor to act, and I think they succeeded, and I was told last year whenever this was occurring that that was the game that these high-paid lobbyists were trying to perform.

So I am not saying that you did anything or that the Department did anything untoward. I don't think you did. I think the process lends itself to the high-paid lobbyist using it for delay and slow-rolling the process in order to ensure that decisions can't be made in a timely fashion, and I think that happened in this case. So that is my complaint. It is not with any one of you. Certainly, as I said, I have the deepest respect for both you and the Department and for the work you do. My concern is that we have set up a system that unfortunately allows for people to misuse the system in a way that helps their competitive advantage, and that is wrong, and that is all I am saying.

I thank you.

Ms. MARTIN. Thank you, sir.

Chairman POMBO. Thank you. I am going to dismiss this panel and call up our next panel, consisting of Ernie Stevens, who is the Chairman of National Indian Gaming Association, who is accompanied by Mark Van Norman; Principal Chief Christine Norris of the Jena Band of Choctaw Indians. She is accompanied by Heather Sibbison of the law firm of Patton Boggs; and Chief Leaford Bearskin of the Wyandotte Nation.

Now that I have you all seated, if I could have you stand and raise your right hand.

[Witnesses sworn.]

Chairman POMBO. Thank you very much. Let the record show they all answered in the affirmative.

Mr. Stevens, we are going to begin with you.

Mr. YOUNG. Mr. Chairman.

Chairman POMBO. Mr. Young.

Mr. YOUNG. Mr. Chairman, if I may at this time have the privilege, because I mentioned to Ms. Martin my interest in the Wyandottes for the last 8 years, I would like to—he is being recognized, but I would like to recognize on my own behalf Chief Leaford Bearskin. He is the Chief of the Wyandotte Nation since 1983, and not only that, I am going to do this because there are only a few of us in this room that the maturity, and he has a little more years than I do, but he has served our Nation in many different ways, including 41 years in the U.S. Government. More than that, though, during World War II, he was the chief aircraft commander of the B-24 labrador [sic] bomber in New Guinea as part of the 90th Arma-

ment Group on the Fifth Air Force and flew 46 combat missions of heavy bombers. He served as squadron commander in Korea, and that is my time. He was later commander of Strategic Air Command at Headquarters in Nebraska and after retired as lieutenant colonel, from a sergeant to lieutenant colonel, which is phenomenal considering I went from a private E-1 to private E-1 three times. I hope your appreciate that.

Mr. TAUZIN. There has got to be a story there.

Mr. YOUNG. He has been the Chief of the Wyandotte tribal organization and has been recognized by many different groups about his leadership and his contribution to not only his tribes, but to the Nation and the State itself, and I personally will tell you I believe that this man has led the Wyandotte as should have been led, but more than that, I think they have been screwed over by the U.S. Government, and I think that is very inappropriate.

And I will say again they qualify for Section 20. He is here to testify what happened to them, the affects upon the tribe itself and why I believe it was the wrong thing to do as the Government has enforced it and the State of Kansas has enforced it. So I would just like to acknowledge a great American.

Chief, I am glad to have you here today, and it is a pleasure to have you representing not only your tribe, but this Nation as a whole, and thank you for your service to this great Nation as we all serve it. Thank you, Chief.

Mr. BEARSKIN. Mr. Young, thank you very much. I would like you to talk to my board of directors and maybe I can get a raise.

Mr. YOUNG. Now you are talking my language.

Mr. TAUZIN. Mr. Young, did he fly a labrador or a liberator?

Mr. YOUNG. Liberator. I can't pronounce it.

Mr. TAUZIN. Mr. Bearskin, did you fly a labrador or a liberator?

Mr. BEARSKIN. Liberator.

Chairman POMBO. I tell you, sometimes I mess up on people's names, but the former Chairman set such a low standard that I can't do any worse.

Mr. Stevens.

## STATEMENT OF ERNIE STEVENS, JR., CHAIRMAN, NATIONAL GAMING ASSOCIATION

Mr. STEVENS. Good morning, Mr. Chairman, and again, I as well am greatly honored to be next to a great chief and a great soldier. As you know, many of our soldiers from the beginning of any conflict in this country have stepped up in great numbers and mostly in terms of volunteers. And I just talked to my nephew yesterday, and he is stationed in an Army camp. He has been back. He was on the front line. On 9-11, he signed up to go defend his country and has been there, been through the toughest part of that conflict, and his platoon sergeant said they may be going back over soon.

So with that, sir, I just wanted to say how impressed and how intimidated just a little bit I am to sit next to such a great soldier, like my father.

Mr. Chairman, I would like to say good morning to you and the rest of the committee members. I know people are busy here. We will try to be as brief as we can and summarize my statement for

the record. I have a detailed statement that I will submit for the record, and I will try to summarize that as quickly as I can.

I am honored to be here this morning to share NIGA's views on the issues of tribal land acquisition for gaming purposes. This subject requires some historical overview to put the topic into perspective. There are also a few members of NIGA's executive board present as well today.

As you know, Indian tribes were independent self-governing communities long before the arrival of European nations. Upon their arrival, the nations of England, France, and Spain all entered into treaties with tribes to maintain their peace, build wartime alliances, and establish a means of trade and commerce. When the U.S. was formed, it too entered into treaties with tribes for the same reasons. When the U.S. ratified the Constitution, it specifically acknowledged the importance of trade and tribal governments in the commerce clause which states that Congress shall have the power to regulate commerce with foreign nations and among several States and with the Indian tribes.

Over the next 200 years, the United States continued to acknowledge the governmental status of Indian tribes through the hundreds of Federal laws and regulations and U.S. Supreme Court decisions. Despite these promises of peace and friendship, Federal policies in the 1800s devastated the Indian tribes and their economies. The United States Indian population plunged from 15 million in 1492 to only 250,000 in 1890.

The first of these policies, removal, forced a number of these tribes to leave their homelands in the east and to travel to remote areas west of the Mississippi River. Tens of thousands of Indians died on the trails of tears on their way to Oklahoma and other reservations. Today, the removal policy would be denounced as ethnic cleansing. Our Indian nations still suffer from the damage and dislocation caused by the removal policy.

After the removal policy proved a failure, the United States turned to the policy of allotment and assimilation. The Allotment Act violated the treaties which agreed to preserve tribal homelands by wrongly selling the reservation lands for settlement to non-Indians. By 1934, the policy of allotment alone caused the loss of over a hundred million acres of Indian lands. Couple that with Indian lands lost through the removal policy, the total grows well over to 300 million acres lost.

In 1934, Congress acknowledged the allotment was a complete failure and altered its Indian policy through the enactment of the Indian Reorganization Act. Reorganization authorized the Secretary of Interior to acquire lands in trust for Indian tribes. In 1953, Congress again shifted its Indian policy, this time to termination which ended the Federal Government's recognition of certain tribes as governments along with the rights to their homelands. In the 1960s, President Kennedy and Johnson moved away from the termination policy. In 1970, President Nixon formally repudiated termination and announced a new policy supporting Indian self-determination which remains in tact today.

Through the self-determination policy, the Federal Government established programs similar to those used to help support State and local governments. These programs seek to help tribes rebuild

their communities and rebuild reservation economies. In addition, tribes began to look for a steady stream of tribal governmental revenue. With the rise of the State lotteries, many tribes looked to gaming as the answer for their budgetary concerns. State governments and commercial gaming operations challenged the rights of tribes to conduct gaming on their lands. These challenges culminated in the Supreme Court case California v. Cabazon Band of the Mission Indians in which the court upheld the right of tribes as governments to conduct gaming on their lands. The court reasoned that gaming is crucial to generating tribal governmental revenue and knows that gaming has become an essential means of employment.

In 1988, one year after the Cabazon decision, Congress enacted the Indian Gaming Regulatory Act, or IGRA, to promote tribal economic development, tribal self-sufficiency, and strong tribal governments. In the 15 years since the enactment of IGRA, Indian gaming has become the native American success story. Tribal governments have used gaming to rebuild many communities that were all but forgotten. Gaming has helped to preserve our culture and is providing a hope for an entire generation of Indian youth. Schools, hospitals, roads, and good relationships with surrounding communities are just a few examples.

IGRA generally requires that tribal gaming be conducted on Indian lands, but the Act also makes important exceptions that account for problems created by the United States historical policies of removal, allotment, and termination, as I previously noted. For example, many tribes have sought for more than a hundred years to restore their homelands wrongly taken through the removal and allotment policies. Accordingly, IGRA recognizes that tribes may conduct gaming on lands placed in trust as a part of a land claim settlement. In addition, the governmental status of a number of tribes was wrongly terminated either by Congress in direct acts of termination or through wrongful administrative termination by the Bureau of Indian Affairs. As a result, IGRA also recognized that newly acknowledged and restored tribes can conduct gaming on their initial reservations and restored lands.

IGRA also contains a more general exception which permits tribes to apply to the Secretary of the Interior to use after-acquired lands for land gaming purposes. This two-part process first requires the Secretary to consult with local governments and neighboring tribal governments to determine whether the use of lands for gaming would be in the best interest of the tribe and not detrimental to the surrounding community. We believe that it is important for the Secretary to consult with neighboring Indian tribes because the tribes have an interest in the development and impacts of new gaming operations in the area. Second, the Governor of the State must be consulted and must concur before the land can be taken into trust and used for gaming purposes. Congress intended the Governor to make that decision in good faith, considering the interests of all concerned parties. And as previous stated this morning, only three tribes have successfully navigated the process in over 15 years under IGRA. That is the Fourth County Potawatomi Tribe in Milwaukee, Wisconsin, the Kalispel Tribe in Spokane, Washington, and the Keweenaw Bay Indian Community

in Marquette, Michigan. These tribes have shown that the use of after-acquired lands for Indian gaming under Section 20 is positive for the tribe involved, the local communities, and the State when this process is used properly.

To briefly conclude, Mr. Chairman, we feel that the media sensation that Indian gaming is exploding is overblown. IGRA's exceptions are narrow. They recognize that tribal government lands were wrongly taken and acknowledge that tribes in these situations should be treated fairly. While the Section 20 two-part determination process is not without its difficulties, we feel that as long as the process is followed and that the necessary parties are fully consulted, that those difficulties will be addressed. In our view, Section 20 should not be amended at this time.

Mr. Chairman, that is the summary of my complete statement, and the only thing I really wanted to add is, you know, there was a little bit of discussion throughout the morning about taxes, and tribes, you know, are governments and I know you that we are not subject to tax, but tribes do pay Social Security taxes as employers. Tribal members are taxed. Vendors pay income tax, and overall Indian gaming generates over seven billion in Federal, State, and local revenues each year, in addition to that, approximately 70 million to charitable contributions. And what I said previously in my testimony about service agreements, we are on a very high percentage basis working cooperatively with our communities around us, and I think Section 20 also addresses that.

So we feel that there are positive examples throughout this country about working cooperatively with the neighbors in these areas. So we think it is cumbersome, but we think it is a process that is appropriate, and we think that the three examples there are great examples, and to say that this is reservation shopping or it is blown out of proportion or there is an explosion of gaming is certainly, on behalf of the record as we see it and report it to you today, is certainly not an appropriate analogy.

[The prepared statement of Mr. Stevens follows:]

**Statement of Ernest L. Stevens, Jr., Chairman, National Indian Gaming Association**

INTRODUCTION

Good morning Chairman Pombo, Ranking Member Rahall, and Members of the Committee. My name is Ernest Stevens, Jr., and I am Chairman of the National Indian Gaming Association and a member of the Oneida Nation of Wisconsin. The National Indian Gaming Association (NIGA) is an intertribal association of 184 federally recognized Indian Tribes united with the mission of protecting and preserving tribal sovereignty and the ability of Tribes to attain economic self-sufficiency through gaming and other economic endeavors. I am honored to be here this morning to share NIGA's views on the issue of tribal land acquisitions for gaming purposes.

*Indian Tribes as Governments*

The complex issue of tribal land acquisitions for gaming purposes requires a historical overview of the status of Indian Tribes as governments and tribal landholdings to place the subject in proper perspective.

Before Columbus, Indian tribes were independent sovereigns vested with full ownership and authority over their lands. European nations acknowledged Indian nations as sovereigns and entered into treaties to acquire lands, establish commerce, and preserve the peace. When the United States was established, it too recognized the sovereign status of Tribes through treaties for these same reasons. The U.S. during the late 1700s and early 1800s was vulnerable to recurring attack from Eng-

land. Thus, the United States sought to maintain peace with tribal governments and sought them as allies. The new government also sought to build its economy, and recognized that securing an exclusive trade relationship with tribal governments would further that goal.

The United States Constitution specifically acknowledges the importance of trade with tribal governments in the Commerce Clause, which states that "Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." U.S. Const., Art. I, § 8, cl. 3. For these reasons, the United States policy on Indian affairs in the formative years of the new Republic was one of respect and recognition that tribal governments were necessary allies to protecting the Union both politically and economically.

During the Revolutionary War, the United States adopted the legal principles and practice of European nations and acknowledged the sovereign status of Indian tribes, with full ownership and authority over their lands. The 1778 Treaty with the Delaware Nation was the United States' first Indian treaty, and it provided:

> [A] perpetual peace and friendship shall henceforth take place through all succeeding generations: and if either of the parties are engaged in a just and necessary war with any other nation or nations, that then each shall assist the other in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation.
>
> [W]hereas the United States are engaged in a just and necessary war, in defense of life, liberty and independence, against the King of England the Delaware nation stipulate[s] and agree[s] to give a free and safe passage through their country to the troops affording to said troops supplies of corn, meat, [and] horses. And engage to join the troops of the United States with a number of their best and most expert warriors.

My own tribe, the Oneida Nation, assisted General Washington and the United States by providing food for the troops during the cold winters in Valley Forge.

In the Northwest Ordinance of 1787, the Continental Congress pledged that the United States would pursue a just policy toward Indian nations:

> The utmost good faith shall always be observed towards the Indians, their land and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed.

For over two hundred years, the United States Constitution, treaties, hundreds of federal laws, and U.S. Supreme Court decisions all acknowledge that Indian Tribes are governments. The 2000 Executive Order on Consultation and Coordination with Indian Tribal Governments, issued by President Clinton and later affirmed by President Bush, provides:

> Our Nation, under the law of the United States has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and their territory. The United States work[s] with Indian tribes on a government-to-government basis concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

Consultation between sovereigns is still the cornerstone of Federal-Tribal government-to-government relations today.

*Historic Loss of Indian Lands*

Despite these promises of peace and friendship, federal policies throughout the 1800s caused significant damage to tribal communities and the Indian land base. The Indian population in the United States plunged from 15 million before Columbus to only 250,000 by the end of the Indian Wars in 1890. During this same time, Indian nations lost hundreds of millions of acres of their homelands and were pushed onto the most remote corners of the United States.

*Removal Policy*

During the late 1820s, the United States established the "Removal Policy" and forced the Cherokees and other Tribes to walk a number of Trails of Tears. Tens of thousands died on their way to remote lands west of the Mississippi River. Many others stayed behind, and today the Cherokee Nation is represented by both the Cherokee Nation of Oklahoma and the Eastern Band of Cherokees in North Carolina. Many other Tribes were divided by the Removal Policy and are represented on both sides of the Mississippi. Today, the "Removal Policy" would be denounced as a form of ethnic cleansing. Indian nations continue to suffer from the damage and displacement caused by the Removal Policy.

*Allotment and Assimilation*

In 1868, the United States continued to enter into treaties with Tribes for land exchanges which proclaimed, "From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it." The treaties promised that the United States would acknowledge that the reserved lands would serve as the "permanent home" of the respective Indian nations.

However, the United States adopted a policy of Allotment and Assimilation, which violated each of these treaties. The Allotment Policy also ignored Tribal government laws on land use, and parceled out tribal lands in 160-acre units to heads of individual tribal households. After heads of households received their allotments, the Government sold the remaining reservation lands to non-Indians. As a direct result of the Allotment policy, Indian land holdings plunged from 138 million acres in 1887 to 48 million acres by 1934. All told, Removal and Allotment caused the taking of well over 300 million acres of Indian homelands.

*Indian Reorganization*

In 1934, in cooperation with Congress, President Roosevelt secured the enactment of the Indian Reorganization Act to promote "local self-government" for Indian Tribes. Recognizing that tribal communities had been devastated by the loss of almost 100 million acres of land, the Act gave the Secretary of the Interior authority to reacquire lands in trust for Tribes and individual Indians. The Act was very well intended and remains law today, but has never been adequately funded.

*Termination Policy*

In the 1950s, federal policy turned towards Termination. Termination essentially ended the federal government's recognition of certain Indian Tribes as governments and sought rapid assimilation of individual Indians, instructing them to disband and adopt a non-Indian way of life. These Tribes also lost their homelands again passing Indian lands into the hands of non-Indians. Tribes not directly terminated faced severe program budget cuts, and reservation economies were completely ignored.

The cumulative effect of all of these policies destroyed tribal economies and the Indian land base. Indeed, in the 1960s, Indian communities faced the highest national rates of poverty, crime, poor health care access, education dropouts, and countless other social and economic problems. Reservation economies were in ruins.

*The Era of Self-Determination and the Indian Gaming Regulatory Act*

The federal government again recognized the failure of its Indian policy, and again shifted its views. In the 1960s, Presidents Kennedy and Johnson included Indian Tribes in federal community development programs, in the War on Poverty, and in Civil Right legislation to strengthen tribal self-governance. In 1970, President Nixon formally announced the federal policy supporting Indian Self-Determination, and repudiated the Termination Policy. At the heart of the new policy was the federal government's commitment to foster reservation economic development and helping tribal governments to attain economic self-sufficiency. The federal government began to make available to tribal governments a number of the programs that were used to help state and local governments. These programs provide Tribes with the ability to rebuild their communities, and have created new economic opportunities throughout Indian country.

In addition, in the late 1960s, Tribes began to look for a steady stream of tribal governmental revenue separate from federal program or appropriation funds. At the time, the recent rise in State government lottery systems caused a number of Tribes to consider gaming as the answer for their budgetary concerns.

State governments and commercial gaming operations challenged the rights of Tribes to conduct gaming on their lands. These challenges culminated in the Supreme Court case of California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). The Court in Cabazon upheld the right of Tribes, as governments, to conduct gaming on their lands. The Court reasoned that Indian gaming is crucial to tribal self-determination and self-governance because it provides tribal governments with a means to generate governmental revenue for essential services and functions. The Supreme Court also recognized that California Tribes were left on reservations that "contain little or no natural resources which can be exploited," so the Court acknowledged that Indian gaming is also essential to provide tribal employment. In 1988, one year after the Cabazon decision, Congress enacted the Indian Gaming Regulatory Act to promote "tribal economic development, tribal self-sufficiency and strong tribal government." 25 U.S.C. § 2702.

In approximately 30 years (just over 15 years under IGRA), Indian gaming has become the Native American Success Story. Today, approximately 65% of the federally recognized Indian Tribes in the lower 48 states have chosen to use gaming to aid their communities. Indian gaming has helped many Tribes begin to rebuild communities that were all but forgotten. Because of Indian gaming, our Tribal governments are stronger, our people are healthier and our economies are beginning to grow. Indian country still has a long way to go. Too many of our people continue to live with disease and poverty. But Indian gaming has proven to be one of the best available tools for Tribal economic development.

In 2003, Indian gaming generated 500,000 jobs nationwide and $16 billion in gross tribal government revenues (net tribal gaming revenues are much smaller when accounting for payroll, operating costs, overhead, and debt service). Indian gaming is funding essential tribal government services, including schools, health clinics, police and fire protection, water and sewer services, and child and elderly care. And, Indian gaming generates over $7 billion in added revenue for the Federal, State and local governments. Despite the fact that Indian Tribes are governments, not subject to taxation, individual Indians pay federal income taxes, people who work at casinos pay taxes, those who do business with casinos pay taxes, and those who get paid by casinos pay taxes. As employers, Tribes also pay employment taxes to fund social security and participate as governments in the federal unemployment system. In short, Indian gaming is not only helping rebuild Indian communities, but it is also revitalizing nearby communities.

*Treatment of After Acquired Lands Pursuant to IGRA*

IGRA establishes a general policy that Indian Tribes should only conduct gaming on lands held in trust by the United States prior to passage IGRA on October 17, 1988. 25 U.S.C. § 2719. Congress also accounted for historical circumstances such as diminished reservations, terminated Tribes, and Indian land claims, and established reasonable exceptions to provide for the use of "after acquired" lands when necessary.

In addition, Congress established a more general exception for the use of "after acquired" lands for gaming where the Secretary of the Interior after consultation with local governments and neighboring Indian tribes determines that Indian gaming on the lands is in the best interests of the Tribe and would not be detrimental to the surrounding community. The Governor of the State must then concur in the Secretary's decision. Of course, the Tribe must also successfully negotiate a compact with the State before conducting class III gaming on such lands.

*Within Reservation and Contiguous Land*

Recognizing the excessive loss of Indian lands and sporadic checker-board landholdings due to Removal and Allotment, Congress through IGRA permits Tribes to conduct gaming on lands within or contiguous to existing reservations. 25 U.S.C. § 2719(a)(1). These "contiguous" land acquisitions are generally without controversy. For example, the White Earth Ojibwe reservation was heavily checker-boarded by the loss of trust lands under the Allotment Policy, and without much fanfare, the White Earth Band reacquired a 61-acre parcel of land within its existing reservation area for gaming in 1995.

*Land Claim Settlements*

For similar reasons, IGRA permits gaming on Indian lands reaffirmed through a land settlement. 25 U.S.C. sec. 2719(b)(1)(B)(i). In our view, these trust acquisitions are simply a measure of justice for Tribes that have suffered historical wrongs. Where lands were wrongfully taken and are restored through land settlement, in essence, they relate back in time to the original holding of the lands by the Tribe.

*Newly Acknowledged and Restored Tribes*

In addition, the governmental status of a number of Tribes was wrongly terminated, either by Congress in direct acts of termination or through wrongful Administrative termination by the Bureau of Indian Affairs and other agencies. As a result, IGRA also recognizes that newly acknowledged and restored Tribes can conduct gaming on their initial reservations and restored lands. Congress reasoned that these lands should be available for gaming because these Tribes have the same sovereign status as other federally recognized Indian Tribes. See 25 U.S.C. § 479a (Federally Recognized Indian Tribe List Act).

For example, the Mohegan Tribe's land was taken into trust under the exception for the initial reservation for newly recognized tribes. 25 U.S.C. § 2719(b)(1)(B)(ii). Of course, the residents of Uncasville were well aware of the Tribe's historical status as a State-recognized Indian tribe and the status of their lands as a state Indian reservation. The Grande Ronde Indian Community in Oregon was restored to rec-

ognition after termination, and in 1990, the Secretary acquired about five acres of land in trust pursuant to the exception for Tribes restored to recognition. 25 U.S.C. § 2719(b)(1)(B)(iii).

*Section 20 Two-Part Consultation Process*

Section 20 of the Indian Gaming Regulatory Act also provides that an Indian Tribe may apply to the Secretary to place land into trust for gaming purposes. This process has sometimes been criticized as divisive among tribal governments, and has led to media hype regarding the unbridled proliferation of tribal gaming operations. While the procedure is not without its difficulties, we feel that as long as the process in IGRA is followed and the necessary parties are consulted, that there is no need at this time to amend the Act.

The two-part determination process is significant. Upon application by a Tribe the Secretary of the Interior begins a review to make a determination of whether the acquisition of the land in trust for gaming purposes would be in the best interests of the Indian tribe. The Secretary must also consult with the local area government and neighboring Indian tribes to ensure that such acquisition "would not be detrimental to the surrounding community." 25 U.S.C. § 2719(b)(1)(A).

We believe it is important for the Secretary to consult with local governments and neighboring Indian Tribes because the local community and Tribes in the area have an interest in the development of new gaming venues in their area. Certainly, local governments may be impacted by additional calls on their resources. Generally, tribal governments have been generous in negotiating agreements with local governments to underwrite those services and mitigate the impacts of gaming.

Neighboring Indian Tribes may also be impacted by new gaming venues, either through a market impact or concerns about overlapping aboriginal areas. Consultation can help to identify and address such concerns. It is important to remember that the Secretary of the Interior has a trust responsibility to the neighboring Tribes as well as to the applicant Tribe.

If the Secretary makes a determination favorable to the applicant Tribe, then the process turns to the Governor of the State in which the land is located. The Governor is consulted to ensure that the overall interests the State are considered, and the process will not move forward unless the Governor concurs with the Secretary's determination. The Governor's concurrence serves as a condition precedent to the use of "after acquired" lands for Indian gaming. The Governor's concurrence authority should be exercised in "good faith," just as Congress provided for in the tribal-state compact process.

While we are aware of reports of a number of Tribes have applied for "after acquired" land to be placed in trust for gaming outside the historical exceptions, only three Indian Tribes have successfully navigated the Section 20 two-part process: the Forest County Potawatomi Tribe in Milwaukee, Wisconsin, in 1990; the Kalispel Tribe in Spokane, Washington, in 1997; and the Keweenaw Bay Indian Community in Marquette, Michigan, in 2000. In our view, these Tribes have shown that, when the two-part determination process is properly applied, the use of "after acquired" lands for Indian gaming is positive for the Tribes involved, the local communities, and the State.

The Forest County Potawatomi Tribe, for example, invested $120 million in its gaming facility and has been a leader in creating jobs in Milwaukee, with 7,000 jobs. The Tribe also dedicates $14 million annually to fund the Milwaukee Indian School, a school that is dedicated to educating all Indian children in the Milwaukee area. In Forest County, the Tribe has created an additional 667 jobs and generates approximately $11.5 million payroll. With its gaming revenue, the Tribe has created new community infrastructure, including a new $10 million health and wellness center for both tribal members and tribal employees. The Forest County Potawatomi Tribe is also very generous with its resources, and has assisted both the Sokagon Chippewa Tribe and the Red Cliff Band of Chippewa in Wisconsin.

The Kalispel Tribe has also been a community leader in creating jobs, with 1,500 new jobs at its facility. The Tribe also contributes over $500,000 a year to the City of Airway Heights to aid the City in its governmental services, and makes a number of contributions to other local charities.

The Keweenaw Bay Indian Community ("KBIC") has also achieved important success at its Marquette, Michigan facility. KBIC's casino is responsible for about 300-400 local area jobs (about 65% of which are held by non-Indians). The Tribe is one of the largest employers in the local economy. KBIC assists the local government with revenue for many government projects, including a new truck for the fire department, a new drug enforcement dog for the police department, and construction of a radio tower for the community ambulance service. KBIC is also generous in

funding the YMCA, the school hockey program, youth events and other special events in the community.

CONCLUSION

To summarize, the media attention is overblown there is no explosion of off-reservation Indian gaming. IGRA includes narrow exceptions for gaming on after-acquired lands that address the wrongful land takings caused by the Removal, Allotment, and Termination policies. While the Section 20 two-part determination procedure is not without its difficulties, we feel that as long as the process is followed, and that local governments and affected Indian Tribes are fully consulted, that these difficulties will be addressed. In over 15 years, only three Tribes have successfully used the Section 20 two-part process. In our view, Section 20 should not be amended at this time. Mr. Chairman and Members of the Committee, this concludes my remarks. Once again, thank you for providing me this opportunity to testify.

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Chairman POMBO. Thank you.

I will now recognize Principal Chief Norris.

**STATEMENT OF PRINCIPAL CHIEF CHRISTINE NORRIS, JENA BAND OF CHOCTAW INDIANS, JENA, LOUISIANA**

Ms. NORRIS. Good morning, Chairman Pombo and members of the Committee. I thank you this morning for allowing me this opportunity to come before you. I ask your indulgence as this is my first experience in being in such an arena as this.

My name is Christine Norris. I am tribal chief of the Jena Band of Choctaw Indians. You have heard this morning from Congressman McCrery who represents a population in Louisiana who are my competitors. I respectively realize that he speaks for these people, but I am also glad that you have the opportunity to hear from the tribe itself. At this point, this has not been done thus far. So I thank you for this opportunity.

The policies and procedures of Section 20 of IGRA are of particular importance to my tribe. We are newly recognized and recently restored to Federal recognition. For us, there is no such thing as on-reservation gaming because we have no reservation. That is the point that I want to bring out and make you realize, that we are different from the other tribes in Louisiana as when we were federally recognized in 1995 through the Federal acknowledgment process, we had no land. We are a landless tribe. That is the difference. The Coushattas, the Tunica-Biloxi, the Chitamacha tribes upon Federal recognition had land and thus that is where their casinos are.

Through the years, the Bureau of Indian Affairs recognized the Jena Band as Indian people and provided modest services to the group there that was in Jena, Louisiana; however, it wasn't until 1995 that we reaffirmed our tribal status, although we had no land, no money, no reservation. Nonetheless, we identified properties within our three-parish service area. This is because this is where our people lived. I had to provide for these people health care, homes. We have a few parcels in trust now that we have requested that Interior designate them as our initial reservation. The total acreage only amounts to less than 105 acres. This is considerably less than the reservation land bases of the other three federally recognized tribes in Louisiana.

Like many other tribes, my tribe made the sovereign decision to conduct a tribal gaming operation to generate funds to enhance our

Federal Government programs. The Jena band consists of 241 tribal members, a very small receiving a very small budget from the Federal Government.

We have brought some exhibits with us that will show you, on Exhibit A, our three parishes that form our service area. In these three parishes, Grant, LaSalle, and Rapides, all three of the parishes have voted out any form of gaming. While we continue to pursue the gaming avenue, our former Governor, Governor Foster, played a large role in suggesting that this tribe look at lands outside of its parish area. Governor Foster informed us that he would not negotiate a tribal state gaming compact with us for any facility located within our service area, and he even stated that he would oppose our efforts to acquire trust lands within the three-parish service area. This is what led the tribe in the very first place to look at the area of Vinton, Louisiana.

We learned from our many mistakes there in Vinton. Number one, we did not have the community support in the political arena from the local politicians. After we sought to work with the State in the local and governments, we embarked on several years to identify alternate sites for a gaming facility, one located outside of our service area, but still within an area which our people had an historical connection. We are not saying the Jena Band lived in Logansport, Louisiana. What we are saying is we submitted historical data to show where Choctaw people lived there. We were of the Choctaw Nation. Only until the nineteenth century were these tribes broken out into various names of tribes. We were all Choctaw people.

Our attempts to do so were met at every turn by casino interests looking to protect their own market. Not only did we have the competition of 16 land-based casinos in Louisiana, there were also three other Federal Indian tribes having casinos in Louisiana. Realizing the competition, this is a free market. This is what competition is all about and develops a healthy attitude among people. We were received with closed doors. At every turn that we went, we were met by opposition.

In Logansport, Louisiana, it is only 62 miles, I want to point out, from the border of our service area. We attempted to locate a casino there. Learning from the mistakes in Vinton, we went to the people there. We reached out to see if this is an area that wanted us. The people—it is a rural area just like our parishes of Rapides, LaSalle, and Grant Parish—they endorsed us with open arms. The police jury did vote for us. We had the support of the mayors, the Chamber of Commerce. They attended trips with us to Washington before they testified to Interior on our behalf.

On Exhibit B, on the maps, they are borrowed from a book written by several Indian history experts published before enactment of the Gaming Regulatory Act. These maps as well as thousands of pages of historic documents demonstrate the Choctaw connection to the area of Logansport and northwestern and central Louisiana. After lengthy consultation with the Department of Interior, we submitted an application by the two-part determination process. This process requires the collection and submission of the factual information that is time consuming, that is vastly expensive, and imposes great hardships particularly on landless tribes. These bur-

dens are even more severe in our case where casino interests were actively seeking to prevent us from infringing on their markets.

In December of 2003, after reviewing the merits, Interior ignored the rhetoric and issued a positive two-part determination because it requires the Governor to concur in that determination, and because neither former Governor Foster nor current Governor Kathleen Blanco have responded to Interior's request for concurrence, it appears that the Logansport land will not be taken into trust.

As a result, my tribe is forced to return to our home parishes and attempt to develop a facility in a community which clearly opposes our presence there. In these home parishes, we live with these people. We go to school with them. We work with them. We attend church with them. Again, we are constantly being turned back even in our own surrounding communities. We are made to be felt ashamed of bringing a casino to this area. Our people now are just beginning to hold their heads up high and be proud of who they are, but with the negative publicity that we receive, that Jena has been around the State forum shopping, continues to hold my people down. Even my son attended a church service last Sunday where the pastor said that he was writing to the Governor to oppose any further expansion of gambling in Louisiana. I tell him to hold his head up high and be proud of who he is and that he has the rights that are afforded other Indian tribes and other entities in this State. We are asking for that right to be given to us.

We have lived here before gambling. We can continue to survive and will live after gambling is over with or continues to be here, but it needs to be done away with, is my feeling, if we are not allowed to participate in this activity also.

Perhaps we were naive when we first considered Indian gaming the vehicle for economic development. We had no concept of the degree to which our efforts would become the focus of the extremely well-funded attacks from Las Vegas, not only from them, from tribes such as Coushattas, from the Mississippi Choctaw. We were not expecting this type of opposition. The opposition of well-heeded, well-established gaming concerns can make it incredibly difficult for newly recognized tribes to participate in the economic benefits for which have been made available to most other tribes. This very much has become a struggle between the haves and the have nots.

It is my hope that our story of the long and difficult road upon which my tribe has been made to travel will give the Committee and the public a better sense of the realities facing landless tribes. It is imperative that the public debate about off-reservation gaming be conducted within the context of these realities and within the context of the historical facts which have left tribes like mine in significantly disadvantaged positions.

We hurt. We cry. And yet we rejoice in the celebration of life that God has given us. As long as I have breath in me, I will continue to move my tribe forward to seek a better way of life for my people so that we may be strong, so that we may be proud, and we may be productive and give back to our creator and share with the others the many blessings such as the freedom that we enjoy today. That very freedom is what allows me the right and opportunity to

seek the health and well-being and pursuit of happiness for my people.

So my point here is I want you to realize that we were a landless tribe. We did not seek out off-reservation, so to speak, only because we took direction from our Governor. We tried to meet and work with our local state political body in securing a place to go for my people, and we will continue this pursuit.

Thank you so much for allowing me this opportunity to meet with you and speak with you today.

[The prepared statement of Ms. Norris follows:]

**Statement of Chief Christine Norris, Jena Band of Choctaw Indians**

Chairman Pombo and members of the Committee, I thank you for this opportunity to speak today on behalf of the Jena Band of Choctaw Indians of the State of Louisiana. I appear before you in my official capacity as the elected Chief of my Tribe.

It is our understanding that the focus of today's hearing is on the policies and procedures which govern the federal government's acquisition of trust title for off-reservation lands pursuant to the requirements of Section 20 of the Indian Gaming Regulatory Act ( IGRA ). As you know, Section 20 effectively prohibits gaming on off-reservation lands acquired in trust after October 17, 1988, unless one of several exceptions is applicable. Three of the exceptions—initial reservation, restored lands for restored tribes, and land acquired in the settlement of a land claim, are intended to even the playing field for tribes that either had no land, or were dispossessed of their land, when IGRA was enacted in 1988. The fourth exception—the so-called "two-part determination"—is available to all tribes. The two-part determination is, in many ways, the most difficult of the exceptions to satisfy because it effectively requires the consent of the people who live in the local area, and it explicitly requires the consent of the governor.

The policies and procedures of Section 20 are of particular importance to tribes like mine, which are newly recognized or recently restored to federal recognition. For us there is no such thing as "on-reservation" gaming because we have no reservation. Unless we can meet one of Section 20's exceptions, we can never reach a level playing field with the vast majority of other tribes, which are free to game on their reservations without resort to the onerous and expensive fee-to-trust process and without the impediments inherent in the Section 20 limitations on gaming on after-acquired lands.

Over the last few years, the rhetoric surrounding off-reservation fee-to-trust acquisitions has heightened to a fevered pitch. Like many others, my Tribe often has been accused of "forum shopping" for "far flung" lands. These accusations have been hurled at us not so much by persons who genuinely oppose gaming on moral or religious grounds, but rather by persons representing the interests of some of the sixteen non-Indian casinos and three Indian casinos already operating in the State of Louisiana. Indeed, in our experience, the folks who most often cry "forum shopping" are not concerned about federal Indian policy, tribal historical connections to certain lands, or even the moral or social propriety of gaming; rather, these folks are driven by a desire to protect the market share of existing gaming operations, both Indian and non-Indian.

I can think of no other factual and legal situation which better illustrates the conundrum in which landless and nearly landless tribes find themselves than that of my Tribe. For this reason, in your general deliberations on the policy and legal questions inherent in the debate on off-reservation gaming, I respectfully urge you to consider our story and the difficulties we have faced. I urge you to remember that newly-recognized and newly-restored tribes have faced particularly difficult legal and financial hurdles not generally faced by landless tribes. I urge you not to make those barriers any more difficult.

*Brief History of the Jena Band of Choctaw*

Through nine treaties executed between 1786 and 1830, the Choctaw Nation ceded approximately 23.4 million acres of land to the United States. Most Choctaw were removed to Oklahoma through the infamous Trail of Tears, but a few scattered groups remained in Mississippi and Louisiana. One of those groups eventually settled near the small town of Jena, Louisiana. We are direct descendants of those Choctaws. In the late 1800s the federal government again sought to remove remaining Choctaw to Oklahoma, promising abundant land for those who would remove.

Acting on this promise, some of the Jena Band's ancestors walked along railroad tracks all the way to Oklahoma, only to learn that the Oklahoma membership rolls had been closed and that there were no lands left for allotment. Our ancestors returned to our traditional homelands in Louisiana, having no choice but to live as sharecroppers on the very lands they had occupied before they left for Oklahoma.

For many years the Bureau of Indian Affairs provided modest services to our people, and at one point the Bureau even planned to move us to Mississippi in order to provide us with land. Due to a lack of federal funding, however, this was never accomplished. Despite the fact that we descended from a treaty-recognized tribe, and despite the fact that we had received Bureau services in the first half of the twentieth century, the Bureau failed to include us on its initial list of tribes first published in 1979. As a result, we were forced spend substantial time researching and applying for formal federal recognition through the Bureau's administrative process. It took sixteen years but we finally obtained federal acknowledgment in 1995.

When the Jena Band obtained federal recognition in 1995, we had no trust lands and no reservation. Not one acre of land was set aside by the federal government as a reservation. We had no state reservation. We also had no money.

*Our Efforts to Create a Reservation.*

Recognizing that we would need a tribal land base adequate to provide housing, governmental and cultural services to our people, we identified properties within our three-parish services area that could form the basis of our reservation. We then asked the Department of the Interior to acquire trust title to these properties and designate them as our initial reservation. (I note that the total acreage for all of the lands for which we have applied for trust status is less, on either a straight acreage basis or a per capita basis, than the reservation land bases of the three other federally-recognized tribes in Louisiana.)

In addition, my Tribe determined that it wished to conduct a tribal gaming operation to generate the revenue needed to provide governmental, health and human services to our people. However, my Tribe's three-parish service area is located in a very conservative, very religious part of our state. Each one of the parishes which comprise our service area rejected the allowance of gaming of any kind, Indian or non-Indian, in a state-wide referendum vote in 1996. I would like to refer you to Exhibit A attached to my testimony, which is a map of the parishes of the State of Louisiana that shows where gaming has been allowed by public referendum and where it has not. You'll see that there are "0" gaming devices allowed in any of our three parishes (Rapides, Grant and LaSalle). For this reason, and for the reasons described below, we made every effort to locate a gaming site outside the three-parish service area.

The one parcel which has not been taken into trust by the federal government is the one on which we had hoped to develop a class III gaming facility. Let me tell you briefly about that parcel.

From the time of our initial discussions in mid-2000, our former governor, M.J. "Mike" Foster, informed us that he would not negotiate a tribal-state gaming compact with us for any facility located within our three-parish service area, and would oppose our efforts to acquire trust lands within the three-parish service area. Despite the fact that all three other federally-recognized tribes in Louisiana operate gaming facilities pursuant to such compacts, it was Governor Foster's contention that he would not force any type of gaming facility upon any parish that had expressed its opposition to gaming through the 1996 state referenda. Further, our tribal members have lived all their lives with our neighbors. We were cognizant of our neighbors' views, and were hopeful that we might be able to find an alternative site outside our service area so as not to offend the sensibilities of those neighbors. For these reasons, and these reasons alone, we embarked on a several-year effort to identify an alternative site for our gaming facility, one located outside our service area, but still located within an area with which our people had a historical connection. I respectfully refer you to the two maps provided at Exhibit B to my testimony. These maps are borrowed from a book written by several Indian history experts published before enactment of the Indian Gaming Regulatory Act.[1] These maps demonstrate the Choctaw connection to this area of Louisiana. (I note that we have provided thousands of pages of documentation to the Department of the Interior documenting our historical connection to that area of the State.)

Perhaps most importantly, however, we sought to identify a site in an area in which the local people affirmatively wanted to host a tribal gaming facility. We

[1] Fred B. Kniffen, Hiram F. Gregory & George A. Stokes, The Historic Tribes of Louisiana (1987).

found such a site in Logansport, Louisiana. Logansport is located in DeSoto Parish, which unfortunately suffers from one of the highest unemployment rates, and from some of the lowest family income averages, in the State. For these reasons, Mayor Dennis Freeman and the DeSoto Parish Police Jury (the elected governing body of DeSoto Parish) have gone on record, in writing, over and over and over again supporting the placement of the Jena Choctaw gaming facility in their area.

We applied to the Department of the Interior to have this Logansport land taken into trust. Because the land is located in an area with which we have a strong historical connection, and because we included the trust application for this land as part of our coordinated package of lands with which we were trying to create our reservation land base, we first asked the Department to include the Logansport land in our "initial reservation." The Department declined to do this.

We then submitted thousands of pages of information documenting our historical connection to the land near Logansport, and documenting our legal case for a determination that we are a "restored" tribe and that the Logansport parcel constituted "restored lands" within the meaning of the Indian Gaming Regulatory Act. While we provided those materials to the Department nearly two years ago, we are not aware that Interior has considered the merits of our request in any serious fashion.

Finally, out of some level of desperation, despite the fact that we are a landless tribe, we agreed to submit a request that the Department review our application under the significantly more onerous standards imposed under the "two-part determination process" set forth in Section 2719(b)(1)(a) of IGRA. That provision requires Interior to make a factual determination that acquiring trust title to the property for gaming is first, "in the best interest of the tribe," and second "not detrimental to the surrounding community." The Committee should be aware that the collection and submission of the factual information necessary to allow for such a determination is enormously time consuming and expensive, and imposes great hardships, particularly on landless tribes. In December 2003, Interior issued a positive two-part determination. Because IGRA requires the governor to concur in that determination, and because neither former Governor Foster nor current Governor Kathleen Blanco have responded to Interior's request for a concurrence, it appears that the Logansport land will not be taken into trust.

As a result, my Tribe is left with no alternative but to return to our three-parish service area to try to develop a gaming facility. We do this with heavy heart. We looked forward to working with a community desirous of our presence—a community with which we had worked closely for several years to develop a win-win partnership for all of our people. Instead, we are forced to return to our home parishes and develop a facility in a community which clearly opposes our presence there. It is difficult to believe that this is what the framers of IGRA intended.

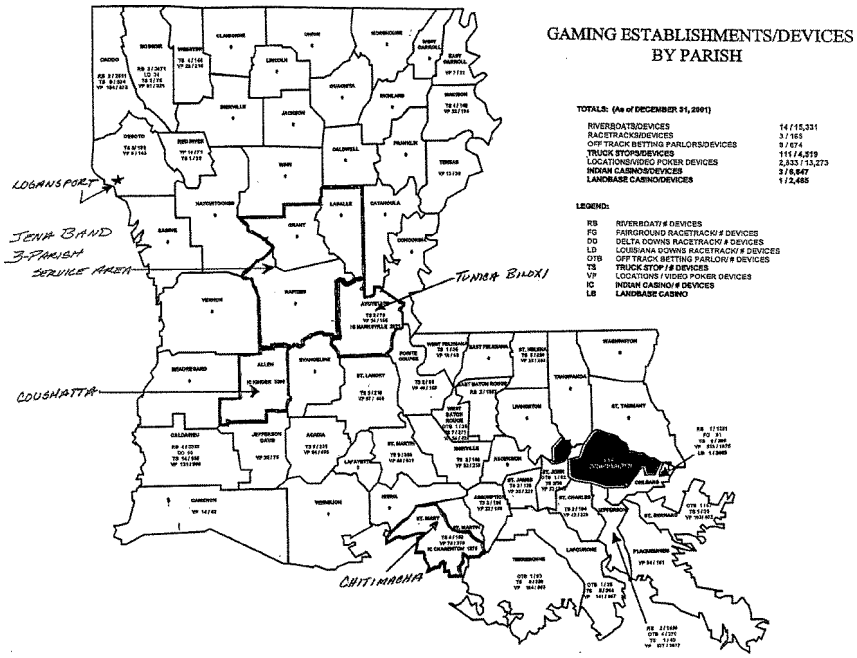
As of the date of this hearing, nine years after receiving federal recognition, we are still without a single parcel of land on which we may legally conduct gaming activities.

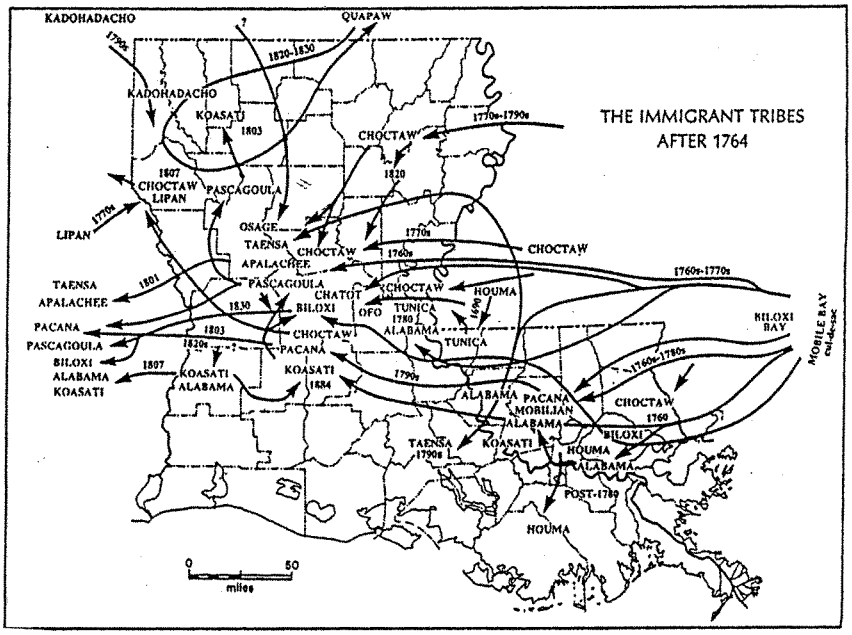
*Conclusion*

Perhaps we were naive, but when we first considered Indian gaming the vehicle for economic development, we had no concept of the degree to which our efforts would become the focus of virulent and extremely well-funded attacks from both Las Vegas-based non-Indian casino operations and from other tribes, most notably the Coushatta and the Mississippi Choctaw. The opposition of well-heeled, well-established gaming concerns can make it incredibly difficult for newly-recognized tribes to participate in the economic benefits which have been made available to most other tribes. This very much has become a struggle between the haves and the have-nots.

It is my hope that the story of the long and difficult road upon which my Tribe has been made to travel will give the Committee and the public a better sense of the realities facing landless and nearly landless tribes. We urge that the Committee help better inform the public about the legal and practical realities facing tribes like ours and about the significant obstacles inherent in acquiring off-reservation land in trust. It is imperative that the public debate about off-reservation gaming be conducted within the context of these realities, and within the context of the historical facts which have left tribes like mine in significantly disadvantaged positions.

I once again thank you for the opportunity to tell the Jena Band of Choctaw Indians' story today. I would be most happy to answer any questions you may have.

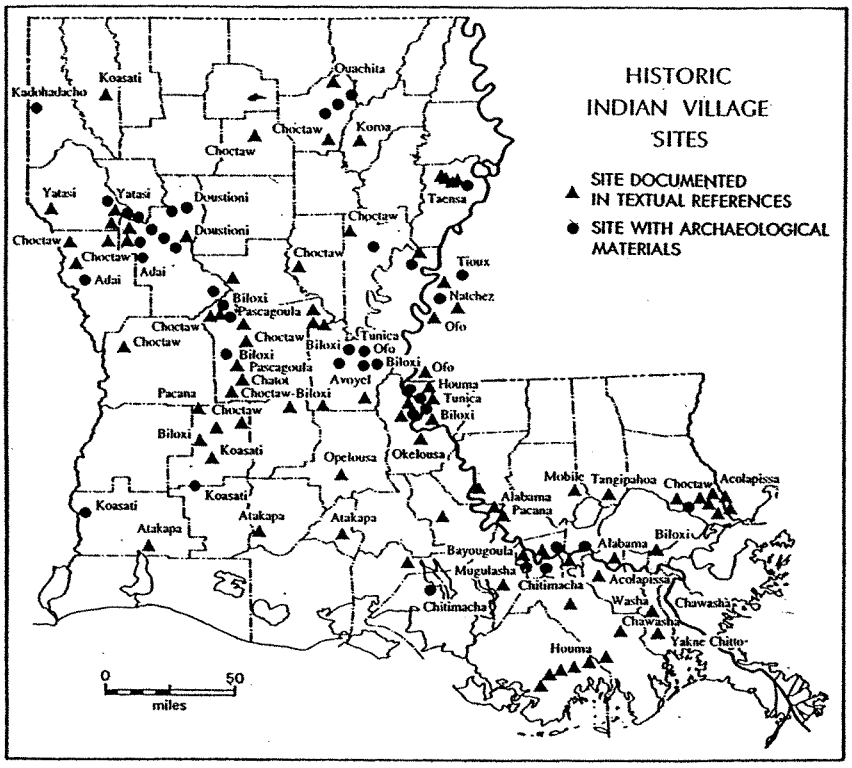



*Courtesy of the Louisiana State University Cartographic Section*

Kniffen, Fred B., H.F. "Pete" Gregory and George A. Stokes. The Historic Indian Tribes of Louisiana. Louisiana State University Press. Louisiana: 1987.

TRIBAL SETTLEMENTS




*Courtesy of the Louisiana State University Cartographic Section*

Kniffen, Fred B., H.F. "Pete" Gregory and George A. Stokes. The Historic Indian Tribes of Louisiana. Louisiana State University Press. Louisiana: 1987.

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Chairman POMBO. Thank you.

Chief Bearskin.

**STATEMENT OF CHIEF LEAFORD BEARSKIN, TRIBAL CHIEF, WYANDOTTE NATION, WYANDOTTE, OKLAHOMA; ACCOMPANIED BY DAVID McCULLOUGH, ATTORNEY**

Mr. BEARSKIN. Chairman Pombo and members of the Resource Committee, I thank you for inviting me here today. I consider it a great honor and a privilege.

My name is Leaford Bearskin. I am the elected chief of the Wyandotte Nation. I have been the chief for almost 22 years after being elected in 1983. I understand that the purpose of my testimony today is to discuss gaming off reservation in restored and newly-acquired lands. My tribe, the Wyandotte Nation, opened a casino in Wyandotte County in Kansas on August 28, 2003 after a

long and bitter legal study. Although there are probably others who are more qualified than I to speak about Indian gaming, perhaps none share the scope of magnitude, fears, and frustrations that I and my people have encountered.

On April 2, 2004, after 214 days, we opened our doors and created 48 full-time jobs in Kansas City, Kansas. The Attorney General of Kansas ordered 23 armed troopers to raid our facility and threaten patrons and workers alike. These men seized all our assets and arrested our manager, Ellis Enyart. Phill Kline, the highest-ranking law enforcement officer in Kansas later explained his actions as enforcing the laws of the State of Kansas.

We ask how could this happen. It turns out that the Attorney General's actions, namely that of invading our sovereign lands, were precipitated by a legal opinion drafted by a part-time attorney working for NIGC. This opinion, in short, stated that our reservation located in Wyandotte County, Kansas on land that my ancestors named was, quote, not Indian land because it was not lands acquired in settlement of a land claim.

I believe that the U.S. Government should follow the law and not let bureaucrats interpret the laws contrary to what Congress has passed. The law that the Wyandotte Nation is following was passed by Congress, not an attorney at the NIGC who arbitrarily decided that she had the power to harm my nation as she did so.

Over the years, the Wyandottes have signed 19 treaties with the U.S. Government. Of these, we have a perfect record. There are 19 that have been broken, but not by us. I believe there are illegal and political attempts to break another agreement, not a treaty, but a law, Public Law 98-602 passed in 1984. I was there when it happened, and I think some of you were too. It was a land claim settlement bill. I want to emphasize that.

We have land in trust in Kansas City. This land was taken into trust for the Wyandotte Nation following every law, every statute, every standard given by the United States for us to follow based on a law passed by this body through this committee in 1984. Some people think that laws only apply to the Wyandottes if they can be used against us. The legal twists and turns in this case have been so numerous and in some cases so ridiculous that it is hard for me. I cannot begin to explain them in detail, but rest assured, we have followed the law to the letter in everything we have done.

Right now, this law is being distorted and used against the Wyandotte Nation. We believe this is not right, but historically this has always been the case. Whenever an Indian nation has something that someone else perceives to be of value, it is usually taken away using legal and political means. This statement is indisputable. The horrific history of this Nation in regards to the way my people, the Wyandotte Nation, and the rest of the Indian nations have been treated is very real and very well documented.

In the other chamber of this body, there is a resolution apologizing to the American Indian for the way we have been treated by the U.S. Government. I appreciate this very, very much. I ask that the United States follow the laws that it made and stop the harassment of my people through illegal means by some of the leaders of the State of Kansas. We have followed the law. We are being harassed and attacked by the leaders in the State of Kansas

simply because they think they can get away with it. We feel we are right, and we will continue to fight this out because we are right and because our rights are being trampled by a State Attorney General who decided that without following the law, he could attack my nation and close down my casino on our trust land.

I hope and pray that my testimony here today will stir this committee to action to protect and defend those of us that are playing by the rules and aspiring for the right of economic freedom and prosperity.

There are things that I know. I know that the Congress of the United States passed Law 98-602 on October 30, 1984. It was a land claim settlement bill. I want to emphasize that again. I know because I was there. I think some of you were there. We as a nation have struggled now for almost 20 years, ever since the Congress passed Public Law 98-602 in October of 1984. That law was passed by the Congress to settle the decades of old land claims for lands that were taken from my ancestors illegally. Over 8 years ago, the Secretary of the Interior signed a deed of trust for lands that the Wyandotte purchased in accordance with Law 98-602 in July 1996. According to the Bureau of Indian of Affairs, that land could be used by the Wyandotte for economic development purposes.

As we sit here today, every conceivable effort has been made by competing interests, politicians, and even legal authorities to deprive the Wyandotte of their legal rights. In short, these people have used every means to deprive my people of a chance—no, not a chance, but of the right to economic prosperity that Congress declared we had over 20 years ago.

I am not here for a handout. I am asking for a hand up. All I ask is that this country, the United States of America, live up to their word, their word written in Public Law 98-602, and allow the Wyandotte Nation to move forward with our economic development. Specifically, I ask this committee to re-affirm that Public Law 98-602 was a land claim settlement, and if we do that, we will take care of all the rest ourselves. I think enough is enough.

Thank you very much.

[The prepared statement of Mr. Bearskin follows:]

**Statement of Leaford Bearskin, Col. USAF, Ret., Chief, Wyandotte Nation**

Chairman Pombo and Members of the Resources Committee. Thank you for inviting me to testify here this morning. It is a great honor and privilege.

My name is Leaford Bearskin. I am the elected Chief of the Wyandotte Nation. I have been the Chief for almost twenty-one years, having been first elected in 1983.

I understand that the purpose of my testimony today is to discuss gaming on off-reservation, restored, and newly-acquired lands.

My Tribe, the Wyandotte Nation, opened a Casino in Wyandotte County, on August 28, 2003, after a long and bitter legal struggle.

Although there are probably others who are more qualified than I to speak about Indian Gaming, perhaps none share the scope of magnitude, fears or frustrations that I and my people have encountered.

On April 2, 2004, 204 days after we opened our doors and created 48 full time jobs, the Attorney General of Kansas ordered 23 armed troopers to raid our facility, threaten patrons and workers alike. His men seized all of our assets and arrested our Manager, Ellis Enyart.

Phill Kline, the highest-ranking law enforcement officer in Kansas, later explained his actions as "enforcing the Laws of the State of Kansas".

How can this happen, you may ask? It turns out that the Attorney General's actions, namely that of invading our sovereign lands, were precipitated by a legal "opinion" drafted by a part time attorney working for the NIGC. This "opinion" in short stated that our reservation, located in Wyandotte County, Kansas, on land that my ancestors named, was "quote" not Indian Land because it was not land acquired "in settlement of a land claim".

I believe that the United States Government should follow the law and not let bureaucrats interpret the laws contrary to what congress has passed. The law that the Wyandotte Nation is following was passed by Congress, not an attorney at the NIGC who arbitrarily decided she had the power to harm my nation and then did so.

Over the years, the Wyandottes have signed 19 Treaties with the government, and of these, we have a perfect record, there are 19 that have been broken, and none of them by the Wyandotte Nation.

I believe there are legal and political attempts to break another agreement, not a treaty, but a law, Public Law 98-602 passed October 30, 1984. I was here when this passed, and so were many of you. It was a land claim settlement bill.

We have land in trust in Kansas City. This land was taken into trust for the Wyandotte Nation following every law, every statute, and every standard given by the United States for us to follow based on a law passed by this body, through this committee in 1984, Public Law 98-602.

But it seems that laws only apply to the Wyandottes if they can be used against us.

The legal twists and turns in this case have been so numerous, and in some cases so ridiculous that it is hard for me to try and explain them in detail, but rest assured we have followed the law to the letter.

Right now, the law is being distorted and used against the Wyandotte Nation, and this is not right, but historically, that has always been the case.

Whenever an Indian has something that someone else perceives to be of value, it is usually taken away using legal and political means. This statement is indisputable, and the horrific history of this nation in regards to the way my people, the Wyandotte people, and the rest of the Indian Nations have been treated is very real, and very well documented.

In the other chamber of this body, there is a resolution apologizing to the American Indian for the way we have been treated by the United States government.

I appreciate the gesture, but I would just as soon that this nation follow the laws that it made, and stop the harassment of my people through illegal means by some of the leaders of the State of Kansas.

We have followed the law, and are being harassed and attacked by the leaders of the State of Kansas, simply because they think they can get away with it.

We are right, and we will continue to fight this out, because we are right and because our rights are being trampled by a state attorney general who decided that without following the law, he could attack my Nation and close down our casino located on trust land.

I also hope that my testimony here today will stir this committee to action, to protect and defend those of us that are playing by the rules, and aspiring for the right of economic freedom and prosperity.

All I know is that the Congress of the United States passed Public Law 98-602 on October 30, 1984.

It was a land claim settlement bill.

I know, because I was there.

So were some of you!

We as a nation have struggled now for almost twenty years, ever since the Congress of the United States passed Public Law 98-602 in October of 1984. That law was passed by the Congress to settle a decades old land claim for lands that were taken from my ancestors illegally.

Over eight years ago, the secretary of the Interior, signed a deed of trust for lands that the Wyandotte purchased in accordance with Law 98-602 in July 1996. According to the Bureau of Indian Affairs that land could be used by the Wyandotte for economic development purposes.

As we sit here today, every conceivable effort has been made by competing interests, Politicians, and even Legal Authorities to deprive the Wyandotte of their legal rights. In short, these people have used every means to deprive my people of a chance, no, of the right, to economic prosperity that congress declared we had over twenty years ago.

I'm not here for a hand out. All I ask is that this country, the United States of America live up to their word, the word written in Public Law 98-602, and allow the Wyandotte Nation to move forward with their economic development.

Specifically, I ask this committee to reaffirm that Public Law 98-602 was a land claim settlement bill.

Enough is enough!

Thank you.

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Chairman POMBO. Thank you very much.

I would also like to acknowledge that the chief is accompanied by David McCullough, who is an attorney. He was sworn in, so he is available for questions.

I am going to recognize Mr. Tauzin first.

Mr. TAUZIN. Chief, let me first extend to you, as my colleague did, my warmest appreciation on behalf of a grateful Nation for your service to our country and for your extraordinary career. We thank you for that, sir.

I want to turn to Principal Chief Norris and to follow up on the conversation that I had with Ms. Martin. Let me first acknowledge to you, Chief, that my culture, the Acadian Cajun culture of Louisiana, shares some of your experiences. We were blended people in Nova Scotia, and in the French Indian War the Brits were involved in, they ended up acquiring the land, the sovereignty over Nova Scotia and ended up deciding that we were not a trustworthy people since we were of French descent, and they gathered us up at a little church in Beau Pre and without warning put us on ships, put my ancestors on, separated husbands and wives and kids on purpose, put them on ships and dumped them on foreign lands. Some of them were sold into slavery. Some were dumped into the islands of the Caribbean. Most were dumped on the shore of Maryland and Massachusetts with no prospects.

Longfellow wrote a beautiful epic poem, "Evangeline", telling the story of my people and how these two lovers who came to the church at Beau Pre to be married that day were separated were and spent their lives trying to find one another. It is a beautiful fictitious story, but nevertheless it tracks a real story of the Acadian people whose land was taken from them and never compensated and relocated and struggled to find a home in Louisiana.

So I share some of your feelings about the history of our government and the way it has treated Indian tribes in our country and the way in which land issues have been resolved, and I sympathize deeply with some of your arguments. I particularly was impressed with the presence of the Choctaws in Louisiana. When I saw the historic presentation you were making to the Bureau of Indian Affairs, it occurred to me that it was terribly incomplete. There was much more information you could have gathered. For example, one of the communities that my grandmother was born in, Leontine Delotte, was a place called Choctaw, Louisiana in Ward Six next to Chackbay where I was born. Achaphalia is, I think, a Choctaw word itself. So many words in the language of the community of our State is Choctaw Indian origin.

So I was deeply impressed with the presentation, frankly, you were making, and as you know, I did my best to ensure that you got a fair process. I think you got slow-rolled, and I think, as I said, the process worked against you and you didn't get a fair chance, and I am sad about that as I am sad about many of the interactions of our government with Indian populations over the history

of our country and the results that sometimes end up I think unfairly treating your populations.

And so I thank you for all of your testimony today. I don't know how this is going to work out for you, Chief Norris. Again, when we met and you presented your case, I made no commitments to you on whether you should win or lose, but simply that you got a fair process, and I am not sure you got it, and I feel deeply hurt and disappointed that that happened. Perhaps it can be rescued at some point and your landless tribe can be made whole and you can have a fair chance to do what any other Indian tribes are doing in our State, and that is competing in this area that has meant such great resources to my friends of the Chitamachas and the Coushattas and others in the State who have benefited.

I have watched the Chitamachas, what their tribe has been able to do for their families because of the revenues derived from their casino. When I first got elected, there was no casino. There was a 600-acre plot. I went to the first graduation ceremonies. There were two kids graduating out of kindergarten into first grade and one going from eight to twelve, but it was a wonderful ceremony. I remember the tribe was there to celebrate these young people.

I saw the poverty of those families, and I see the difference now. I see the senior centers. I see the health care center, the fire department that has been built, the rec centers, the cultural center that has been established to teach the young children of the tribe the history and the culture of their people. I have seen what an amazing advantage the casino has been to giving these poor families a share of the American dream. I wish you would have had that opportunity like the Chitamachas, and 1 day I hope you have that chance.

And I can only do something that I think you deserve, and that is offer you an apology that the process didn't work out as fairly as I think it should have. You should have been given a chance at success, and I don't think you have.

And I yield back the balance of my time.

Mr. BEARSKIN. Thank you, sir.

Mr. TAUZIN. I recognize Mr. Pallone for a round of questions.

Mr. PALLONE. Thank you, Mr. Chairman.

I am just trying to make sense of, you know, how this all fits into the overall issue of IGRA and off-reservation-acquired land. It seems to me that Mr. Stevens is saying that essentially IGRA should be allowed to continue the way it is and supports the status quo and thinks that the system works well, and the other two tribal leaders are suggesting in both their cases that maybe it doesn't because you see that somehow you should be an exception on don't fall within IGRA exactly the way it might be interpreted.

But I still don't understand. In other words, in the case of the Jena Band, you have been following the IGRA process, but ran into a problem because of the Governor, because of the change in the administration, and now the Governor doesn't support it; is that the main problem that you face right now? You said you actually met the two-part test. Right?

Ms. NORRIS. Yes. Yes. In December of last year, the Interior issued a statement in concurrence with the Governor of Louisiana

who at that time was Governor Mike Foster, that they would take the land into Logansport into trust for gaming for the Jena Band.

Mr. PALLONE. But now there is a change of administration.

Ms. NORRIS. Yes. He passed it along to the new administration, which is Kathleen Blanco, the Governor of Louisiana.

Mr. PALLONE. Now, would you suggest—I am just trying to move it along because I want to ask the other Chairman a question too. Would you suggest that there be a change in IGRA, or you just feel that right now you have become blocked because of the change of administration?

Ms. NORRIS. Once again, I believe another door has been closed to us. There are barriers that have hindered this tribe into pursuing gaming and moving further. We are at a roadblock because we have not heard from Interior. We have not heard from the Governor, only in a responsive letter dated June 1, 2004. So I am still left out in limbo as to what is going to be happening with this particular tribe.

Mr. PALLONE. So what would you suggest be done by the Committee or by Congress at this point to address your problem?

Ms. NORRIS. To address my problem, I am looking for some responsibility to be taken in this case, whether it is from Interior, whether it is from the State, in issuing a concurrence or a nonconcurrence, but I am left just hanging there, and I think there needs to be a responsibility to our tribe, to our people, to bring resolution to this. I am asking for help in endorsing from your committee that some type of action be taken in our case so we can move forward to whatever we have to do next to resolve this issue.

Mr. PALLONE. OK. And then—

Mr. TAUZIN. Would my friend yield a second?

Mr. PALLONE. Yes. I do want to get to the other guy.

Mr. TAUZIN. I will just take a second.

Mr. PALLONE. Sure.

Mr. TAUZIN. One of the problems that we see in IGRA that is presented by the Jena Tribe is the fact that you have landed tribes and landless tribes. They happen to be a landless tribe, and so the way they are treated under the law is different from the way a landed tribe goes through the process, and they seem to be caught in this cycle of limbo where nobody gives them an answer. And that is their problem.

Mr. PALLONE. No. I understand, and I started in the beginning here saying although I generally agree with NIGA's position that we don't want to change IGRA, there may be cases where there is a problem, and I think you two are the hard cases, so to speak.

As far as Chief Bearskin is concerned, now have you applied or ever proceeded through the IGRA process in trying to address your concerns?

Mr. BEARSKIN. Yes, we have done that. We have complied with all the laws and stuff that we have to to get where we are going.

Mr. PALLONE. So the problem is that you claim you fall under the exception to IGRA, and the AG in Kansas disagrees. So what are you going to do now? What do you want us to do?

Mr. BEARSKIN. We want you to reaffirm that the 98-602 says what it says and that our land was a land claim settlement.

Mr. PALLONE. And are you in court now or is this proceeding through IGRA or in the courts in any way, your claim?

Mr. BEARSKIN. I think my attorney can better answer that than I can, sir, if you will.

Mr. PALLONE. Sure.

Mr. MCCULLOUGH. The answer is, yes, we are in court now. We are in State courts on the seizure that was made by the State of Kansas, and we are also in Federal Court asserting several challenges.

Mr. PALLONE. But are you looking for any particular legislation action by Congress to address this, or you are just going to proceed through the courts?

Mr. MCCULLOUGH. What we are looking for is we are actually focusing on the exceptions under the IGRA, as was correctly pointed out. The land that we have in trust was not taken in trust specifically through an IGRA process. The land was taken in trust because there was a special law for the Wyandotte, 98-602 referred to by the chief several times, that in 1984 set aside $100,000 for the tribe to purchase land, and within that language of that particular bill was that the land—it was mandated that the Secretary take that land into trust, and we have gone through that process and the Secretary at the completion of that process took the land into trust in 1996. As I believe Mr. Skibine referred to earlier, at the time the exception we were relying upon, was that it was contiguous to reservation land. The Wyandotte has a tract of land in Kansas City, Kansas. The 10th Circuit at the completion of litigation over that issue determined that the particular tract of land did not qualify for reservation land under IGRA and therefore that exception did not apply.

The Wyandotte then went back to the NIGC and put forth claims under essentially the three remaining exceptions, but specifically it was a land claim, the position of Wyandotte, that Public Law 98-602 which was the allocation of funds for Congress as a result of their claims was, in effect, a land claim. So we are here under the exceptions and the interpretations under those exceptions.

Mr. PALLONE. And you are still pursuing that in the courts at the same time?

Mr. MCCULLOUGH. We are.

Mr. PALLONE. OK.

Thank you Mr. Chairman.

Mr. STEVENS. Chairman Pombo and Congress Pallone, I stand here as Chairman of the National Indian Gaming Association supporting the rights of these tribes. I just want to ask—joining me today is our executive director, Mr. Mark Van Norman. If he could just give a brief overview of the intent of our testimony regarding that particular topic.

Mr. VAN NORMAN. Thank you, Mr. Chairman and Congress Pallone and Congressman Tauzin.

What we intended by our testimony was to say that the Indian Gaming Regulatory Act provides provisions to right historical wrongs. The point of having the land claim settlement provision is for the tribes that have had a land claim settlement can use their lands the same way that other tribes can use their lands, and the point is that relates back in time to their original holding of the

lands. That is a simple matter of justice for them to use their lands.

Similarly, when you have tribes that have been through the removal process, passed over by the United States, and are restored to recognition, it is entirely appropriate and just a matter of simple justice for the tribes to have an initial reservation that they can use as other Indian lands are used. So we think that the act, properly applied, would take care of these positions, situations. We are not saying that the BIA has properly applied it in every case, but we think that the statute would make a provision for that and that the BIA should take a look at these cases and act appropriately.

That is what we are saying.

Mr. PALLONE. OK. Thank you.

Ms. NORRIS. Congressman Pallone and Chairman, if I may, to clarify my answer to your question on behalf of the Jena Band, I would like to ask Heather Sibbison to offer up comments on your question. That is what we are here for today, to give you a little bit better understanding of our situation.

Ms. SIBBISON. Actually, I would just essentially reiterate Mark's point, which is basically there are two kinds of exceptions to the rule that you can't game on land acquired after 1988. There is the regular exception, which is a two-part determination, and that requires that you put this package of goodies together, you get the government on board, you get the locals on board, and there is a pretty standard set of data, some information you have to be able to provide, and you have to be able to show certain things to be able to be successful to go through that exception.

Then there is sort of the second package of exceptions which are really intended to put tribes that were either not recognized in 1988 on equal footing with tribes that were recognized in 1988, because by definition those tribes do not have reservations on which to conduct on-reservation gaming operations; and similarly, as Mark is saying, the settlement of the land claim exception is intended to put a tribe back on the position it would be in if it hadn't lost its land before 1988, usually through an illegal transaction based on the non-intercourse act. So that the second group of exceptions is intended to put tribes that were disadvantaged because they weren't in the right—just by historical accident weren't in the right place on October 17, 1988, back to where they should be.

In a sense and almost in defense of the Department, I think part of what is happening is that there are no real guidelines as to how to interpret those three exceptions, how to decide what is appropriate to be in this reservation, what are the standards by which you should decide whether a tribe is a restored tribe and whether the lands are being restored to it, and that the problem with the public policy debate and the rhetoric on off-reservation gaming is there really are no discernible standards. And so from the Department's standpoint, it puts the Department in a very awkward position by which, frankly, I think that they are stymied. It is hard for them to make decisions because they are afraid they are going to make the wrong decision. Congressman Tauzin is right. They end up just not making a decision.

And in the Jena Band's case, you are right. The reason, in my opinion, the Department was much more comfortable going through

a two-part determination, which is not really appropriate for this tribe—it is a landless tribe—they are more comfortable because there is a precedent for it. The Department knows what to look for, knows that the Governor is on board, knows that the locals are on board. They have done it before. The Department would have to correct me, but I think on initial reservation, there is only ever been one or two, if ever. There have been very few restored lands, and the problem is everyone is just having a hard time figuring out where they fit, and it puts the tribes in a particularly awkward position because you can't go to a statute or regulation and say, OK, I fit here for sure. And you have to spend a lot of time and money trying to convince the Department that you should fit in that exception, and it is hard for the Department to know whether you do or not because there are no guidelines, and then this feeds back into Congressman Tauzin's point about lobbyists, which is the public debate is so fevered on this issue now that it is hard to get to the merits and it does put the Department in an awkward position where it is scary to get to the merits unless there are clear standards because of the public debate and the public debate is being fueled by unfortunate elements and which then gets back to Mark's point, which is that I think the statute structurally is OK. It has built into it flexibility for these tribes that were not sort of up and running in 1988, for whatever reason, but there have to be regs or guidelines or more thought from you guys to Interior, telling them what you expect them to do, because I think they don't know what to do, and it has put the tribes in a very awkward position.

Mr. BEARSKIN. Mr. Chairman, if I may, I would like permission for my attorney to make one more statement for us, if you would, please.

Chairman POMBO. Yes.

Mr. MCCULLOUGH. Mr. Chairman, I want to be clear as a follow-up in the response that I made a few minutes ago, that I believe the specific question was were we looking for some change in IGRA by this, was that our proposal, and the answer is no. We believe there needs to be more clarification as to how the exceptions are applied; however, in the case of the Wyandotte, what we believe is that Public Law 98-602, enacted in 1984, was in settlement of a land claim. The National Indian Gaming Commission has found that it was not by applying the standards that they applied. What we are asking for this committee to do is to reiterate what was done in 1984, that this land was set aside for the Wyandotte in settlement of a land claim and therefore, under IGRA, is it is a land claim settlement which falls under the exception.

Thank you.

Chairman POMBO. OK. Mr. Stevens, you know as well as anyone the pressures and the controversies that this committee is dealing with when it comes to this issue.

Mr. STEVENS. Sure.

Chairman POMBO. And we have talked in the past about trying to clarify this issue through legislation and trying to deal with it, which is exactly what the intent of Congress is, because a lot of times when Congress passes a law, as it gets interpreted through a number of different administrations, we end up with situations that may or may not really be within what Congress originally

intended. And we have looked at a number of different ways of trying to clarify this. Obviously, if we try to move forward, there will be a lot of consultation and a lot of talk between this committee and you and your membership in trying to deal with how you clarify this. One of the big issues that we deal with is landless tribes and how do they ultimately fit into this picture and how do we move forward.

But one question I have for you is if you have differences of opinion amongst your membership as to whether or not something should or should not be approved, do you take a position on that?

Mr. STEVENS. Absolutely not, sir. We represent approximately 180 tribes, and it is our standing policy that we do not involve others with issues between tribes. As a matter of fact, the National Congress of American Indians has a standing resolution, which is our colleagues here in D.C., and I wrote the resolution several years ago. So we stand away from issues where there are tribes that have differences.

Chairman POMBO. So if there is a difference of opinion amongst the tribes, then you just stay out of it, you don't take an opinion on that issue?

Mr. STEVENS. That is right.

Chairman POMBO. When it comes to landless tribes, should those tribes be required to acquire land for gaming purposes inside their lands claim area or within the area where the tribe resides? Where do you guys generally come down on that?

[Mr. Stevens confers with Mr. Van Norman.]

Mr. STEVENS. I'm sorry. I just want to make sure I am on legal standing with my partner here on this business. In general, we continue to assert historically, an historical basis.

Chairman POMBO. Now, do you believe that if you have a tribe that has historical lands and they are in very isolated area, that they should be allowed to seek lands in an area that is more heavily populated or better suited for gaming purposes?

Mr. STEVENS. I think it applies to the Section 20 process. I think that it is a natural, I think, to look for a good area, but I think we constantly assert the historical rights of tribes, and that is why I gave probably a little more historical overview than people really wanted to hear today; but for us, to the tribes, it means a lot considering what we have been through throughout the years from European contact until now.

Mr. VAN NORMAN. Mr. Chairman, could I just amplify that a little bit?

Chairman POMBO. Yes, Mark.

Mr. VAN NORMAN. We do think it is important that there be a thorough consultation through the Section 20 process that takes into account the interests of neighboring tribes, and we thought that that is an important part of the process because, you know, those tribes, the Federal Government also has a trust responsibility to those tribes.

Chairman POMBO. Well, I have some different ideas that the Committee has been working on to try to deal with this, which is one of the reasons we wanted to do this hearing, so we could kind of figure out what are some of the challenges we are up against in

trying to move forward with this, but I appreciate the testimony of this panel.

Mr. Baca, did you have any questions?

Mr. BACA. Yes, I did do. Thank you very much, Mr. Chairman. I have a question for Mr. Stevens.

In your testimony, you state that the Secretary of Interior has a trust responsibility to neighboring tribes as well as tribes who apply for gaming away from the reservations. Do you believe that this trust responsibility has been kept?

Mr. STEVENS. Well, you know, I struggle with the words "trust responsibility" as it pertaining to tribes overall and certainly historically. You know, I don't really want to look back over it and would like to look forward and try to assert that we need them to hold on and—I'm sorry—need to stand by that trust responsibility from here into the future. So for me to look back and point out, there are probably several points in the past that I could assert concern about trust responsibility, but I would look more to the future for these tribes that are in the process.

Mr. BACA. And that is following the Section 20 process too as well, right, which is part of what the responsibility of the trust fund is, to make sure that they are compliant with the policies that are currently in place. Is that correct?

Mr. STEVENS. Yes.

Mr. BACA. And just as a follow-up, do you believe that the consultation process between the Secretary and the neighboring tribes can be improved? If so, how?

Mr. STEVENS. I'm not sure if I understand your question.

Mr. BACA. It is just a follow-up to the original one, question. First of all, the first question was do you believe the trust fund's responsibility has been kept. You answered that. As a follow-up to that, how do you believe that the consultation process between the Secretary and the neighboring tribes can be improved?

Mr. STEVENS. How do I believe it can be improved?

Mr. BACA. Um-hum.

Mr. STEVENS. I just think it is just straightforward communication between all the principals involved.

Mr. BACA. Do you or anyone have a problem, I think to follow up on what the Chairman indicated in reference to one tribe—and I think all of us believe in historical land and rights of tribes within their own areas, but do you believe that tribe should have the right because they look at a gold mine or a probability of a highway or a freeway, that they should be allowed to come, let's say in California, for example, from a northern portion of California to southern California even though it is not near their reservation or have no reservation or have no identify in that area, but yet there are other tribes that are close by that do have a closer identity?

Mr. STEVENS. No, sir. Again, we continue to assert historical tribal homelands.

Mr. BACA. And that means that basically what you are saying is a tribe that is within that area who asserted that area and lived in that area then should have that right versus a tribe who does not that wants to come from another portion for the sake of gaming or other purpose?

Mr. STEVENS. Yes. I think it is pretty safe to say that when we are asserting historically, that we are not condoning a tribe coming from some other place and going to no place that they have ever been in their history just for the purposes of going where there is a large freeway and a large market.

Mr. BACA. And that would create disharmony amongst the current legislation that is in place. Correct?

Mr. STEVENS. I think it would.

Mr. BACA. And it would create chaos and disharmony in terms of a concept of sovereignty and protection of sovereignty too as well. Is that correct?

Mr. STEVENS. Yes, I think so, and I just want to make sure, Congressman, you understand—and I said this to Chairman Pombo—that even though we stand away when there are issues, the National Indian Gaming Association, you know, we will meet in the next two days. We have a mid-year meeting in August. We continue to work cooperatively. So on these issues, we are talking about them and we are working on these issues. We just don't get into specifics. So I don't want to in any way, shape, or form tell you that I don't want nothing to do with this. I am here to advocate for resolution, for the rights of these tribes and all Indian tribes. So we are not like standing away and saying we are hands off. We want to help, but on the specific issues, we have to stand clear, but we consider this very much a concern of ours.

Mr. BACA. Thank you very much.

Mr. TAUZIN. Mr. Chairman.

Chairman POMBO. Mr. Tauzin.

Mr. TAUZIN. Mr. Stevens, you heard Ms. Sibbison, her comments that at least from the Jena perspective what they saw was a Federal Government agency who felt of kind of caught between their duty to operate in the best interest of the existing tribes who had casinos and at the same time work through the question of this landless tribe who is filing an application based upon historic connection, and her evaluation of the problem that the department is that it doesn't have good objective criteria to determine historic connection and that without much more clarity and much more certainty in defining that criteria, the department is afraid that it is going to violate one duty or the other; it is caught in between.

Do you concur with that analysis and would you support Jena's request that either the Congress or the Department work out some clear regulations, some clarity, some objectivity in the historic connection review so that your position that historic connection can be a real and objective standard for determination of these landless tribes as to where they might go?

Mr. STEVENS. Certainly we support resolution to that. You know, again, we assert the rights of these tribes, and I would like to ask Mark to give you a little bit more legal review on it.

Mr. TAUZIN. Please. Do you agree with Ms. Sibbison's analysis or do you agree with it or would you support our request, perhaps, for the agency to adopt objective criteria for determining historic connection?

Mr. VAN NORMAN. I think I agree with Ms. Sibbison's analysis that there are two parts to the statute.

Mr. TAUZIN. Obviously.

Mr. VAN NORMAN. One is for the historical injustices and to address land settlements and newly recognized tribes, and the other is a Section 20 process which is more of a consultation process with the local government and neighboring communities, and then the way we see it, the Governor has an obligation to act in good faith and take into account the interests of all parties concerned. We don't think that the statute needs to be amended at this time.

Mr. TAUZIN. She didn't recommend that. All she recommended was that there be more clarity at the Department. The Department is not afraid to make a mistake, that it knows literally how to evaluate historic connection claims.

Mr. VAN NORMAN. I think one of the problems with the Department is they don't have deadlines that they act upon.

Mr. TAUZIN. Exactly.

Mr. VAN NORMAN. And they take too long to get things done.

Mr. TAUZIN. Exactly.

Mr. VAN NORMAN. And I think if the Department were to adopt internal deadlines, that that would help these situations.

Mr. TAUZIN. That is an additional good recommendation, Ms. Sibbison. So what we are hearing from you is that maybe the Department needs, number one, deadlines in which to give somebody an answer so you are not stuck in limbo and, second, some clarity in knowing how to evaluate these applications.

I just want to amplify what Ms. Sibbison said. What I learned in watching this process is that is exactly what happened, that because there was difficulty in reviewing all of this historic information and knowing how much more research the tribe had to do to satisfy what might be the requirements of the law and because the Department obviously is concerned that it is balancing its duties here, that if it violates one side or the other, it is going to find itself in court, so it is slow to give an answer. Even if it had a deadline, it would probably try to skip a deadline.

So the impression I am getting and the recommendations I am hearing, Mr. Chairman, is that the Department needs some clarity in the criteria and maybe some deadlines to work under so that these tribes who are making these applications know exactly what they have to do if they are going to try to move to another piece of land, what is exactly required of them; and second, that the department has some confidence in making a determination on time that they are not going to get sued by both sides because there is too much ambiguity in the process.

I am not against lobbying. I am not against lobbyists. I am not saying that. But the ambiguity feeds this lobbying fever and it puts heat on the Department not to make a decision, which is exactly what happened in our case, and maybe we could have fairness and justice in many of these historic claims if we just had clarity, more certainty in the process, and maybe a deadline or two for the Department to work under.

Is that a fair evaluation?

Mr. VAN NORMAN. I think we would be in favor of deadlines.

Mr. TAUZIN. But you never told me whether you would be in favor of us asking for them to be more—regulations to clarify historic connection. Do you favor that or not?

Mr. VAN NORMAN. Well, we would have to take a look at them. One of the things that you will find—

Mr. TAUZIN. Why? Why wouldn't you support that?

Mr. VAN NORMAN. Well, you know, there is a wide variety of circumstances that will come up, and you will see—

Mr. TAUZIN. That is the problem. There are so many circumstances, the Department doesn't know which circumstances count and which don't, whether a tribe spending the night in an area is historic presence or whether they had a village there. The point I am making is why wouldn't you support the Department coming up with much more certainty and much clearer standards for settling these very difficult areas? Why wouldn't you support that?

Ms. SIBBISON. Let me clarify too, I actually meant sort of across the board, not just historical connection.

Mr. TAUZIN. Yes.

Ms. SIBBISON. The degree to which local—what is going on locally—

Mr. TAUZIN. The whole scene.

Ms. SIBBISON. The whole thing, because I agree with Mark that they really do need to be looked at on a case-by-case basis and you know need to look at all the puzzle pieces together to figure out what the right thing to do is.

Mr. TAUZIN. But you are not saying anything different, I don't think. That is why I think we have agreement here.

Ms. SIBBISON. Yes.

Mr. TAUZIN. And if we have agreement, it might be very good for all of you to make a request on our committee to help make that happen, because we can. We can help make that happen, not changing the law, by simply helping the Department to side some kind of agreement, some arrangements whereby all the parties feel like they are going to get an objective rather than a subjective decision out of the Department.

Thank you.

Mr. BEARSKIN. Chairman Pombo, can I make a statement about that?

Chairman POMBO. Yes, sir.

Mr. BEARSKIN. We are now working with the third Governor of Kansas. Before we get anything done, we may be working on the fourth one. I believe in deadlines, yes, sir.

Mr. STEVENS. I just want to assert, Congressman and Chairman, that these concerns will be brought forward to the tribal leadership and we will continue to discuss this and try to bring forward some proactive recommendations.

Mr. TAUZIN. Thank you.

Mr. STEVENS. Yes, sir.

Chairman POMBO. I am going to dismiss this panel, but I would remind you that members of the Committee may have additional questions that they will submit to you in writing. If you would answer those in writing, the hearing record will be held open to give you a chance to respond to those.

Thank you.

I would like to now call up our final panel of witnesses, who are: Deron Marquez, Chairman of the San Manuel Bank of Mission

Indians; Leslie Lohse, Treasurer of the Paskenta Band of Nomlaki Indians; and Kurt Luger, Executive Director of the Great Plains Indian Gaming Association.

Before you sit down, I am going to have you all stand up for a minute. If I could have you all stand and raise your right hands.

[Witnesses sworn.]

Chairman POMBO. Let the record show they all answered in the affirmative.

Thank you very much. To begin with, I want to apologize for the length of the hearing. I know you all have been waiting, but it is something that, obviously, the members have a lot of interest in.

Mr. Marquez, we are going to begin with you.

**STATEMENT OF DERON MARQUEZ, CHAIRMAN, SAN MANUEL BAND OF MISSION INDIANS**

Mr. MARQUEZ. Good morning, Chairman Pombo and Rank Member Rahall. My name is Deron Marquez, Chairman of the San Manuel Band Mission Indians based in southern California. I appreciate the invitation to testify before you.

The subject of acquiring landing to establish tribal casinos away from existing tribal homelands is a great concern of ours, that this sort of land acquisitions threatens not only San Manuel and its interest in particular and its ancestral homelands, but also the very existence of tribal government gaming in the future. For centuries, San Manuel people occupied the San Bernardino and San Gabriel Mountains and their southern foothills, the Mojave Desert and Napa Valley and out to Barstow and areas as far east as Twentynine Palms and Yucaipa Valley. Today, the San Manuel reservation is located in a small area, 850 acres located near San Bernardino and Highlands in California.

In 1986, San Manuel first established gaming on our reservation as a tool for generating revenues for our tribe. Since that time, we have heard elders from our tribe and many others say that tribal gaming will 1 day go away, that this source of subsistence will 1 day be part of our history rather our present. And what then will we have to sustain others? Our answer at San Manuel has been to diversify our economy and tribal holdings, but I fear that once again our elders will be right, acquisition of land for gaming purposes far away from existing reservation homelands and the enormous sacrifices that tribal communities must make to do so may be the beginning of the ends of our tribal government gaming and sovereignty as we know it today.

Tribal government gaming has proven to be a useful tool for tribes to become more self-sufficient and more able to provide opportunities for tribal members to live more abundant lives. Gaming has provided resources for tribes to more effectively protect their sovereignty rights where they have come under increasing threat. It has provided tribes with the opportunity to focus on revitalizing tribal languages and cultures where poverty made survival the first obligation for many Indians. It has given tribes opportunity to reacquire lands that were sold or taken from them in more desperate days and make them a part of tribal territory once again.

Without a doubt, acquiring land is key for some tribal communities to continue to rebuild themselves. There is much work to be

done for most tribal communities to ensure that their homelands are protected and suitable into the future, but the efforts to acquire lands far from existing reservations brings added scrutiny from the general public and now the Congress to land acquisitions and makes such reacquisition efforts more difficult, and not long ago, reacquiring land to build new schools or homes for tribal members did not receive the level of suspicion it does today. Seeking to have land taken into trust now takes longer than ever to accomplish. Now the highest levels of Congress have taken notice of this practice and rightfully so.

Casino deal acquisitions are not a new idea, but one that has been refined by clever casino developers. A new pattern is non-Indian casino developers matching tribes with economic depressed non-Indian communities in efforts to pull together a casino deal. Often times, the tribe's existing reservation and the non-Indian community are miles and miles apart. With such deals, there can be hidden costs of non-Indian communities seeking short-term economic relief who are ill-equipped to adequately assess the entities and individuals they are partnering with.

This is a hard lesson learned by some Indian tribes. There is now such a casino deal in the works in San Manuel ancestral land in the California Cities of Asperia and Barstow. The proposed land acquisition of Asperia is more than a hundred miles from the existing reservation of the Timbisha Shoshone Tribe, and although with a legislative slight of hand, this deal is more moving forward as an initial reservation rather than after-acquired lands under the Indian Gaming Regulatory Act, therefore the Department of Interior is not required to consult with San Manuel even though this land is within our ancestral territory and is much closer to our reservation than the existing Timbisha Shoshone Reservation. Furthermore, it may not require the concurrence of the Governor to be completed.

Similarly, the Barstow deal would allow the Las Coyotes Band to build a casino over a 160 miles from its reservation, again, encroaching on our ancestral lands and others.

These proposed casino deals and ones similar to them have the added effect of creating enormous tension between tribes who have claims to these lands as ancestor homelands as well. The long-term cost to tribes for this activity may also be substantial. Tribal government is a tool not a toy. Tribal sovereignty should be exercised responsibly for history shows that Congress and the courts give little patience where such powerful rights are abused.

That concludes my testimony. I will be pleased to answer questions when it is time.

[The prepared statement of Mr. Marquez follows:]

**Statement of Chairman Deron Marquez,**
**San Manuel Band of Mission Indians**

Good morning, Chairman Pombo and Ranking Member Rahall. My name is Deron Marquez, Chairman of the San Manuel Band of Mission Indians based in Southern California. I appreciate the invitation to testify before this Committee on the subject of acquiring lands to establish tribal casinos away from existing tribal homelands. I have great concerns that these sort of land acquisitions threaten not only San Manuel and its interest in protecting its ancestral homelands but also the very existence of tribal government gaming in the future.

For centuries, our Serrano people occupied the San Bernardino and San Gabriel Mountains and their southern foothills, the Mojave Desert near Apple Valley and out to Barstow, and areas as far east as Twenty-nine Palms and Yucaipa Valley. Today, the San Manuel Reservation is located on a much smaller area, 850 acres located near San Bernardino and Highland, California. In 1986, San Manuel first established gaming on our reservation as a tool for generating revenues for our Tribe. Since that time, we have heard elders from our tribe and many other tribes say that tribal gaming will one day go away. This source of sustenance will one day be a part of our history rather than our present. And what then will we have to sustain ourselves? Our answer at San Manuel has been to diversify our economy and tribal holdings. But I fear that once again our elders will be right. Acquisition of land for gaming purposes far from existing reservation homelands—and the enormous sacrifices that tribal communities must make to do so—may be the beginning of the end of tribal government gaming.

Tribal government gaming has proven to be a useful tool for tribes to become more self-sufficient and more able to provide opportunities for tribal members to live more abundant lives. Gaming has provided resources for tribes to more effectively protect their sovereign rights where they have come under increasing threat. It has provided tribes with the opportunity to focus on revitalizing tribal languages and cultures where poverty made survival the first obligation for many Indians. It has given tribes opportunity to reacquire lands that were sold or taken from them in more desperate days and make them a part of tribal territory once again.

Without a doubt, reacquiring land is key for some tribal communities to continue to rebuild themselves. There is much work to be done for most tribal communities to ensure that their homelands are protected and sustainable into the future. But the efforts to acquire lands far from existing reservations brings added scrutiny from the general public and now the Congress to land acquisition, and makes such reacquisition efforts more difficult. Not long ago, reacquiring land to build new schools or homes for tribal members did not receive the level of suspicion it does today. Seeking to have land taken into trust now takes longer than ever to accomplish. Now the highest levels of Congress have taken notice of this practice and rightfully so.

Casino deal land acquisitions are not a new idea but one that has been refined by clever casino developers. A new pattern is non-Indian casino developers matching tribes with economically depressed, non-Indian communities in efforts to pull together a casino deal. Oftentimes, the tribe's existing reservation and the non-Indian community are miles and miles apart. With such deals, there can be hidden costs to non-Indian communities seeking short term economic relief who are ill-equipped to adequately assess the entities and individuals they are partnering with. This is a hard lesson learned by some Indian tribes.

There is now such a casino deal in the works in San Manuel ancestral lands in the California Cities of Hesperia and Barstow.

The proposed land acquisition in Hesperia is more than 100 miles from the existing reservation of the Timbisha Shoshone Tribe. And through a legislative slight of hand, this deal is moving forward as an "initial reservation" rather than an "after acquired" lands under the Indian Gaming Regulatory Act, therefore the Department of the interior is not required to consult with San Manuel, even though this land is within our ancestral territory and is much closer to our reservation than the existing Timbisha Shoshone Reservation. Furthermore, it may not require the concurrence of the Governor to be completed.

Similarly, the Barstow deal would allow the Los Coyotes Band to build a casino over 160 miles from its reservation. Again, encroaching on the ancestral lands of others.

These proposed casino deals and ones similar to them have the added effect of creating enormous tension between tribes who have claims to these lands as their ancestral homelands as well.

The long-term costs to tribes for this activity may also be substantial. Tribal government is a tool, not a toy. Tribal sovereignty should be exercised responsibility, for history shows that the Congress and the courts give little patience where such powerful rights are abused.

That concludes my testimony. I would be pleased to answer any questions you may have.

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Chairman POMBO. Thank you very much, Chairman.

Ms. Lohse.

**STATEMENT OF LESLIE LOHSE, TREASURER, PASKENTA BAND OF NOMLAKI INDIANS**

Ms. LOHSE. Yes. Thank you, Chairman Pombo, for inviting us here today.

As Treasurer of the Paskenta Band of Nomlaki Indians and NCAI Pacific Region Area Vice President and the BIA Policy Committee Chair, those leadership roles have allowed me a vast opportunity to experience tribal government and gaming related issues. We know that nationwide, obviously, after hearing all of this this morning and knowing what has been going on, that gaming on off-reservation and restored and newly-acquired lands is a national issue, but locally for us, it is Tahema County.

Tahema County supervisors have had to twice reject a tribe, the Greenville Maidu, of Plumas County's proposals to do gaming in Tahema County noting that they have previously tried to go down into southern California, Oxnard, California Bay Area, California. The Tahema County supervisors understand, as we understand, the Hardwick case which clearly identifies Greenville's historical lands to be in Plumas County which where it states 275 acres is located three miles east of Greenville, Plumas County, California. So you must remember we talked about and recognition. They were re-recognized as Maidu, not as a tribe of Wintun or Nomlaki, which we have shown through anthropological letters and maps that designate clearly Tahema County as Wintun Nomlaki territory, not Maidu.

So as the Tahema County supervisors and we reject Greenville and their investors, the Wilmots as they are identified in their records, their attempt to negatively impact our homelands, this relocation is identified and driven by the tribe's out-of-state profiteer who purchased land in Tahema County. Their legal counsel, Judy Albietz, in her own statement reflects that the developer approached the tribe with this project. No consideration was given to Greenville's historical area because that was not where the investor purchased the land, and then they hired an out-of-state revisionist historian to rewrite our history to try and link a tribe, the Greenville Maidu, with the investor-purchased land. In fact, the only connection with that area is the fact that the Maidu member, one of them at one time, married a Wintun Nomlaki or a Wintun from the area.

This is a disturbing and exploitive picture of tribal governments. As the Chairman said, this continues to bring object about terms like "reservation shopping", questions about who we native Americans are and where we are truly from. It undermines the unrecognized tribes's attempts to regain their recognition.

I heard this morning about fairness, that IGRA was going to provide fairness. Is that fair? Higher scrutiny is given to our desire to protect our sacred sites and our cultural resources. Is that fair? Negative impacts due to the deals for this these off-reservation gaming virtually bring in state taxation. I heard that this morning. Is that fair? State and local jurisdiction over our tribal lands, that is not fair. The backlash and pressure on us who are currently compacted to make the same deals offered by those going off reservation, that is a negative impact economically as well as tribally and culturally.

All of these concessions are made that will forever affect our tribe. While the Wilmots of the world make their profits from Indian gaming and move on, we are left with that fair share that we have to provide to the States.

IGRA has worked for many years. These types of attempts to gain far-stretched off-reservation acquisitions have made review of IGRA even an issue. I don't believe that IGRA supports these types of land claims. I know the BIA does struggle with the legal and political realities of off-reservation land acquisitions. My concern, though, is the statement by Mr. Skibine that said that tribes's opinions and local tribes, their opinions about what is happening, does not impact as greatly as local communities. I differ with that. We have heard conflicting reports about the limits that IGRA does not expand but restricts the gaming by disallowing newly acquired far from current or prior reservations to do gaming. I think the key still remains, the State, local, Federal and local tribal concurrence.

We support any reasonable effort by other tribes to improve their economic situation and we would be open to the Greenville Maidu in their attempt to make a gaming facility on their own ancestral territory, but as they proceed today, we will stand firm to this type of off-reservation gaming acquisition as do the Tahema County supervisors, and this type of acquisition only further perpetuates the terms "off-reservation gaming is reservation shopping", the questions about who we are as Native Americans and where we are from and the notion that we are merely special interest groups given an unfair opportunity to do gaming on land, and it is a shame that we can only take pride in being Indians and tribal nations if we are doing gaming, as I heard earlier.

Again, overall, IGRA has worked over the years when applied properly, and State and local and Federal concurrence is supported and included. We support your continued efforts to address IGRA and ensure the local community and local tribal involvement.

Again, thank you very much for your time and I appreciate the opportunity. I know there are a lot of other pressing things on your agendas, but again, thank you.

[The prepared statement of Ms. Lohse follows:]

**Statement of Leslie Lohse, Treasurer,**
**Paskenta Band of Nomlaki Indians of California**

Chairman Pombo and members of the Committee, I would like to thank you for the opportunity to testify on the subject of Gaming on Off-Reservation, Restored and Newly-acquired Lands. As Treasurer of the Paskenta Band of Nomlaki Indians of California, I am very involved with the issues of gaming, including but not limited to the economic development opportunity, tribal-state compacting, land into trust, and governmental jurisdiction. I am here today with full authority and direction from the Paskenta Band of Nomlaki Indians of California Tribal Council. We are very pleased to see the Committee has taken the time to address this very important issue, even though we know that your committee has numerous important tribal and non-tribal issues to address on a daily basis.

As the National Congress of American Indians (NCAI) Pacific Region Area Vice-President and U.S. Bureau of Indian Affairs Central California Agency Policy Committee Chairperson, I have become increasingly aware and knowledgeable of the many struggles of Tribal Governments dealing with the issues related to gaming on off-reservation, restored and newly-acquired lands. Although, for the record, I am here to represent only my Tribe, my statements will reflect my experience and acquired knowledge from being a representative of the above-mentioned organizations. Because of the precedents that could be set for Indian Country, I feel it is very

important to deliver pertinent information that will assist the Committee with its findings.

Many examples of the issues arising from off-reservation gaming are taking place throughout the United States, in California and within our own County of Tehama. As you may know, the 87-adult member Greenville Maidu Indians of Plumas County, California (their ancestral territory) is seeking to relocate to Tehama County, California (the aboriginal territory of the Paskenta Band) for the sole purpose of conducting gaming. This quest by the Greenville Maidu follows prior efforts to engage in commercial gaming on other off-reservation locations in Oxnard, California and the Bay Area (San Francisco-Oakland, California).

For a second time, the Greenville Maidu have approached the Tehama County Supervisors with their proposal to develop a casino and ancillary facilities. Previously, the Tehama County Supervisors rejected the Greenville Maidu proposal, but were approached again by the Tribe with a new agreement. The Minutes of the Meeting of the Board of Supervisors of the County of Tehama, Tuesday, May 18, 2004, (Attachment A, see Pages 14 & 15) reflect the following statements made by Legal Counsel for the Greenville Tribe, Judith Albietz: Ms. Albietz, when asked why the tribe does not have land in Greenville and if a site-search was conducted and how this location was chosen, emphasized that "the developer approached the Tribe with this project." Also, Ms. Albietz emphasized that "the developer of the project, the Wilmots, will be a good partner with Tehama County." She further advised that "there are very clear rules relative to this proposal, that there will be a seven-year management agreement, and that the facility will be run by the Wilmots."

The Greenville Maidu proposal presents a disturbing and exploitive picture of Tribal Governments throughout this great nation.

To begin with, the Greenville Rancheria settlement is found in the Hardwick case. The stipulation and judgment in that matter provides that the exterior boundaries of the plaintiff tribes' individual reservations (rancherias) would be restored to pre-termination status. Therefore, the Greenville Rancheria's "275 acres, is located approximately three miles east of Greenville, Plumas County, California." This indicates clearly that the United States and Greenville Rancheria recognize that the Greenville Maidu's proper land request should be limited to Plumas County, California, not Tehama County, California. But, the Wilmots have purchased property in Tehama County along Interstate 5. Therefore, the Wilmots want to relocate the Greenville Maidu to this new location. Such relocation will satisfy this out-of-state investor's appetite for profit. No consideration is being given to the Maidu's true ancestral territory or the land recognition indicated in the Hardwick case.

Also, no consideration is being given to the fact that the proposed site is well within the ancestral territory of the Paskenta Band of Nomlaki Indians. As evidenced by Attachments B and C, the Paskenta people, classified as Nomlaki, also referred to as Wintun, Central Wintun, or Hill and River Wintun, resided "in the Sacramento River Valley in present Tehama County, Cottonwood Creek forming the northern boundary, Stoney Creek forming the southern boundary, the foothill land to the west, extending to the summit of the Coast Range." We understand that the Wilmots have hired the services of an out-of-state genealogist to re-write the history of the Native Americans in California. Now, the Greenville Maidu claim that the "Tribe's people have occupied areas along the Sacramento River," yet the "Tribe's people" is not defined and it is understood that the tie to Tehama County is through the marriage of a Greenville Maidu to a Wintun Indian. Therefore, the tie to the lands of Tehama is through the Wintun/Nomlaki, yet the revisionist historian would have history read that it is the Greenville Maidu Tribe which is culturally tied to our area.

This disturbing stretch and re-write of our history by an out-of-state revisionist historian and out-of-state profiteer undermines the core of every sovereign Indian nation. Such liberal re-writes bring questions from the non-Indian population about the validity of "who we (Native Americans) are and where we are from— and ensuing accusations of "reservation shopping." We have many un-recognized Tribes waiting to be re-recognized, but such revisionist historical re-writes all but seal the fate of the many Indian nations that have true claims. As Chairperson of the Central Cal Agency Policy Committee and NCAI Area Vice-President, I have been approached by some of the unrecognized Tribes expressing their frustration and concern with the recognized Tribes taking such actions in order to pursue gaming.

"Reservation shopping" has become the catch phrase in California as Tribes seek off-reservation land acquisitions to satisfy the gaming developers' wishes to garner larger profits from Indian gaming. We know that the Bureau of Indian Affairs struggles with the political and legal realities of this issue. We have read conflicting reports about whether the Indian Gaming Regulatory Act (IGRA) "limits, not expands, the right to game" by "disallow[ing] gaming on newly-acquired lands far from

the current prior reservation." Clearly, IGRA provides language that allows Tribes to game where "such lands are located within or contiguous to the boundaries of the reservation of the Indian Tribe on October 1, 1988..." 25 U.S.C. § 2719 (a) (1), but the Greenville Maidu's improper claim that gaming on their currently proposed site is consistent with IGRA only further fuels negative issues arising from far-fetched pursuits to do off-reservation gaming.

Such negative issues include, but are not limited to, virtual state taxation, state and local jurisdiction over tribal lands, negative economic impacts to other Tribal Governments and the cumulative loss of Indian Tribes' sovereign status. As with other Tribes across the nation that seek off-reservation gaming, the Greenville Maidu have offered up a substantial amount of money to the local community in order to buy their support. Also, they have offered up substantial local and state jurisdiction in order to buy support. The Greenville Maidu are currently without a Tribal-State Compact and will undoubtedly offer up even more money that will go into the State of California's general fund to address the State's current budget deficit. The backlash of such offerings is that the local and State governments begin to look upon us that are currently doing gaming in the same light. Thereby, we are pressured into making the same sort of deals in order to continue our gaming operation. Such undue pressure and Greenville's attempt to do off-reservation gaming in the Nomlaki homelands erodes our Tribe's economic stability. We do not believe the above-noted scenario was the intent of IGRA.

Rather, we believe IGRA was written to support Tribal sovereignty, self-determination and growth. Instead, it is being used to degrade and detract from our Tribal Governments. As deals are cut, revisionist historians re-write our history, and profit-driven investors lure our Tribal Governments, our Tribal Nations we will continue to lose our identity. The next time we want to protect a sacred site or our cultural resources, greater scrutiny will be imposed upon us because of relocation(s) to off-reservation lands. Tribes are willingly signing and attesting to documents that will forever change our history and perhaps cause great damage to the future of Native Americans, all for the "projected profits" put before us by outside developers and investors.

We understand that gaming provides an opportunity to gain revenue that may assist with the needs of Tribal Governments. But, as noted earlier in the statements by Greenville's legal counsel, Ms. Albietz, the Wilmots will run the operation and the Wilmots will be a good partner with the County. Based upon those statements we ask: Where is the Tribal Government? Where is the Tribal jurisdiction? Where is the protection of Tribal sovereignty? Concessions to the extent being offered up and the need to re-write history would not be necessary if the Greenville Maidu Tribe would stay within their own historical area. We know there is a viable market within Greenville's historical area, but the Wilmots have purchased property in the Paskenta territory. And, the concessions made will not affect the Wilmots down the line, because they will have made their profits from Indian gaming and move on. But, we as Indian Tribes will remain and suffer the backlash received due to the re-written history and the agreements drawn up that satisfy the developers' economic margins and needs.

Mr. Chairman, I will be very clear that the Paskenta Band of Nomlaki Indians of California's primary concern is the erosion and degradation of our sovereign status as a Tribal Nation and our special relationship with the United States Government. Some will charge that our only concern is with competition, but we emphasize that competition from a Tribe having a legitimate land claim would be respected by our Tribe. Yet, what we see here is an attempt to do off-reservation gaming by a Tribe clearly driven by an out-of-state investor, and concessions and deals offered that will surely be disastrous to our Tribe's economy and sovereign status.

We support the reasonable efforts of other Tribes to improve their economic situation, and will be similarly open to the Greenville Maidu in any attempt made within their own ancestral territory to do gaming. However, as the Greenville Maidu proceed today, we will stand firm along with the Tehama County Supervisors against this type of off-reservation gaming acquisition. This type of acquisition only further perpetuates the term "reservation shopping," the questions about "who we (Native Americans) are and where we are from," and the notion that we are merely "special interest groups" given an unfair opportunity to do gaming upon our tribal lands. Again, overall, IGRA has worked over the years when applied properly, and when state, local and federal concurrence and support is included. We support your continued efforts to address IGRA and to ensure local community and local tribal involvement.

In closing, Mr. Chairman, I again would like to thank you and members of the Committee for the opportunity to testify on the subject of Gaming on Off-Reservation, Restored and Newly-acquired Lands. The Paskenta Band of Nomlaki Indians

of California are very appreciative of you and your committee colleagues' time taken to review this issue, given the growing concerns and protection needs of this great United States of America. Thank you for your time, and I look forward to any questions you may have for me regarding this issue.

[NOTE: Exhibits attached to Ms. Lohse's statement have been retained in the Committee's official files.]

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Chairman POMBO. Thank you very much.

Mr. Luger.

**STATEMENT OF J. KURT LUGER, EXECUTIVE DIRECTOR, GREAT PLAINS INDIAN GAMING ASSOCIATION**

Mr. LUGER. Good morning, Mr. Chairman and honorable Members of the Committee. I am a little upset now. Leslie stole my fire. She got it wrapped up pretty quick.

To all my colleagues, I can hear my friends in the background whispering who is this guy, because I have a lot of friends, but I have my cowboy hat off. So I have new rules for this, only marrying, burying, and Congress. So I have a lot of respect for you.

First off, I want to say who I am. I am Kurt Luger. I am the Executive Director of the Great Plains Indian Gaming Association. My office is in Bismarck, North Dakota. I am an enrolled member of the Cheyenne Sioux Tribe and either fortunately or unfortunately, I am Mark Van Norman's cousin.

The other thing I want you to know is a little bit about who we are, real briefly. I represent 31 tribes from Montana to Kansas, nearly all the tribes that have gaming compacts. This issue is floating out there left and right. I heard some comments today that are a little shocking to me. I guess George Skibine kind of knocked me for a blow. I don't know how you can dream up out of the air a 50-mile radius, because I can justify it. Hell, in North Dakota, I drive 50 miles to go get gas to go another 50 miles to get groceries. It is insane.

And so I guess what I am here to say—and I want to be brief. I was going to give you some background on our tribes, but I have that all into the written testimony. We have had plenty of pain and suffering across Indian country. I don't know that one tribe has received any more pain or less than others, but I do want to leave you with this thought: the Indian gaming where I come from is about jobs. We use the "revenue" word too darn much. I was suffering in 75 percent unemployment in my region and all the social ills that come without a job: alcoholism, drug abuse, the domestic violence, everything else. Indian gaming has been a huge success in rural America, and I certainly don't subscribe to the "Time Magazine" seen article.

I have 17 million acres of trust and nearly a quarter of a million Indians where I work, and one of the things that we feel strongly about and so far we have been able to do in my region, we don't pay revenue sharing. The States that we have been in, we have been able to convince that it would be detrimental to do so. The same with this off-reservation scenario. I think it is absolutely critical that those historic tribes that have operations on their reservation be given some deference. We have a situation now at home, the Band of Chippewa, after watching the news reports coming out of Minnesota this last session between Red Lake and White Earth

and the rest of those folks wanting to put up a Twin Cities joint venture thing in Minneapolis, hell, before we knew it, we were paying for the Vikings and the Twins. That is how this stuff gets blown out of proportion.

The one thing that I did want to say, obviously in our area it is jobs, but this type of discussion is dangerous to tribes. It pits tribes against tribes. I saw two Louisiana tribes here who feel very distinctly about one another, and I can't see that that is a healthy measure, and the one that isn't here seemed to be coming off as the bad guy that somehow I heard this world about lobbying heavy handed. What about them having a right to protect their own backyard? I am a cowboy, and I am telling you what. If somebody sticks a post hole in my backyard, I get a chance to say I don't want that post hole in there, and there is enough of this.

Indian gaming was never promised to be a panacea to anybody. It was to be an upgrade for those that could take advantage of it and move their circumstances up. Now we find ourselves fighting about location and who has got more revenue in what market and things like that. It is getting confusing, and I am afraid that the American public is extremely confused about this. On our historical lands, Indian gaming is important. It is just one more arrow in the quiver and we treat it as such, and we have brought our argument to the States I have lived in. We don't pay revenue sharing. They understand. That is important to us.

Just in North Dakota alone, that is 2,100 jobs in North Dakota, full time, pension and insurance, unheard for most tribal jobs. We have now one tribe that is looking at a scenario. Just by looking at it, we have been in the newspaper for about the last two months every day on every editorial page. They are 200 miles away from their reservation boundary. I have another tribe that is only 45 miles away, and these are the types of things that get brought to the table and we wonder how we get ourselves not unified.

At the Great Plains Indian Gaming Association, we acknowledge the right of Indian tribes to apply to the Secretary to take land into trust for Indian gaming under Section 20 outside of its historic reservation, but we also acknowledge that some of these transactions have been controversial because those in nearby communities or members of neighboring Indian tribes may be impacted by the acquisitions. And I was a little bit taken back by Mr. Skibine and Ms. Martin today in saying that that tribal input didn't have very damn much weight, and that is what IGRA was about, to take and address the horrific unemployment situations on reservation in your homeland, and if you have good relationships with your neighbors and good communication with your neighbors, then nearly everything in Section 20 could be applied, but obviously there are places in Indian country that they are not being able to communicate or not being able to come to resolve, and it is ending up in these types of discussions.

We feel it is very important for the Secretary to thoroughly consult with neighboring Indian tribes. I have $250 million worth of infrastructure in North Dakota in those five tribes, $35 million a year payroll, $50 million a year purchase of in-State goods. If that off-reservation scenario hit in Grand Forks, all of them in isolated areas—you have to drive a couple of hours to get to each one of

them—if one of those would go that way, one of two things are going happen: State-authorized gaming is just going to get blown up to keep up with the competitive factor or, two, you are going to have four tribes not ever speaking to one tribe until hell freezes over, and that includes negotiations of the BIA and IHS, and that is why I say to my brothers here in this room gaming is not everything to us. That does not make us people. It is our homeland. It is our language. It is our perseverance. It is our ancestors, and if you can make it work for you, damn well good luck, but do not take this as the only opportunity and see a neighbor over there doing fairly well by it and take to that individual or that tribe. They are on their historic ground.

Aboriginal claim? Hell, North and South Dakota is a total aboriginal claim. There isn't an acre in North and South Dakota that doesn't have an aboriginal claim to it, probably.

So these things are pretty serious stuff. I have 2,000—well, in my region, I have nearly 6,000 full-time employees that I am worried about, and I think that it is a must that the tribes have some input on this process under Section 20 so their negative is concluded with.

In conclusion, I just want to say in our view at the Great Plains, the Secretary of the Interior must gather information through the consultation process necessary to protect existing Indian gaming on historic reservation lands because after all, the main purpose of the Act is to protect the historical rights to self-government on existing Indian lands. Under Section 20, in order to fulfill the Federal trust responsibility to protect Indian tribes, the Secretary of Interior must consult thoroughly with neighboring Indian tribes and to act to protect existing Indian gaming when considering any Section 20 application for the use of after-acquired lands of Indian gaming. We believe that a thorough application of the existing law and clear focus on real and substantial consultation will ensure that the Section 20 process serves its purpose of generating a substantial local and tribal community consensus concerning the use of any after-land acquired for Indian gaming. This will avoid the need for an amendment to the Indian Gaming Regulatory Act.

And in closing, I would just again thank you for your time, and I think that all of us in Indian country, we will be chewing this over amongst ourselves as well be, but I don't want those cross-comparisons to be made to my region. We don't pay revenue sharing. We are huge. We have long distances between us, and almost every little thing that one or the other does impacts us, and so I think it is important that tribes, the neighboring tribes—and I am not thrilled about this 50-mile radius or hundred-mile radius. I don't imagine he could tell you where he pulled that out of the hat at. I have asked him twice, and he has never been able to give me an answer.

And with that said, I would like to close my testimony and open up for any questions that you may have for me and I will be happy to answer them.

[The prepared statement of Mr. Luger follows:]

**Statement of J. Kurt Luger, Executive Director, Great Plains Indian Gaming Association**

*Introduction*

Good morning. Chairman Pombo and Members of the Committee thank you for inviting me to testify today concerning Indian gaming on off-reservation, restored, and newly-acquired lands.

My name is J. Kurt Luger and I am a member of the Cheyenne River Sioux Tribe of South Dakota and my family resides on the Standing Rock Reservation near Ft. Yates, North Dakota. I serve as the Executive Director of the Great Plains Indian Gaming Association, which includes 28 Indian nations from North and South Dakota, Nebraska, Iowa, and Kansas. We work closely with both the National Indian Gaming Association and other regional Indian gaming associations, including the Minnesota Indian Gaming Association. At Great Plains Indian Gaming Association, my job is to alert our Member Tribes to the challenges that we face in Indian gaming and to provide training and technical assistance to our tribal government officials, tribal gaming commissioners, gaming management and staff.

At the outset, let me say that Indian gaming is working in rural areas of America. Indian tribes that faced 50, 60, and even 70% unemployment are now generating jobs not only for their own tribal members, but for neighboring non-Indians as well. I live and work in Bismarck, North Dakota so I will use the situation of the North Dakota Tribes as a representative example.

*Indian Tribes in North Dakota*

In North Dakota, 5 tribal governments operate Indian gaming facilities: the Three Affiliated Tribes of Fort Berthold—Mandan, Hidatsa, and Arikara; the Spirit Lake Sioux Tribe, the Turtle Mountain Chippewa Tribe, the Standing Rock Sioux Tribe and the Sisseton-Wahpeton Sioux Tribe. Both the Standing Rock Sioux Tribe's reservation and the Sisseton-Wahpeton Sioux Tribe's reservation straddle the border with South Dakota.

Three Affiliated Tribes. The Three Affiliated Tribes, Mandan, Hidatsa, and Arikara, operate as a unified tribal government. These Tribes have occupied the Missouri valley for hundreds and thousands of years, planted corn, squash, and beans on the fertile flood plains, and hunted buffalo and wild game. Living in stockaded villages, the Three Affiliated Tribes were devastated by smallpox epidemics in 1792, 1836, and 1837.

Early on, the Three Affiliated Tribes established friendly relationships with the United States. They welcomed the Lewis and Clark expedition into their villages and assisted them on their journey. In 1825, the Mandan, Hidatsa, and Arikara Tribes entered into Treaties of Friendship and Trade with the United States, which states:

> Henceforth, there shall be a firm and lasting peace between the United States and the [Mandan, Hidatsa, and Arikara Tribes]... *The United States—receive the [Tribes] into their friendship and under their protection.*

The United States' treaty pledges of protection forms the basis for the Federal Indian trust responsibility. The traditional lands of the Mandan, Hidatsa, and Arikara encompassed an area of 12 million acres from eastern North Dakota to Montana and as far south as Nebraska and Wyoming. The Fort Laramie Treaty of 1851, congressional acts and executive orders reduced the Tribes' lands to 1,000,000 acres in western North Dakota.

In the early 1950s, the Three Affiliated Tribes were asked to undertake a tremendous sacrifice by allowing the United States to dam the Missouri River and flood their reservation. The original tribal headquarters was flooded and families were moved away from the fertile Missouri River flood plain up on to the high prairie. When Lake Sakakawea was formed by the dam, the new lake divided the reservation into three parts. The Tribes suffered an enormous loss of natural resources, including the most fertile land on the reservation, their community was divided and the small village life that many had known along the Missouri River was gone. The tribal headquarters were relocated four miles away in New Town, North Dakota. Today, the tribal population is about 10,000 with about 5,000 living on the reservation.

Spirit Lake Sioux Tribe. The Spirit Lake Sioux Tribe is composed of the Sisseton-Wahpeton and Yankton bands of the Dakota or Sioux Nation. Originally residing in Minnesota and eastern North Dakota, the Spirit Lake Sioux Reservation was established by the Treaty of 1867 with the United States. The Treaty of 1867 provides that: "The—Sioux Indians, represented in council, will continue—friendly relations with the Government and people of the United States"." The Treaty recognizes the Spirit Lake Sioux Reservation as the "permanent" reservation of the Tribe.

The Tribe has worked to develop jobs through manufacturing, providing Kevlar helmets and military vests to the Pentagon through Sioux Manufacturing Corporation, yet with a reservation population of over 6,000 people, the Tribe has struggled with 59% unemployment as the Defense Department budget was cut in the 1990s. The Spirit Lake Reservation encompasses 405 square miles north of the Sheyenne River in northeastern North Dakota.

Turtle Mountain Chippewa Tribe. The Chippewa or Ojibwe people originally inhabited the Great Lakes Region and began to hunt and trade in North Dakota in the late 18th and early 19th Centuries. Historically, the Chippewa and the Dakota fought wars with each other, but they settled their differences through the Treaty of Sweet Corn in 1858.

In 1882, Congress set aside a 32 mile tract in Northeastern North Dakota for the Turtle Mountain Band of Chippewa 11 miles from the Canadian border. With the passing of the great buffalo herds, the Chippewa turned to agriculture and ranching, and faced many difficulties due to encroachment by settlers. Today, almost 20,000 tribal members live on the 6 x 12 mile Turtle Mountain reservation, and Belcourt, North Dakota has become the 5th largest city in the state.

Standing Rock Sioux Tribe. The Standing Rock Sioux Tribe is composed of Sitting Bull's Band, the Hunkpapa, and the Yanktonai, with some Black Foot Sioux on the South Dakota side. In the Fort Laramie Treaty of 1868, the United States pledged that: "The Government of the United States desires peace and its honor is hereby pledged to keep it." The Treaty also provides that the Great Sioux Reservation was to serve as the "permanent home" of the Sioux Nation.

Yet, in 1876, General Custer and the 7th Cavalry came out to Sioux country to force the Sioux tribes on to diminished reservations. In 1889, the Federal Government once again called on the Sioux Nation to cede millions more acres of reservation lands, and the Standing Rock Sioux Reservation was established by the Act of March 2, 1889. Sitting Bull had opposed the land cession and in 1890, he was murdered by BIA police acting in concert with the U.S. Cavalry.

The Standing Rock Sioux Reservation is composed of 2.3 million acres of land lying across the North and South Dakota border in the central area of the State. Like the Three Affiliated Tribes, the Standing Rock Sioux Tribe was asked to make a substantial sacrifice for flood control and ceded almost 56,000 acres of the best reservation land for Lake Sakakawea. Tribal members were removed from their traditional homes along the Missouri River flood plain and relocated well up above the river. Today, the population of resident tribal members is almost 10,000.

Sisseton-Wahpeton Sioux Tribe. Located in Southeastern North Dakota and Northeastern South Dakota, the Sisseton-Wahpeton Sioux Tribe has a total enrollment of over 10,000 tribal members and a resident population of about 5,000 tribal members. The Tribe was originally located in Minnesota, but pressure from white settlers pushed the Tribe westward. The Treaty of 1858 with the United States established the Sisseton-Wahpeton Sioux Reservation, which today has approximately 250,000 acres in North and South Dakota.

*Indian Gaming in North Dakota*

Since the beginning of tribal gaming in North Dakota, the primary function has been to provide employment and economic development opportunities. Indian gaming has also provided vital funding for tribal government infrastructure, essential services including police and fire protection, education, and water and sewer services, and tribal programs, such as health care, elderly nutrition, and child care.

There are five Indian gaming facilities in the state—Four Bears Casino & Lodge (Three Affiliated Tribes), Sky Dancer Casino & Lodge (Turtle Mountain), Spirit Lake Casino (Spirit Lake Sioux), Dakota Magic Casino (Sisseton-Wahpeton), and Prairie Knights Casino & Lodge (Standing Rock). Together, the gaming facilities employ almost 2,000 North Dakota residents. About 70% of the employees are tribal members, and the balance are our non-Indian neighbors, and taking into account the multiplier effect of the $112 million of economic activity generated by Indian gaming in North Dakota, Indian gaming generates an additional 2,000 jobs statewide. Since 1997, the combined economic impact of Indian gaming and related activity has exceeded $1 billion statewide.

*Tribal-State Relations*

All of the North Dakota tribes have worked to maintain positive government-to-government relationships with the State of North Dakota. Our Tribal-State compact acknowledges that:

> The Tribe and the State mutually recognize the positive economic benefits that gaming may provide to the Tribe[s] and to the region of the State adjacent to the Tribal lands, and the Tribe and the State recognize the need

> to insure that the health, safety and welfare of the public and the integrity of the gaming industry of the Tribe and throughout North Dakota be protected.

The Tribes in North Dakota have worked very hard to preserve a strong relationship with the State, and the State for, its part, has worked in good faith with the Tribes.

In fact, the State Attorney General is vested with authority to regulate gaming under state law and works with the tribal governments through our compacts. Attorney General Wayne Stenjhem has complimented the tribal governments on our record of strong regulation and has cooperated with the tribal regulatory agencies to apprehend and prosecute those who attempt to cheat our casinos. The Attorney General has recognized that Indian gaming has created important jobs and generated vital revenue for tribal self-government and has made it clear that he is proud that the State of North Dakota has not asked for revenue sharing. State officials in North Dakota know that tribal governments have many unmet needs and it helps the whole state, when tribal governments have a way to create jobs and generate essential governmental revenue.

*After Acquired Lands*

In general, the Indian Gaming Regulatory Act is intended to strengthen tribal self-government by safeguarding Indian gaming as a way to fund essential tribal government infrastructure, services and programs. The Act establishes a general policy that Indian gaming shall be conducted on trust land acquired prior to its passage in 1988. Because of the complex history of Federal takings of Indian lands, Section 20 of the Act provides several necessary exceptions:

- Lands Contiguous to Indian Reservations or Within the Last Reservation of a Tribe No Longer Has Reservation Borders;
- Lands Recovered Under Land Claims;
- Lands for Newly Recognized Tribes; and
- Lands Acquired Through Consultation with Local Governments and Neighboring Indian Tribes and a Two-Part Determination by The Secretary of the Interior with the Concurrence of the State Government.

The first three exceptions for trust land within historic reservation boundaries, trust lands under land claims, and lands for newly-acquired lands fall into the category of addressing problems created by the United States' historic takings of Indian lands and injustices. The last exception, however, is a discretionary exception that requires the development of a broad consensus that such an acquisition is in the best interests of the Tribe and not adverse to the surrounding community.

The Indian Tribes in North Dakota are engaged in gaming on Indian lands acquired prior to the Indian Gaming Regulatory Act, or in the case of the Sisseton-Wahpeton Sioux Tribe, on trust land acquired within the original boundaries of its reservation under the 1867 Treaty.

To date, there have been no off-reservation land acquisitions under the two-part Secretarial process. The Turtle Mountain Band of Chippewa has indicated that it is considering an off-reservation acquisition under the secretarial process set forth in Section 20.

Section 20 explains that the limitation on Indian gaming to lands acquired prior to 1988 shall not apply when:

> The Secretary, *after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes,* determines that a gaming establishment on newly-acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State...concurs...

*25 U.S.C. 2719(b)(1) (emphasis added).*

At the Great Plains Indian Gaming Association, we acknowledge the right of Indian tribes to apply to the Secretary to take land into trust for Indian gaming under Section 20 outside of its historic reservation. We also acknowledge that some of these transactions have been controversial because those in nearby communities or members of neighboring Indian tribes may be impacted by the acquisition. Therefore, we believe that the right of neighboring Indian tribes to consultation with the Secretary concerning such an application of after acquired lands is as important as the right of an individual Tribe to apply for it.

Therefore, we believe that it is very important for the Secretary of the Interior to thoroughly consult with local governments and "neighboring" Indian tribes. In fact, in North Dakota we all consider ourselves to be "neighbors" in the tribal community, and we believe that all Tribes should be consulted concerning any Section

20 after acquired land application in North Dakota or even near the North Dakota border in Minnesota, South Dakota or Montana. After all, while we live in areas that are large geographically, our population is small and we often draw our customer base from a substantial distance away. The same is true in other Great Plains states.

In addition, if a Section 20 after acquired land application proves to be controversial, it is possible that it could damage relationships with local governments or even the State where we reside. Therefore, any hard and fast effort to define the term "neighboring" as 50 miles or 100 miles, must be rejected.

In our view, the Secretary of the Interior must gather information through the consultation process necessary to protect existing Indian gaming on historic reservation lands because, after all, the main purpose of the Act is protect the historic tribal rights to self-government on existing Indian lands.

*Conclusion*

Under Section 20, in order to fulfill the Federal Trust Responsibility to protect Indian tribes, the Secretary of the Interior must consult thoroughly with neighboring Indian tribes and act to protect existing Indian gaming, when considering any Section 20 application for the use of "after acquired" lands for Indian gaming. We believe that a thorough application of existing law and clear focus on real and substantial consultation will ensure that the Section 20 process serves its purpose of generating a substantial local and tribal community consensus concerning the use of any after acquired land for Indian gaming. This will avoid the need for amendment of the Indian Gaming Regulatory Act.

Again, thank you for the opportunity to testify today. Pilamayayelo.

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As Chairman of the Great Plains Indian Gaming Association, I concur in Mr. Luger's testimony.

CHARLES MURPHY, CHAIRMAN, STANDING ROCK SIOUX TRIBE

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Chairman POMBO. Well, thank you, and I want to thank the entire panel for their testimony. It was very interesting for me and I am sure for the entire Committee.

Mr. Luger, just to clarify for myself—

Mr. LUGER. Sure.

Chairman POMBO.—do you feel that you there is a need to have off-reservation gaming, that there should be the ability to do that within the law?

Mr. LUGER. Yes.

Chairman POMBO. You also feel that if this were to happen, that besides State and local community involvement, other tribes should also be heavily weighed in any of those decisions?

Mr. LUGER. Absolutely.

Chairman POMBO. If we were to look at this from—you know, coming from California, we have our own set of issues out there, and I am assuming that some of the same things are happening in your area.

Mr. LUGER. You sent them east. They came.

Chairman POMBO. That tends to happen. But in trying to get our arms around this, one of the things that Mr. Marquez—Chairman Marquez talked about this. One of the things is that what is happening right now in California and in other parts of the country is in my opinion endangering all Indian gaming as well as sovereignty, because people are beginning to react to a lot of what is happening with people that are applying for off reservation.

Do you feel that is it is in the interest of all tribes that we try to get in front of this thing before it goes much further?

Mr. LUGER. I think it would be—it is absolutely critical, and I will use NIGA as an example, that this dialog be taking place because it is growing. I mean, we are expected—look at California. My God. They had to ante up a billion dollars to the Gov over there. In my home country, we all had a heart attack that morning when we saw it in the news, and the bottom line is this, why is Indian country responsible for picking up the deficit problem in the State of California? We are be used for every little—nobody is questioning the leadership in the State of California during the hay day of the nineties, but, boy, they want that Class III money from Anthony Picot, and we are having a real problem with that, and it is coming into our neck of the woods. Kansas, Nebraska, Iowa, Montana just grew into that problem.

And so you are correct in wanting to view this thing, because I see wagons kind of getting a runaway train.

Chairman POMBO. Chairman Marquez, your testimony was very enlightening, and I know a lot of the issues that you are dealing with and some of the problems that you are trying to get in front of, but do you believe that we should allow off-reservation gaming if we follow the criteria that we were just talking about, that the local community buys off, the State buys off, the tribes that are local there buy off on it or sign off on it, and it is a more open collaborative process than what we are currently doing?

Mr. MARQUEZ. I think under the Section 20, it allows for that process to take place. What we have unfolding here in front of us under the Timbisha Shoshone situation is a sidestep to the Section 20 where the Act allows the tribe with proper consultation with the Secretary of the Interior to acquire lands that they both agreed to purchase. I think we can all pretty much, especially in California, sit down and draw a bubble, if you will, of what our ancestral lands are, and I think it is a no-brainer to understand where your ancestral lands are, and that is in my mind, in my opinion, that is where you should be taking your off-reservation, quote-unquote.

I think often times some of these tribes are driven by hungry investors and hungry attorneys to acquire land in more what I would deem profitable centers for their own benefit and not for the tribe's benefit, and I think it sets a horrible precedent, as Mr. Luger alluded to.

Chairman POMBO. Would it not make more sense if a remote tribe was trying to locate a gaming operation in what was your historic area, for them to approach you and locate near your operation and try to work something out with you rather than spreading it all over the place the way that we see it happening in California right now?

Mr. MARQUEZ. If the question is proper consultation, I think there is always something to be said when two sovereigns can sit down and discuss whatever there is in front of them. I think what is more in question here, it is not about a casino. It is about an individual tribe coming into our ancestral land, acquiring land under trust for their purpose of X, Y, and Z, especially when our reservation is so limited and we don't have much land to perform and do various functions as far as provide housing. I think that, to me, is more critical than the fact that this is about gaming.

As Mr. Luger said, we are much more than gaming, and this is about taking land into trust that is not theirs ancestrally. It is ours. I have a huge problem with that.

Chairman POMBO. Well, we better get in front of that, because it is becoming all about gaming. That is what is happening, and I can tell you in my district, in my congressional district or immediately around it, I have five different groups that are looking at lands for possible casinos. That is driving public opinion and public perception, and if we are not careful, it is going to all end up about gaming, and everything else that you do and all of your other efforts in terms of your culture and your language and your sovereignty are going to be driven out because of this.

And that is one of the reasons why I am so concerned about where we are going with all of this, and obviously in California, we have a lot going on right now, and I think the recent agreement with the Governor and a number of tribes in California helps to drive that because the public perception now is very different than it was just a few years ago in terms of what is going on.

My time has expired, and I am going to recognize Mr. Baca.

Mr. BACA. Thank you very much, Mr. Chairman. First of all, I want to commend you for having this hearing on this very critical issue that is impacting not only the State of California, but other areas too as well, and thank the panelists for appearing here today on this very important issue that we must address and hopefully that we can look at the process that is in place and look at finding some kind of resolution or consultation in dealing with the particular problem as we deal with off-reservations, if we look at off-reservations gaming or purchase of land as well, especially geographical areas that are outside of the ancestry areas.

My question, first of all, is to Chairman Marquez. Where are your ancestors' land located for San Manuel Band of Mission Indians?

Mr. MARQUEZ. Well, as I said in my testimony, it is the San Bernardino area, San Gabriel Mountains to the southern foothills as well as the Mojave Desert near Napa Valley as far out as Barstow and as far east as Twentynine Palms and Yucaipa Valley.

Mr. BACA. Thank you. If these were lands were taken into trust by another tribe under the concept that we are trying to negotiate or talk about for the purpose of gaming, what effects would this have on San Manuel in terms of its economy and heritage?

Mr. MARQUEZ. If the question is about market share of the casino, I don't believe it would be an issue with the situation of where they are located. It is much deeper than that. I think the first problem we have is the fact that the land is our ancestral land as well as being close to our reservation as is. The second problem I believe comes into play is when they go into negotiations with the State, what concessions are going to be given up, and those concessions resonate just in the tribes in California, but they resonate across the country.

I have already seen the spill-over from the $1 billion offering from those five tribes, and I have heard from countless tribal leadership across the country of their fears of their states coming to them asking for such the same, and that is just simply not what we are here for, as Mr. Luger alluded to. We are not here to bail

out the State of California or any other state for their problems, and I think that is the second step that takes place. The third step is the public outcry that is going to take place about reservation shopping, and the fourth, I believe will be, as I alluded to in my testimony, there are a lot of people out there looking to jump into this mix. A lot of them are not suitable. I think there should be a process that before tribes who are non-gaming tribes engage in any investors must go through the NIGC to get properly backgrounded and found suitable before having conversations with these tribes.

Mr. BACA. Thank you, because that does create a problem, because if they don't go through the appropriate channels, then they can be going through the Governor such as they have in the State of California for the purpose of bailing out for the State. That creates quite a problem in terms of disharmony amongst tribes, disrespect for one another. So now they are negotiating based on revenue or dollars or the ability, which means now that they are going to bail out the State, and the Governor then can sign a compact with a certain tribe outside of their ancestor area that creates a big problem for a lot of us in our areas. Is that correct?

Mr. MARQUEZ. That is correct, sir.

Mr. BACA. So that would really, you know, put a tremendous burden on us. Then the Governor then would have the control in the State of California to say, Well, I am going to negotiate because these are the tribes that were willing to sign a compact, so we are going to allow them to start a gaming casino somewhere because we know that we are going to get revenue versus one tribe that has already signed a compact, and in that compact, that they already agreed to certain terms of an agreement, but yet they are holding them hostage with a gun at your head, saying that if you don't do this, this is what we are going to do. That is wrong, isn't it?

Mr. MARQUEZ. Well, it gets back to the Pete Wilson days where basically you had to take it or leave it, and the Pollock compact, obviously we chose not to take that, and that was back in the late nineties which gave rise to the current compacts of 1999 under Davis. So it is the same process where they can hold a gun to your head and demand a whole plethora of items that the States are willing to take and the tribes are willing to give up, and then that is placed on the other tribes in the State of California across the country as well.

Mr. BACA. And beyond that. I think it was stated it pits one tribe against another tribe and disharmony not only in terms of sovereignty, but ancestry, lands too as well. I think that is another problem that we have to deal with, because we are talking about heritage, customs, and traditions, and those values that would be impacted if we allow the off-reservation, and I don't think anyone here is totally against off-reservation if it is done within a geographical area of that tribe, but when you are going from one area to another, it is just like having one country invade us and say, Well, I am going to take over your State. And that is basically what we have. You know, Iraq is going to come in here and says, All right, I am going to take over the San Bernardino area. I will use San Bernardino as an example.

You know, are we going to allow Iraq to do that based on the power and money that they have? It is the same situation.

Mr. MARQUEZ. We also know that there are tribes, as you stated, in the past panel from northern California, from central California in our area, looking to acquire land, some as close as five miles away from our current reservation. They haven't formalized it yet, but we know that they are out there shopping and looking, and again, they are being backed by various groups such as Paragon Gaming, which was the group in Oxnard that the Treasurer alluded to. We know those people are out there.

Mr. BACA. Especially for most of us who are from southern California, we know that the population which is approximately 36 million people in the State of California and the majority of them being in the southern portion of California, the majority of them all go right through our area right into Las Vegas, use the I-10, the 215 right directly into that area. So they know very well that if they are allowed to do this, it is like a gold mine for them whether it is in Barstow—I have no objection in terms of Barstow, but if it was done, you know, through someone who had that ancestry in that area, basically because I come from Barstow, but having a tribe come from the northern portion to establish gaming in that area is a difficult problem that I have because they know the flow of traffic is there. They know that. They market it, and they know that it is very easy and accessible, and then that would take away from some of the other tribes too as well. I am not saying that you are against it, but only against from the form of having someone come into another portion that has nothing to do with that particular area.

But what steps do you believe need to be taken by the Secretary of Interior or by Congress to discourage what some call the reservation shopping? And that is for any of the panelists too as well.

Mr. LUGER. I certainly have an opinion on it. First of all, the easiest thing to do is get them to do their job now. They should fully enforce the consultation policy, and, quite frankly, I saw confusion in the ranks when they were testifying up here earlier, and I have my own opinion on it. I don't think it is motivated by lobbyists. I think it is flat confusion, trying to do the right thing, but not knowing what to do, and we have all ran across that before with most bureaucracies, but in this case here, the signal that I—I read my history books, and you guys, anybody in here can go back and read what happened to Klymouth in Oregon. There is a time when tribes have to stand up and say, Hey, look, our credibility is on the line as well.

How many more "Time Magazine" articles or Andy Rooney comments or things like that are we going to be able to endure with the public? Once John Q. Public loses their guilty conscience on the atrocities that we went through in the 1800s, we are in trouble, and I know that. I have been there before.

And so this is one of those questions where the Secretary needs to give clear direction to her troops that the consultation policy must be fully enforced and that the tribes, not just the local communities, are comfortable with that. It is easy to say that one tribe was a bad guy because they worked against another not to get developed. Let us flip the coin around. The other tribe, what if they

had $200 million worth of infrastructure on the ground and in their homeland? It seems to me like they have the right to say uncle.

So the pitting looks to me like it is headed toward tribe to tribe, and actually it is Uncle Sam in the background again adding confusion.

Mr. BACA. Let me follow up to that. Do you believe, then, that the current Section 20 IGRA process addresses the problem when it is difficult to determine where one tribe's ancestors land ends and another tribe's begins? That is Question No. 1, and that is for any of you to answer. And then as a follow-up, how do you believe that this disagreement can be resolved for the benefit of all tribes?

Mr. LUGER. Which disagreement are you specifying? The one that we heard this morning?

Mr. BACA. The one that I heard earlier by Chairman Marquez in his testimony. Chairman Marquez states: "was able to able to reclaim the ancestral lands". Do you believe that this is fair to other tribes when their lands have the same area? So it is a follow-up to that. I didn't get a chance to ask that question to Chairman Marquez earlier.

Mr. MARQUEZ. I think there are definitely going to be areas where there is a setting where some areas were trade routes where various tribes utilized those areas. I think when you come to that crossroads, proper consultation should be had by all of those involved in that area, because we are well known to know that we have burial sites up in the area. There are villages up in the area. We know that the Chimawaves were also part of that trade route. We also know the Pyutes were part of that trade route.

So there are other entities in that area that should be properly dialogued with before another tribe steps in and claims that land as theirs when it is really not. It is more than just one.

Mr. BACA. Didn't we have a similar situation I don't know how many years back, but when we had the Martinez tribe in that area that was trying to claim a certain area, that we had problems with some of the other problems as well? Do you recall that?

Mr. MARQUEZ. The Torres Martinez Cabazon conflict?

Mr. BACA. Yes.

Mr. MARQUEZ. I recall it. Do I remember it vividly? I do not.

Mr. BACA. But that was similar in one sense when we were looking at it, but yet there was appropriate consultation that they were able to settle their differences.

Mr. MARQUEZ. After people started to raise the question about what was there proper consultation. I think early on in the process, there wasn't, but when people started to question the process and question the practice, I believe the two tribes finally got together and had what I would consider a proper dialog.

Mr. BACA. OK. Thank you very much.

Mr. Chairman, I know that my time has expired, but, you know, I hope that we continue to dialog and look at this, because this would set a horrible precedent if we allow this kind of exchange that goes on right now, and it would pit tribe against tribe. It would divide our Nation too as well, and then it would allow the highest bidder then to obtain the land versus ancestry based on that particular area. So I think, hopefully, we can take all of this into consideration before any final decision, and as stated before,

there is a process, and hopefully if a decision is made wrong, that there is some kind of appeal process too as well.

Ms. LOHSE. Chairman, I would just like to add to what they are saying. I know that a lot of concern is with southern California in their more urban areas, but up in our rural area, it is a negative impact. I want to emphasize about the revisionist historians that rewrite our history and how that will impact us down the road.

Indian gaming is not a Federal entitlement, so that needs to be put on the table and considered when we talk about this. I heard earlier about the re-recognition process and the tribe that was landless. We were landless, but we were re-recognized. There was clearly an identification of where we were from at that time. I would suggest that the Government look at those type of things, that type of language where it clearly identifies where that tribe is from.

The other thing is that I heard the comment that there was no rush to gain off-reservation gaming. It may not seem like a rush to you, but to those of us that are being affected by it, it is clearly a rush upon us to protect our tribal lands, our culture, our history, and our traditions from those that would do that. I think Chairman Marquez intimated that there were tribes that were coming from northern California down to southern California. It may not have hit the radar yet, but it is there. It is happening.

And so to say that there is no rush, I believe there is, and given the situation that California is in, in particular, and I can only speak to California, there is definitely a rumbling going on regarding those new compacts. They work for those—I will say they work for those tribes. Our concern is that they do not work for ours and that we will be held hostage to come to the table to a certain degree that would not work for us, but we can still work around that.

The other side of it is this type of land acquisition is truly, truly becoming the bigger issue also because that will impact down the road any kind of negotiations that we might have.

So again, Indian gaming is not a Federal entitlement. It was there as an opportunity, and I think I heard this morning let the market bear out; we either keep Indian gaming or we throw it all out. Well, I kind of differ with that opinion. The point is not let the market bear out, but let the truth bear out as to where these tribes are from and not let the market dictate where they can reenter and claim restored land.

Chairman POMBO. Mr. Pallone.

Mr. PALLONE. I will try to be brief because I know we are trying to wrap it up, but I agree. I wasn't here when Ms. Lohse testified, but I agree with you that, you know, you have to be concerned about how this dovetails with the whole issue of Federal recognition, because if another tribe is claiming an area that a tribe is trying to be recognized, it also claims, it makes it all that much more difficult for them to get Federal recognition, which is hard enough as it right now based on hearings that we have had in this committee.

What I wanted to ask, you know, I am trying to put this in perspective with the previous panels, because I heard the Jena Band say that, you know, they didn't have—they were landless and that the process of acquiring land for reservation in trust was related

to all this. Was this—what I wanted to ask Chairman Marquez is, this example that you used with the Timbisha Shoshone Tribe, are they federally recognized? Are they a tribe that is federally recognized or that has any land now?

Mr. MARQUEZ. They are recognized. I believe their lands base is in the Death Valley area.

Mr. PALLONE. So the analogy, then, with Jena and some of these others doesn't hold; they clearly have a land mass and they are just looking to acquire additional land closer to you?

Mr. MARQUEZ. I think there is an Act on the table that they are utilizing to acquire more lands. I am not quite astute in their Act of Congress, but they have some abilities to acquire land off their reservation.

Mr. PALLONE. But then if—you know, again, I missed it and I am just going by your written testimony, but if they are claiming that this is an initial reservation, how do they do that if they already have one? I am confused.

Mr. MARQUEZ. I am with you.

Mr. PALLONE. You have the same question? OK.

Mr. MARQUEZ. Yes.

Mr. PALLONE. Because it seems like such a huge loophole to get around if you already have—

Mr. MARQUEZ. You know, I think what it boils down to is you have tribes who are landless, tribes who have land, and then if we want to make a third category, we can say there are tribes who don't have usable land.

Mr. PALLONE. I see.

Mr. MARQUEZ. And that would be what we would fall into. So it is kind of—you know, it is just wrong when somebody can take land into trust and your ancestral land when you have—I mean, if I was to give an example of my reservation, which is 840 acres, this room here would represent all the flat land we have on our reservation, and then the rest of this building would be the reservation. We couple that with the San Andreas Fault running through our flat land. It does not make for the most I guess suitable land to build on. So we have, you know, obstacles to overcome and we have overcome those obstacles. Then when you hear about a tribe who want to acquire land in your backyard for the purposes of Indian gaming or for whatever, I mean, in my mind, gaming is not the catalyst here. It is just a process for taking land out of trust that is not, you know, solely one hundred percent that tribe's. It is other tribes's areas as well, and we are part of that mix.

Mr. PALLONE. The problem that I see, though—again, I want to keep going on here, is that, you know, if you listen to the previous panel, on the one hand, Ernie said that he recognized legitimate claims of the Jena and the other Oklahoma tribe, but that they should fit within IGRA. You seem to be saying, Chairman, that the Shoshone tribe may be getting around IGRA, but yet you are not arguing that there be any change in the law, just that it be applied the way you think it should be. Right?

Nobody is suggesting any suggesting any change in the law here.

Mr. MARQUEZ. I think Mr. Luger probably said it best, just follow the law, follow the process.

Mr. PALLONE. OK.

Mr. MARQUEZ. There is a process in place already, and when you start to sidestep Section 20 in this case, this is the dilemma we arrive in, and it is a paradox and, nonetheless, it has to be addressed.

Mr. PALLONE. OK.

Mr. LUGER. Mr. Chairman.

Mr. PALLONE. Go ahead. Sure.

Mr. LUGER. Just one quick comment, and I want to put a numerical perspective on this landless tribe situation, and I can stand to be corrected, but I am pretty sure there is less than a half of dozen of those, and there are 560-some recognized tribes with land. So, you know, the perception that while you have half of them out here that don't and the other half do is incorrect. I actually think the number is five.

Ms. LOHSE. And my understanding this morning is the Jena Tribe had said that they did have a hundred acres in trust that they didn't something else on.

Mr. PALLONE. That was confusing to me too.

Ms. LOHSE. So we are a little confused here in regard to that, and I think that is kind of the thing here of having the Timbisha Shoshone saying this is their first reservation when it is not a first reservation, and the tribe that we have up here is the same type of thing. They have a stipulation where they should go, but because they don't want to or they actually have lands there, but it doesn't fit the out-of-state investors' purchase, then we all have to shift.

So I think we continue to say IGRA doesn't necessarily need to be revised, but applied properly, and that is our concern, is that it is not being applied properly because of, you know, not paying attention to what the tribe was recognized to and, again, not continuing to take Indian gaming as the lead for recognizing or restoring land.

Mr. PALLONE. OK. Thanks a lot.

Thanks, Mr. Chairman.

Chairman POMBO. Thank you. I want to thank this panel for your testimony. It is obviously an issue I believe we need to get out in front of, and I know that most of the people who testified today said they didn't see a reason to amend current law, and yet they had a whole list of problems with what was going on, and I am of the opinion right now that we may have to amend current law and get in front of this thing, because the pressure that this committee is under right now from a number of different people because of what is going on across the country, I think it is in all of our interests that we maintain as much control over this as we can because decisions are being made that affect all of us and you in particular.

So I think we do seriously have to look at this and how we are going to deal with it.

Chairman?

Mr. MARQUEZ. I just want to add, you know, we heard a lot about the Federal Government not performing or not practicing. I think we also need to take step back as tribal leadership and tribal governments and look at ourselves and ask ourselves are we performing the best practices for our people, and I think that is something we don't ask ourselves enough; and in this case, who is driving this? It is not the Federal Government.

So I think we need to turn our eyes inward sometimes and look at ourselves. That is all I wanted to say, sir.

Chairman POMBO. I think that is a very valid point.

Mr. LUGER. Mr. Chairman.

Chairman POMBO. Yes.

Mr. LUGER. I just wanted to take the time to congratulate Tom Brierton. He came out to our region and took a good look out there, and the tribe has found a good friend in Mr. Brierton. I know he is on your staff, and I just wanted to recognize that because he was very well received out there.

Chairman POMBO. Well, thank you. Both Tom and Chris and all the staff have, I think, done an admirable job. One of the things that we talked about early on was getting them out and visiting as many areas as they possibly could. I had a chance a few months back to go into South Dakota, and I understand what you mean by you drive 50 miles for gas and 50 miles beyond that for groceries, because I saw it.

One thing you said earlier—I know I have to go, but one thing you said earlier was about sticking a post hole in your backyard. If we could get all of the Federal Government to stay out of your backyard, I would be lot happier, because I saw those prairie dog holes all over the place and I would like to get rid of some of those.

Mr. LUGER. Thank you.

Chairman POMBO. But that is another issue that I think we can deal with.

Mr. LUGER. I just wanted to express your and your staff's interest in the Indian country, it is greatly appreciated.

Chairman POMBO. Thank you.

Ms. LOHSE. Chairman, we would like to also thank you. We can't say enough about your staff. Chris has been very good. I didn't want to let him go unnoticed, and we were discussing you want us to pass a resolution to give him a raise and that kind of stuff, but—

Chairman POMBO. There is too much pressure here.

Mr. MARQUEZ. Chris, you will be staying home for a while.

Ms. LOHSE. We very much appreciate it, and I know you were honored through NCAI about your work in the Indian country, but we do appreciate it, and we know there are a lot of things, and we are glad that you are willing to get out there in the front and get your arms around this, because then we know that we are being protected and looked after.

Chairman POMBO. Thank you very much, and I want to thank all of the panels for your testimony today. I will remind this panel there will be additional questions. They will be submitted to you in writing. If you could answer them in writing, the hearing record will be held open for this purpose. If there are any additional comments anyone would like to enter into the record, I believe the hearing record will be held open for 10 days to allow others the opportunity to submit written testimony to be included as part of the hearing record.

If there is no further business before the Committee, I again thank the members of the Committee and all of our panels and our witnesses, and the Committee stands adjourned.

[Whereupon, at 1:43 p.m., the hearing was adjourned.]

[The following information was submitted for the record:]

- A joint statement submitted by The Honorable Nancy L. Johnson, The Honorable Christopher Shays and The Honorable Rob Simmons; and
- A statement submitted by John McCarthy, Executive Director, Minnesota Indian Gaming Association.

[The joint statement submitted by The Honorable Nancy L. Johnson, The Honorable Christopher Shays and The Honorable Rob Simmons, follows:]

**Statement submitted for the record by The Honorable Nancy L. Johnson, The Honorable Christopher Shays, and The Honorable Rob Simmons**

Mr. Chairman and members of the Committee, thank you for allowing us to submit testimony today on the important subject of off-reservation Indian gaming on restored and newly-acquired lands. This subject is of great importance to our constituents because several tribes in Connecticut are seeking to open Class III gaming facilities on off-reservation lands. The Schaghticoke Tribal Nation of Kent is seeking to build a casino in Danbury, Waterbury, or Bridgeport. The Golden Hill Paugussett tribe of Colchester is seeking to build a casino in Bridgeport. Both the Historic Eastern Pequot tribe of North Stonington and the two Nipmuc groups in Massachusetts are seeking to build casinos in Eastern Connecticut.

During previous hearings before the Committee, we have testified on the seriously flawed federal recognition process. In recent decisions involving petitioners from Connecticut, federal regulations have been abrogated and existing precedent overturned in what appears to be a results-oriented process. Recent hearings of the House Government Reform Committee have revealed the substantial casino interests financing acknowledgment petitions in Connecticut.

Further casino development will have a detrimental impact on the small cities and towns in Connecticut. Federally-recognized tribes do not have to adhere to local zoning laws, nor do they pay local property taxes or federal income taxes, thus shifting the tax burden to the surrounding communities. Local governance is done at the town level in Connecticut, leaving localities, already struggling with tight budgets, unable to cope with the high municipal costs that casinos create. Towns hosting and bordering the two existing casinos in Eastern Connecticut can testify to the tremendous social costs casinos bring: including round-the-clock casino traffic, a heavy burden on local police and emergency services, increased crime, and lower property values.

On the issue of Indian gaming, local communities are at a decided disadvantage. Given this uneven playing field, and our experience with an inconsistent and unfair federal acknowledgment process, it is all the more urgent that federal law and regulations governing off-reservation gaming be applied fairly and consistently.

The Indian Gaming Regulatory Act of 1988 (IGRA) and federal regulations provide clear protections for local communities and state authorities with off-reservation gaming on trust lands acquired after IGRA's enactment. In order to approve Class III gaming on off-reservation trust lands acquired post-IGRA, the Secretary is required to consult with state and local officials and determine, with the co-consent of the governor of the state in question, that gaming "would not be detrimental to the surrounding community." The detrimental impacts of another casino in Connecticut are manifest.

Class III gaming by federally-recognized tribes can only be conducted on federal trust lands. Federal regulations require the Bureau of Indian Affairs to scrutinize trust applications for off-reservation lands, giving increased weight to the concerns of local communities as the distance from the reservation increases. With tribal petitioners in Connecticut and New England seeking to build casinos far from their reservations and closer to major interstates, and in some cases crossing state lines to find more favorable gaming markets, this scrutiny must be vigorously applied pursuant to the regulations.

Given the tremendous consequences of casino development in Connecticut, we believe it is imperative that:

(1) federal law, federal regulations, and recognition criteria be applied fairly and consistently, and

(2) local communities be given every appropriate consideration pursuant to the regulations.

Thank you for considering our testimony today.

[The statement submitted for the record by John McCarthy, Executive Director, Minnesota Indian Gaming Association, follows:]

**Statement submitted for the record by John McCarthy, Executive Director, Minnesota Indian Gaming Association**

Good morning Chairman Pombo, Ranking Member Rahall, and members of the committee. My name is John McCarthy and I am the Executive Director of the Minnesota Indian Gaming Association. Our Association represents nine of the eleven federally recognized Tribes within the State of Minnesota. Those tribes are geographically located in rural communities throughout Minnesota. Our member Tribes are identified as follows:

- Leech Lake Band of Ojibway in northern Minnesota, located in proximity to the Bemidji, Walker and Grand Rapids areas.
- Grand Portage Band of Ojibway in the far northeastern corner of the State, located in proximity to Grand Marais and the Canadian border.
- Fond du Lac Band of Ojibway in northeastern Minnesota, located in proximity to the City of Duluth, Cloquet and Sawyer, Minnesota.
- Bois Forte Band of Ojibway in northern Minnesota, located in proximity to Virginia, International Falls and the Tower and Lake Vermillion area of the State.
- Mille Lacs Band of Ojibway in north central Minnesota located in proximity to Brainerd, Garrison Hinkley, Pine City and the Wisconsin border.
- Upper Sioux Community in southwestern Minnesota, located in proximity to Granite Falls and the Iowa boarder.
- Shakopee Mdewakanton Sioux Community in southeastern Minnesota, located in proximity to the Prior Lake, Savage and Shakopee areas.
- Prairie Island Sioux Community in southeastern Minnesota, located in proximity to Red Wing, Cannon Falls and the Wisconsin border.
- Lower Sioux Community in southwestern Minnesota, located in proximity to Redwood Falls and Morton Minnesota.

All Tribal governments in Minnesota negotiated compacts with the State. In that process we promised the State that we would not expand gambling by agreeing to limit our government gambling to certain games. To date we have honored that promise and we have not in any way promoted gambling expansion within Minnesota. All of our member Tribes have limited their gambling operations within Reservation boundaries, as per our agreement with the State.

Over the years many Tribes have been approached by outside investors, gaming companies, cities, counties and others, with proposals to open gambling operations. Minnesota Tribes have said no. Tribal governments take very seriously, commitments and promises that they have made.

At this time I would like to give you some facts about Tribal Government gambling and the tremendous benefits that it has produced for the rural communities throughout the State.

Tribal government gaming has spawned the growth of Reservation economies like no other economic development tool has been able to do. As Reservation economies have grown so too have the economies of near-by rural communities.

Since 1989 Minnesota tribes have developed Tribal gaming businesses that currently employ over 13,000 people. Tribal gaming is one of Minnesota's top twelve employers. Twelve of the eighteen Tribal gaming operations are the largest employer in their rural communities

Tribal gaming in Minnesota is one of the States largest tourist attractions, second only to the Mall of America. In the year 2000, Tribal casinos attracted more than 20.7 million patrons, with about 3.7 million of those individuals coming from out of State. Those individuals spent an estimated $191.2 million on food, lodging, gas and other purchases on and off the Reservation.

In 2000 Tribal government gaming employed over 13,339 Minnesota residents. 78% of those employed were non-native employees. 22% were Native American. These jobs all pay a fair and decent wage as well as health and dental insurance and retirement benefits.

In 2000 Tribal government gaming operations paid $249,506,000 in total direct annual payroll. The average wage for employees was $18,705. $28,662,000 was paid toward benefits and pension funds. $81,051,000 was paid in payroll taxes.

In 2000 Tribal governments paid $15,901,000, to local units of government, in fees and services related to their gaming operations.

From 1989 through 1999 Tribes have spent $402,717,000 on construction projects for Tribal government gaming.

In 2000 and 2001, Tribal governments spent an additional $158,395,00 in construction dollars related to Tribal government gaming.

In 2000 Tribal governments purchased $186,633,000 from Minnesota vendors.

Tribal gaming has eased the burden on State and County public assistance programs by offering gainful employment in rural communities. According to State records, AFDC payments have decreased by 17.8% in counties with Tribal gaming. The number of Native Americans receiving general assistance has decreased by more than 58%. Nearly 6% of casino employees were receiving some form of general assistance prior to casino employment. An estimated 11.5% of persons employed at Tribal casinos were receiving unemployment assistance prior to employment at the casino. Nearly 22% had been out of work at least three months, and 15% had been out of work more than six months prior to casino employment.

IGRA establishes a general policy that Indian Tribes should only conduct gaming on lands held in trust by the United States prior to passage IGRA on October 17, 1988. 25 U.S.C. § 2719. Congress also accounted for historical circumstances such as diminished reservations, terminated tribes, and Indian land claims, and established reasonable exceptions to provide for the use of "after acquired" lands when necessary. In addition, Congress established a more general exception for the use of "after acquired" lands for gaming where the Secretary of the Interior—after consultation with local governments and neighboring Indian tribes—determines that Indian gaming on the lands is in the best interests of the Tribe and would not be detrimental to the surrounding community. The Governor of the State must then concur in the Secretary's decision. Of course, the Tribe must also successfully negotiate a compact with the State before conducting class III gaming on such lands.

This process has been widely criticized as divisive among tribal governments. While the procedure is not ideal, we feel that as long as the process laid out in IGRA is followed and the necessary parties are consulted, that there is no need at this time to amend the Act. Our Association is concerned with the lack of clarity with regards to Section 20 of the Act. In our opinion there needs to be more specific language regarding the consultation process. There are no guidelines detailing how the consultation is to be conducted and what value will be placed on "Impact to surrounding Tribes." It is our belief that if there was a clearer definition of the subsection referring to "The Secretary must also consult with the local area government and neighboring Indian Tribes to ensure that such acquisitions would not be detrimental to the surrounding community." 25 U.S.C. § 2719(b)(1)(A).

In 1995 our Association was in the middle of a very distasteful battle with four Wisconsin tribes over a fee to trust transfer request relating to a dog track in Hudson Wisconsin. We found ourselves having to oppose the transfer requested by the Wisconsin Tribes. The ensuing battle was long and left many hard feelings. We did not feel that the Bureau of Indian Affairs took our concerns into account and that they completely glossed over the financial impact that this transfer would have on Minnesota markets. At the time we blamed the BIA for not providing adequate consultation. In retrospect the problem more likely was a lack of clear guidelines in the language spelled out in the act.

*CONCLUSIONS*

The Minnesota Indian Gaming Association, acknowledges the right of all Federally Indian Tribes to apply to the Secretary of Interior to take land into trust for gaming purposes under Section 20, outside of its historic reservation. We are aware that some of the past transactions have been controversial because those in nearby communities or members of neighboring Indian Tribes would be impacted by the acquisition. However, we also believe that all other neighboring Federally Recognized Tribes have an equal right as Tribal Sovereigns, to meaningful and fair consultation concerning such an application and the impact it may have on them and their people. This consultation should not be limited and should have clear guidelines allowing all parties to be heard. The neighboring boundaries should be expanded to include all bordering States as well as affected Tribes within that state. We also believe that "remoteness" should not in and of itself be a criteria for acquisition under this section.

Mr. Chairman and members of the Committee this concludes my remarks. Thank you for providing me the opportunity to testify today.