TESTIMONY OF CHIEF CHRISTINE NORRIS
JENA BAND OF CHOCTAW INDIANS

BEFORE THE
RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

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OVERSIGHT HEARING ON GAMING ON OFF-RESERVATION, RESTORED AND NEWLY-ACQUIRED LANDS

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 acknowledgement 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 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.

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

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.