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TESTIMONY
BEFORE THE COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON TRIBAL PROPOSALS TO ACQUIRE LAND-IN-TRUST FOR
GAMING ACROSS STATES LINES. HOW SUCH PROPOSALS ARE AFFECTED BY THE
OFF-RESERVATION DISCUSSION DRAFT BILL, H.R. ____ (POMBO), TO AMEND
THE INDIAN GAMING REGULATORY ACT

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**Testimony of Wade Blackdeer, Vice President
Ho-Chunk Nation**

Good morning Mr. Chairman and members of the House Resources Committee. I am Wade Blackdeer, Vice President of the Ho-Chunk Nation. I thank you for giving me the opportunity to offer testimony on behalf of the Nation on the subject of off-reservation gaming and the draft legislation addressing off-reservation gaming.

I would like to begin my testimony today by stating that the Ho-Chunk Nation is opposed to the present legislation, as drafted. Fundamentally, the Nation supports the idea of permitting Indian tribes to engage in off reservation gaming, including gaming in more than one state. Having said that, I want to emphasize that the Nation is sympathetic to many of the purposes of the legislation, because we, too believe that there must be restrictions on off-reservation gaming. We believe that those restrictions should be based on the concept that tribal gaming should only be conducted in areas to which an Indian tribe has a specific historical connection, so long as there is a stipulation that tribes should not be permitted to interfere with the established gaming markets of other tribes without their express consent.

Headlines and political grandstanding notwithstanding, tribes are not, for all intents and purposes, able to engage in off-reservation gaming. The Section 20 approval process has already created so many roadblocks for approving the taking of land into trust for gaming purposes that it is almost impossible to establish off-reservation gaming unless it is done based on legislation specifically granting trust status to land for gaming purposes. And even there, as we have seen with the Lytton Band in California, public resistance can be so intense that legislation may not be enough to ensure that such gaming will ever take place. The resistance to off-reservation gaming

is subject to so many barriers, in fact, that the Nation has been unable to conduct gaming on its **pre-1988** trust land in Madison, Wisconsin, which does not even fall under the Section 20 approval process. The IGRA provides that the location of gaming is a topic of tribal-state compact negotiations and, on that basis, the Governor of Wisconsin refused to even negotiate over Class III gaming on the pre-1988 trust land, where Class II gaming is already being played. When the present Governor finally agreed to negotiate over the Madison site, he insisted that the issue of Class III gaming on our pre-1988 trust land be put to a public referendum, which was subsequently defeated.

Thus, this legislation appears to be designed to resolve a problem that does not exist. It is simply unrealistic to believe that off-reservation gaming will ever take place without the support of state and local government. We do not need more roadblocks to approval, such as the provisions of the draft legislation requiring the approval of many more governmental entities. This is found in proposed Section 2719 (e)(2)(C) and (3)(C). What we need, and what this legislation can provide, are restrictions on off-reservation gaming plans that eliminates the actual problems faced by gaming tribes and the basic concerns of the non-Indian communities and governmental entities.

The Nation believes that, in order to resolve the problems surrounding off-reservation gaming, a number of basic restrictions should be applied to the Secretary's approval of trust transfers of land for gaming purposes. We do not believe that any changes need to be made to the provisions of the IGRA that related to the restored lands and newly recognized tribes exceptions found in Section 2719. First, all off-reservation gaming should be conducted on land to which the tribe seeking gaming has a historical connection. That connection could be established on the basis that the land was ceded by the Tribe in a treaty, the land was once a reservation of the

tribe, or the land was the aboriginal territory of the tribe. Aboriginal territory could be established through the determinations of the Indian Claims Commission and the Indian Court of Claims, and thus aboriginal territory would provide a meaningful and easily determined standard.

The Nation is a useful example of this historical connection concept. Although the Nation has no reservation, it has maintained a governmental, social and political presence throughout the Midwest, including the State of Illinois. The headquarters for the Nation's government is located in Black River Falls, Wisconsin, and it operates governmental offices throughout Wisconsin, including Minneapolis and Chicago. The Chicago Office has been in existence since the early 1980's, providing services to a thriving population of Ho-Chunk tribal members who live in the Chicago metro area. In fact, the Nation's ties to the Chicago area are so strong that they have been recently endorsed by a Federal Agency. In March 2005, the U.S. Department of Housing and Urban Development recognized the Chicago area and surrounding counties of Cook, Kane, Lake and Du Page as part of the service area for the Ho-Chunk Nation for purposes of the Section 184 Indian Housing Loan Guarantee Program. The Ho-Chunk Nation's Housing and Community Development Agency was approved by H.U.D. for the Section 184 Program accordingly.

In addition, we know that the Nation's tribal members have been in the Chicago area so long that The Winnebago Club has existed in the area since the 1950's. The Nation was formerly known as the Wisconsin Winnebago, and a group of tribal members in the Chicago area formed the Club as a social organization.

The Nation's ties outside of Wisconsin, and particularly in Illinois, are more than social or governmental in nature. The Nation has aboriginal connections throughout the area that would establish our historical connection to the State. I have provided a map of the Nation's

aboriginal territory for the Committee's review and consideration. It shows the Nation's historical connections to Wisconsin, Minnesota and Illinois. Clearly, the Nation has a historical connection with the states of Wisconsin, Illinois and Minnesota.

Second, approval should not be given to requests to have land taken into trust that is within the geographical proximity of an existing gaming facility of another tribe without that tribe's consent. This provides tribes with some market security and ensures some stability of tribal revenues that pay for essential governmental programs for tribal members. An exception to this consent provision would be if the land in question is within five miles of the reservation of the tribe seeking to enter the market of the other tribe, the tribe would not need to obtain the consent of the tribe with the existing gaming operation.

In considering this factor, the Nation's experience is instructive. The Nation is facing precisely this situation in Wisconsin. Right now, a number of tribes like the St. Croix Band of Lake Superior Chippewa, the Bad River Band of Lake Superior Chippewa and the Menominee Nation are attempting to move into the Nation's existing markets. This is purely an attempt to capture market share, and is based on no present historical connection. Under our proposal, a tribe that wishes to enter into such a market would have to receive the approval of the tribe that has the existing facility, which would force tribes to communicate on matters that shared communities should address.

Third, tribes should not be permitted to leapfrog over another tribe in order to establish a gaming operation closer to the population center that is the primary basis for an existing gaming facility of another tribe. The Nation is facing precisely this situation. For example, the aforementioned Wisconsin tribes do not have a fourth gaming site provision in their present Tribal-State Gaming Compacts, yet the Ho-Chunk Nation does. However, those tribes seem to

ignore this preserved ability by one tribe (the Nation) that negotiated for such a contractual right and prefer to move forward with their own agendas.

These provisions are designed to prevent strife among tribes and to ensure that tribal economies remain stable. Here, again, the Nation's situation is instructive. Right now, because of the efforts of other tribes to move into the Nation's markets, the Nation is forced to seek new markets that are, in some cases, outside of the Nation's historic territory. The Nation is compelled to do so, so long as its markets are under threat from other tribes. The Nation has an extensive tribal government that provides its members with a variety of benefits and programs. Those benefits and programs are dependent on a predictable income stream. So long as the Nation's market can be undercut as a result of approval of new gaming operations approved by the Secretary, the Nation has no choice but to do precisely what it does not wish to do: attempt to establish gaming in areas to which it may have no historic connection, with the potential effect of reducing the market of an established gaming facility. If the restrictions suggested by the Nation are made part of the present legislation, the Nation would have no reason to seek sites for new gaming facilities in any area other than its own historic lands. Until they are adopted, the scramble for markets will continue.

I hope that the Committee will consider these proposals in the spirit in which they are offered: Communication. The Nation wishes to assist this Committee in creating legislation that will stabilize Indian gaming, so that all communities can adequately address their concerns. This will benefit the tribes, their members and those members of the non-Indian communities who are concerned about the unplanned expansion of Indian gaming in our shared communities.

Thank you.