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RE: Comments on Draft Revisions to 25 C.F.R. Part 151.11 and Part 151.12

Dear Acting Assistant Secretary Tahsuda:

These comments are submitted on behalf of our client, the Mississippi Band of Choctaw Indians ("MBCI"). MBCI, as with all other federally-recognized tribes, has its own complex and unique history. The MBCI ceded over 2.6 million acres by treaty, leaving the remaining Choctaws that refused to leave Mississippi essentially landless. Now, almost 75 years after our post-removal reservation was formally proclaimed in 1944, the Tribe is left with a remnant of approximately 30,000 acres scattered across 10 counties in east central Mississippi. Given the size of the MBCI, having a current membership of over 10,000, such an amount of land is insufficient for continued ability to provide housing, culture, economic development, education, and health services for its members. In this regard, the Congress has in recent decades expressly recognized the many benefits that result from additional trust land acquisitions and an enhanced reservation land base for the Mississippi Choctaws. *See,* Pub. L. 106-228, as discussed later in these comments. (*See,* Exhibit A).

Any efforts by the Department that would make the land into trust (LIT) process harder or more time-consuming via proposed regulations cut directly against the Department's stated goal of reducing regulatory burdens. From MBCI'S perspective, the proposed regulations will add unnecessary delay to the LIT process, and embolden and strengthen non-tribal interests that object to the tribal lands being placed into trust. In this regard, these propose regulations reflect many of the same misplaced priorities and false premises which have inhered in prior administrative efforts to make the land-into-trust process harder, not easier. *See e.g.,* MBCI's (and other tribal) comments on the Department's last proposed amendments to the existing Part 151 regulations commenced in 2006, which were not ultimately published. (Exhibit B). The comments and concerns were set out regarding the 2006 proposed amendments to Part 151 apply with equal force to the new proposed Part 151 regulations.

The realities of Indian Country vary from tribe to tribe, region to region. MBCI appreciates that the Department has made efforts to conduct consultations regionally. But having read the transcripts of those consultations and after hearing from other tribes commenting on this process, MBCI is concerned

that the Department does not fully appreciate the negative impact its proposed regulations would have on Indian Country.

The enclosed comments address our concerns related to the October 4, 2017 draft revisions to 25 C.F.R. Part 151.11 and Part 151.12 ("October Letter") as well as the December 6, 2017 Dear Tribal Leader letter ("December Letter").

The October Draft Revisions Should Be Formally Withdrawn

As an initial comment, MBCI has tracked tribal rulemaking processes by the federal government for decades. The informal and somewhat unstructured offering of draft revisions to 25 CFR Part 151 contained in the October letter is not in line with previous rulemaking procedures used by the Department. Over the past 25 years, the Department has made strong efforts to make tribal consultation meaningful and timely. Generally, the Department has engaged in a tribal input process prior to issuing draft regulatory revisions. In this case, the Department simply attached them to a letter and sent it out. As you note in the December Letter, it is more appropriate to begin this process with a broader discussion of 25 C.F.R. Part 151 ("Part 151") and the LIT process rather than a truncated approach. Therefore, we request that the Department formally withdraw the draft revisions contained in the October Letter.

Comments on Questions Posed in the December Letter

In its December 6, 2017 letter, the Department asked a series of questions to prompt tribal comments. What follows are MBCI's responses to these questions:

1. What should the objectives of the LIT program be? What should the Department be working to accomplish?

This set of questions is straightforward to answer: the Department should be working tirelessly in furtherance of its trust responsibility to tribes, and place land into trust with the least amount of expense, time, and controversy for tribes. MBCI has had, essentially, a very small amount of land taken into trust for its large tribal population base from the 19th century to the present. Very small tracts have gone into trust since then, which again is not sufficient land to meet tribal needs and priorities.

Without trust land, tribes have no hope of building governments, retaining their languages, their cultural identity, building local economies, addressing housing needs, and creating the capacity to be less reliant on the federal government. The importance of trust land for tribes cannot be overstated. Perhaps most importantly, trust land provides the tribal government the ability to exercise its territorial jurisdiction without interference from state or local jurisdictions. Tribes can then decide for themselves whether to develop the land for economic development or governmental purposes such as housing, health care, or tribal administration. Trust land also insulates tribes from state and local taxation, can provide the tribe with a limited tax base, and gives tribes the ability to protect land with historical and

cultural significance. The Supreme Court itself has recognized that "there is a significant territorial component to tribal power."[1]

2. How effectively does the Department address on-reservation LIT applications?

MBCI, as a result of having to build on a trust land base vastly smaller than its original ancestral homelands, is concerned about all forms of land taken into trust. MBCI encourages the Department to remove all impediments to tribes taking land into trust on existing reservations, as well as lands that are adjacent to existing reservations and trust parcels. Those adjacent parcels should (at minimum) continue to be treated as "on-reservation" applications as in the existing regulations at 25 C.F.R. § 151.10, since concerns about distance, jurisdiction, checker-boarding and non-Indian impacts are minimized and/or non-existent.

3. Under what circumstances should the Department approve off-reservation trust applications?

The Indian Reorganization Act (IRA) does not distinguish between "on-reservation" and "off-reservation" trust land applications. The Department should not create preferential processes, but rather streamline all LIT processes.

The Department has had relatively consistent regulations found at 25 CFR Part 151 for the last two decades or so. However, the resources necessary to process LIT applications has varied over those years, with the Department never having sufficient funding to meet need. Nonetheless, the Department has generally viewed its role in placing land in trust as that of implementing the IRA in a manner that fosters tribal self-determination in implementing the land-into-trust process while encouraging local cooperation where possible.

The Department should approve land in trust where doing so benefits an Indian tribe and addresses needs laid out in the LIT application. Many tribes, like MBCI, are their region's largest employer. However, many of these jobs would be non-existent without trust land. The Department should have a solid grasp and understanding of the thousands of examples in the United States where tribal trust land substantially benefits both the tribe and the surrounding non-Indian community and economy. With those principles in mind, the Department can approve off-reservation placement of land in trust knowing that there is a strong likelihood of short- and long-term benefits both to the Tribe and to the nearby non-reservation communities.

4. What criteria should the Department consider when approving an off-reservation trust application?

One of the most important criteria the Department should consider is that each tribe is different. Some tribes have a huge land base, many tribes like MBCI struggle to provide enough land to meet increasing tribal needs. Everywhere, land is expensive and where tribes acquire title to fee land, the

[1] *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 142 (1982).

Department should give the tribe great deference when a tribe makes a determination that placing that land-into-trust is necessary to meet tribal objectives.

As noted above, the IRA does not distinguish between "on" and "off" reservation in its authority for the Department to place land into trust. That language arose from the enactment of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*, in regard to what trust land would be eligible for gaming purposes and that decision – whether the land is eligible for gaming – is vested with the Chair of the National Indian Gaming Commission and not the Secretary or the Department. In fact, the text of the IRA and associated Congressional reports indicate that the IRA ". . . seeks to get away from the bureaucratic control of the Indian Department, and it seeks further to give the Indians the control of their own affairs and of their own property; to put it in the hands either of an Indian council or in the hands of a corporation to be organized by the Indians". 78 Cong. Rec. 11125.

The presumption that an "on-reservation" acquisition is somehow the "preferred" acquisition is the very type of bureaucratic control and paternalism that Congress was directing the Department to move away from when it passed the IRA. The IRA was specifically intended to put tribal decisions, including decisions about trust land acquisitions into the hands of tribes without second-guessing by the Department. *Id.* Today, tribes are more capable than ever to make those types of informed decisions and the Department should defer to tribal expertise and process all applications in the same manner regardless of location or purpose.

Indeed, the notion that "economic development" applications should be cordoned off from "non-economic development" purposes applications is directly in contrast with the purpose of the IRA. "The intent and purpose of the Reorganization Act was 'to rehabilitate the Indian's economic life...", *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973), *citing* H. R. Rep. No. 1804, 73d Cong., 2d Sess., 6 (1934). Congress *intended* the land acquisitions to facilitate all types of tribal economic development, including gaming if the tribe so choses. The erosion of this central fundamental purpose is outside Congressional intent and should be rectified in any revisions to Part 151. The Department should not engage in the politics and rhetoric which often arise in connection with applications to take land-into-trust for gaming purposes and should simply process these applications in a uniform and efficient manner that meets the statutory requirements of the IRA or other authorizing statute and complies with other applicable federal law – as intended by Congress. If there is no proposed change in use of the property, if there is an emergency, if land is to be used for conservation or cultural purposes, then the Department should ensure that a Categorical Exclusion to National Environmental Policy Act (NEPA) requirements is adopted and efficiently applied. The constraints imposed by the Indian Gaming Regulations Act, 25 U.S.C. §§ 2701 *et seq.* will control on whether the land taken into trust in the future can or cannot ultimately be used for gaming. *See, in particular,* § 2703(4) and 2719.

The Department has for decades applied criteria that take into account location, jurisdictional impacts, cost-benefit analysis, environmental considerations, etc. These criteria appear to have created opportunities for tribes and local governments to have conversations, and create some cooperative agreements to meet local needs along with the tribal need for trust land. The Department should utilize criteria that encourage these conversations and cooperative agreements, but without diminishing the clear goals and objectives of the IRA to strengthen tribal governments and communities. The existing

regulations found at 25 CFR Part 151 include sufficient criteria for the placement of land into trust, so long as an additional criteria is added to examine the specific land history of the applicant tribe, since that is a critical element the current regulations do not adequately address.

5. Should different criteria or procedures be used for off-reservation applications that are for economic development, housing, gaming, non-gaming, and/or no change in land use applications?

Not generally. As argued directly above, these distinctions only create division, confusion, and complications. The Department should use the same criteria and procedures, but the Department should have the internal capacity to streamline applications based on factors such as absolute tribal need, clear lack of controversy, no change in land usage, and/or a tribal request to the Department to prioritize a specific LIT application. Housing applications made to address homelessness are clear examples of the type of LIT application that should move through the process quickly.

MBCI recommends the Department look closely at the land-into-trust process and develop reasonable timeframes for completing any bureaucratic functions necessary to making the final decision. Further, the Department should establish a timeframe for reaching a final decision. These defined timeframes will provide guidance to the Department staff and certainty for the tribal applicant.

The criteria that the Department utilizes should not be complex, arcane, and multi-faceted. The criteria should be straightforward for every application, the procedures should be streamlined for every application, and the Department should consult with each applicant tribe as to how to prioritize a given application. It is important for the Department to understand that the regulations have to be adaptive to meet tribal needs.

However, for the reasons set out at pages 7-9, of MBCI's comments on the amendments to Part 151 proposed in 2006 (Exhibit B)—principally because of the special restrictions on using off-reservation (non-adjacent) land taken into trust after October 17, 1988 for gaming—we do not oppose distinguishing between off-reservation land-into-trust applications for the purpose of gaming versus other non-gaming uses.

Congress—recognizing the jurisdictional, social, cultural and economic benefits of expanded tribal trust and reservation land bases—has authorized the Secretary to place land-into-trust for the benefit of particular tribes in over fifty-one separate statutes, [2] including Pub. L. 106-228, enacted to

[2] The other fifty (50) statutes include: Indian Financing Act of 1974, 25 U.S.C. §§ 1466, 1495; Indian Land Consolidation Act, 25 U.S.C. § 2202; Pub. L. No. 106-462, Title I, § 103(6), 114 Stat. 2002, 25 U.S.C. § 2216(c) (2000) (originally enacted as Indian Land Consolidation Act of 1983, Pub. L. No. 97-459, Title II, § 217); Rocky Boy's Indian Reservation, Mont., Pub. L. No. 85–773, Aug. 27, 1958, 72 Stat. 931 (formerly 25 U.S.C. § 465); Payson Band, Yavapai-Apache Indian Reservation, Pub. L. No. 92–470, Oct. 6, 1972, 86 Stat. 783 (formerly 25 U.S.C. § 465); 25 U.S.C. § 5322(a)(3); Federal Property and Administrative Services Act, 40 U.S.C § 523(a)-(b), Pub. L. No. 107-217 § 1, Aug. 21, 2002, 116 Stat 1083 (formerly 40 U.S.C. § 483(a)(1)-(2)); Oklahoma Indian Welfare Act, 25 U.S.C. § 5201, June 26, 1936, ch. 831, § 1, 49 Stat. 1967 (formerly 25 U.S.C § 501); Shoshone Tribe: Distribution of Judgment Fund Act, July 27, 1939, ch. 387, § 4, 53 Stat. 1129 (formerly 25 U.S.C. § 574); Cheyenne River Sioux Tribe, Pub. L. No. 88-418, Aug. 11, 1964, 78 Stat. 389; Yakima Tribes, July 28, 1955, ch.

423, § 1, 69 Stat. 392; Pub. L. No. 88–540, § 1, Aug. 31, 1964, 78 Stat. 747; Pub. L. No. 100–581, title II, § 213, Nov. 1, 1988, 102 Stat. 2941; Pub. L. No. 101–301, § 1(a)(3), (b), May 24, 1990, 104 Stat. 206 (formerly 25 U.S.C. § 608); Seminole Indian Reservation, Act July 20, 1956, ch. 645, 70 Stat. 581 (formerly 25 U.S.C. § 465); Isolated Tracts Act, Pub. L. No. 88-196, Dec. 11, 1963, 77 Stat. 349, amended by Pub. L. No. 91-115, Nov. 10, 1969, 83 Stat. 190; Spokane Indian Reservation, Wash., Pub. L. No. 90–335, § 1(a)–(e), June 10, 1968, 82 Stat. 174, as amended by Pub. L. No. 93–286, May 21, 1974, 88 Stat. 142 (formerly 25 U.S.C. § 487); Swinomish Indian Reservation, Pub. L. 90–534, § 3, Sept. 28, 1968, 82 Stat. 884 (formerly 25 U.S.C. § 610b); Menominee Restoration Act, Pub. L. No. 93-197, Dec. 22, 1973, 87 Stat. 770, 772-3 (formerly 25 U.S.C. §§ 903-903g); Texas Band of Kickapoo Act, Pub. L. No. 97-429, § 5, Jan. 8, 1983, 92 Stat. 2270 (formerly 25 U.S.C. § 1300b-14); Maine Indian Claims Settlement Act of 1980, Pub. L. No. 96–420, Oct. 10, 1980, 94 Stat. 1785 (formerly 25 U.S.C. §§ 1721-35); Siletz Indian Tribe Restoration Act, Pub. L. No. 95-195, §§ 3(a) and 7(d), Nov. 18, 1977, 91 Stat. 1415 (formerly 25 U.S.C. §§ 711a and 711e(d)); Rhode Island Indian Claims Settlement Act, Pub. L. No. 95–395, Sept. 30, 1978, 92 Stat. 813 (formerly 25 U.S.C. §§ 1701-16); Florida Indian Land Claims Settlement Act of 1982, Pub. L. No. 97–399, §§ 1-10, Dec. 31, 1982, 96 Stat. 2012 (formerly 25 U.S.C. §§ 1741-49); Pub. L. No. 97- 459, 96 Stat. 2515; Mashantucket Pequot Indian Claims Settlement Act, Pub. L. No. 98–134, Oct. 18, 1983, 97 Stat. 851 (formerly 25 U.S.C. §§ 1751-60); Coos, Lower Umpqua, and Siuslaw Restoration Act, Pub. L. No. 98-481, § 7, Oct. 17, 1984, 98 Stat. 2253, as amended by Pub. L. No. 105-256, § 5, Oct. 14, 1998, 112 Stat. 1897 (formerly 25 U.S.C. § 714e); White Earth Reservation Land Settlement Act of 1985, Pub. L. No. 99-264, March 24, 1986, 100 Stat. 61; Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100-89, title II, §§ 203(a) and 206, Aug. 18, 1987, 101 Stat. 670 (formerly 25 U.S.C. §§ 733(a) and 736); Navajo and Hopi Indian Relocation Amendments Act, Pub. L. No. 93-531, § 1, Dec. 22, 1974, 88 Stat. 1716, as amended by Pub. L. No. 96-305, July 8, 1980, 94 Stat. 929 and Publ. L. No. 100-666, Nov. 16, 1988, 102 Stat. 3929 (formerly 25 U.S.C. §§ 640d- 640d-31); Puyallup Tribe of Indians Settlement Act of 1989, Pub. L. No. 101–41, § 1-12, June 21, 1989, 103 Stat. 83 (formerly 25 U.S.C. §§ 1773-73j); Coquille Restoration Act, Pub. L. No. 101-42, §§ 3(e) and 5, June 28, 1989, 103 Stat. 92 as amended by Pub. L. No. 104–208, div. B, title V, § 501, Sept. 30, 1996, 110 Stat. 3009–537 (formerly 25 U.S.C. §§ 715a and 715c); Ponca Restoration Act, Pub. L. No. 101-484, § 4(c), Oct. 31, 1990, 104 Stat. 1167-8 (formerly 25 U.S.C. § 983b); Seneca Nation Settlement Act of 1990, Pub. L. No. 101–503, Nov. 3, 1990, 104 Stat. 1292 (formerly 25 U.S.C. §§ 1774-74h); Crow Boundary Settlement Act of 1994, Pub. L. No. 103–444, § 1-13, Nov. 2, 1994, 108 Stat. 4632 (formerly 25 U.S.C. § 1776-76k); Mohegan Nation of Connecticut Land Claims Settlement Act of 1994, Pub. L. No. 103–377, § 1-10, Oct. 19, 1994, 108 Stat. 3501 (formerly 25 U.S.C. §§ 1775-75h); Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act, Pub L. No. 103-324, §6, Sept. 21, 1994, 108 Stat. 2158 (formerly 25 U.S.C. § 1300k-4); Auburn Indian Restoration Act, Pub. L. No. 103-434, title II, §§ 202(e) and 204, Oct. 31, 1994, 108 Stat. 4533-4 (formerly 25 U.S.C. §§ 1300l(e) and 1300l-2); Paskenta Band Restoration Act, Pub. L. No. 103-454, title III, §§ 303(e) and 305, Nov. 2, 1994, 108 Stat. 4793-4 (formerly 25 U.S.C. §§ 1300m-1(e) and 1300m-3); Act to Restore Federal Services to the Pokagon Band of Potawatomi Indians, Pub. L. No. 103-323, §6, Sept. 21, 1994, 108 Stat. 2154 (formerly 25 U.S.C. § 1300j-5); Miccosukee Settlement Act of 1997, Pub. L. No. 105–83, title VII, §§ 701-07, Nov. 14, 1997, 111 Stat. 1624 (formerly 25 U.S.C. §§ 1750-50e); Michigan Indian Land Claims Settlement Act, Pub. L. No. 105-143, Dec. 15, 1997, 111 Stat. 2652; Torres-Martinez Desert Cahuilla Indians Claims Settlement Act, Pub. L. No. 106–568, title VI, §§ 601-10, Dec. 27, 2000, 114 Stat. 2906 (formerly 25 U.S.C. § 1778-78h); Cherokee, Choctaw, And Chickasaw Nations Claims Settlement Act, Pub. L. No. 107–331, title VI, § 601-09, Dec. 13, 2002, 116 Stat. 2845 (formerly 25 U.S.C. §§ 1779-79g); Graton Rancheria Restoration Act, Pub. L. No. 106-568, title XIV, § 1405, Dec. 27, 2000, 114 Stat. 2940 (formerly 25 U.S.C. § 1300n-3); Shawnee Tribe Status Act of 2000, Pub. L. No. 106–568, title VII, § 707, Dec. 27, 2000, 114 Stat. 2915 as amended by Pub. L. No. 109–59, title X, § 10213, Aug. 10, 2005, 119 Stat. 1939 (formerly 25 U.S.C. § 1041e); Santo Domingo Pueblo Claims Settlement Act of 2000, Pub. L. No. 106–425, §§ 1-7, Nov. 1, 2000, 114 Stat. 1890, as added Pub. L. No. 106–434, § 3, Nov. 6, 2000, 114 Stat. 1913 (formerly 25 U.S.C. §§ 1777-77e); Paiute Indian Tribe of Utah Restoration Act, Pub. L. No. 96–227, § 7, Apr. 3, 1980, 94 Stat. 320 as amended by Pub. L. No. 109–126, § 4, Dec. 7, 2005, 119 Stat. 2547 (formerly 25 U.S.C. § 766).; Pueblo de San Ildefonso Claims Settlement Act of 2005, Pub. L. No. 109–286, §§ 1-18, Sept. 27, 2006, 120 Stat. 1218 (formerly 25 U.S.C. §§ 1780-80p).

take some 8,500 acres of land-into-trust for MBCI (then involving over 76 long stalled land-into-trust applications). Additional lands were later taken into trust for MBCI by amendments to Pub. L. 106-228. *See,* § 811, Act of December 27, 2000, Pub. L. 100-568 (114 Stat. 2868) and § 107, Act of March 2, 2004, Pub. L. 108-204 (118 Stat. 542). *See,* Fed. Reg. 15899 (April 3, 2007) (Exhibit C) Pub. L. 106-228 also declared all of our trust lands acquired prior to or after that legislation (since the Secretary's proclamation establishing our reservation in 1944), to be part of our reservation lands. *See,* § (a)(1) of Pub. L. 106-228:

> (a) IN GENERAL.—Notwithstanding any other provision of law—
> (1) all land taken in trust by the United States for the benefit of the Mississippi Band of Choctaw Indians on or after December 23, 1944, shall be part of the Mississippi Choctaw Indian Reservation;

The Part 151 process is used by the Department to process tribal requests for the Secretary to place land into trust on behalf of a particular tribe under authority delegated by a given statute. Generally, the majority of trust land applications cite to the Secretary's authority under the IRA. However, the Part 151 process is also used by the Department to process trust land applications under other statutory authority such as discretionary tribal land claim settlement or restoration act acquisitions.

In MBCI's case, as noted above, special legislation was required to complete the over seventy-six (76) long land into trust applications which had been held up in the bureaucratic review process for years—some of which had been pending for fifteen (15) years. The Congress took action to take these (and later other) lands into trust for the MBCI to facilitate the Tribe's very successful economic development efforts—efforts which have produced extremely positive economic impacts, both to the Tribe's reservation lands and for the surrounding non-reservation communities. *See,* Testimony and hearing record of June 13, 2000 re S.1967 (Exhibit E) and Separate Report 106-307 (June 13, 2000) (Exhibit D).

6. What are the advantages of operating on land that is in trust?

It is somewhat concerning to MBCI that the Department feels the need to ask for this information given the success of the IRA, the success of the Indian Self-Determination, Education and Assistance Act, and the wide range of stories from the United States of tribal strength and recovery. Of course Indian Country still suffers and includes some of the most impoverished, remote, and underserved populations in the country. However, the placement of land in trust for tribes has been a bright spot and it is helpful to go back to the adoption of the IRA to understand why land in trust is so important.

The IRA reflected a drastic sea of change from a policy of divesting tribal lands under the Indian General Allotment Act of 1887, also known as the Dawes Act, 24 Stat. 388 (1886), to a policy of restoring halting divestment and restoring land back into tribal ownership.

"Unquestionably, the Act reflected a new policy of the Federal Government and aimed to put a halt to the loss of tribal lands through allotment." *Mescalero Apache Tribe*, 411 U.S. at 151.

"The intent and purpose of the Reorganization Act was 'to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.' H.R.Rep.No.1804, 73d Cong., 2d Sess., 6 (1934). *See also* S.Rep.No.1080, 73d Cong., 2d Sess., 1 (1934).

To date, Congress has not changed this fundamental purpose of the IRA nor has the Supreme Court held – despite numerous challenges – that land should not be placed into trust on behalf of tribes under the Secretary's authority.[3]

As stated earlier, the importance of trust land for tribes cannot be overstated. Trust land provides the tribal government the ability to exercise its territorial jurisdiction as a true form of self-determination and sovereignty. Tribes can decide for themselves whether to develop the land for economic development or governmental purposes such as housing, health care or tribal administration. These are the types of decisions that sovereign governments make for themselves. Trust land also can provide the tribe with a limited tax base to support its own governmental services and infrastructure, and gives tribes the ability to protect land with historical, spiritual and cultural significance.

Without a sufficient reservation (trust) land base, tribes are sometimes forced to operate tribal economic development projects or government programs on a mix of reservation (trust) and non-reservation (non-trust) lands—subjecting the same tribal government programs to different, often conflicting legal regimes of tribal and federal law (for their on-reservation components) and state law (for their off-reservation components. This can create a compliance nightmare in terms of personnel rules and laws, tax rules and laws, and health and safety laws, and staff licensing rules and laws, and law enforcement rules and laws—with the off-reservation (non-trust) operations being subject to state court jurisdiction while the on-reservation (trust land) operations being subject to tribal or federal jurisdiction for tribes (such as MBCI) which are not located in Pub. L. 83-280 states or their equivalent.[4]

Facilitating an expanded trust land base avoids these severe jurisdictional and compliance complications.

Further, as evidenced by MBCI's experience, tribal economic development can flourish on trust lands because of the favorable tax and regulatory environments tribes are able to offer to on-reservation tenants or investors. *See,* Exhibit D.

7. Should pending applications be subject to any new regulatory revisions?

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[3] *See generally, Confederated Tribes of Grand Ronde Cmty. of Oregon v. Jewell*, 830 F.3d 552, 563 (D.C. Cir. 2016), *cert. denied sub nom. Citizens Against Reservation Shopping v. Zinke*, 137 S. Ct. 1433, 197 L. Ed. 2d 660 (2017); *Big Lagoon Park Co., Inc. v. Acting Sacramento Area Dir., Bureau of Indian Affairs*, 32 IBIA 309, 312 (1998); *Stand Up for California! v. U.S. Dep't of the Interior*, 204 F. Supp. 3d 212, 226 (D.D.C. 2016).

[4] *See, Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138 (1984) (*Wold I*); *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971); *Williams v. Lee*, 358 U.S. 217 (1959).

No, unless the new revisions provide more streamlined and simple processes for the tribes. It is a well-established principle of administrative law that regulations promulgated by an agency hold the force of law for that agency. The existing Part 151 was promulgated under the Department's federal rulemaking authority and establishes the regulatory process for exercising its trust acquisition authority under the IRA. In the event that the Department decides to subject pending applications to new Part 151 standards without completing the current Part 151 process that applies to a pending application, MBCI is concerned this will lead to costly and unnecessary litigation.

If new regulations are finalized, tribes should be given the option of having pending applications processed under the existing regulations or processed under the new regulations.

8. & 9. How should the Department weigh the state and local government concerns? What about public comments? Should memoranda of understanding be required?

The IRA does not require consideration of state and local government interests. MBCI strongly believes that requiring cooperative agreements outside of the NEPA process creates a "pay-to-play" scenario whereby tribes seeking to increase their land base can be forced into unfavorable agreements with state or local jurisdictions in exchange for their support or neutrality on a land-into-trust application. Local cooperation is only possible where the federal government continues to support tribal objectives under the IRA. Without that support, LIT will come to a halt.

Given the checker-boarding effect of the Dawes Act, and there are other circumstances in which reservations were otherwise recreated from isolated trust land purchases without there first being a declared coterminous reservation boundary, many reservations have non-tribal fee land within their borders, or located outside any fixed, single reservation boundary, like the MBCI, has not had a fixed external reservation boundary since our post-removal reservation was declared in 1944. 9 Fed. Reg. 14907 (Dec. 23, 1944). *See, U.S. v. John,* 437 U.S. 634 (1978) (ruling that the Secretary had lawfully taken land into trust for the Mississippi Choctaws per the IRA without the state's consent and that those lands taken into trust for the Tribe constituted "Indian Country" under 18 U.S.C. § 1151). Instead, the MBCI's post removal reservation has always consisted of separate trust parcels—now spread over ten (10) counties. Of course, as the Tribe has increased its trust land holdings, the amount of its trust and reservation land parcels which are now adjacent to each other has increased. Given this history, any regulations that make it harder to get off-reservation fee lands into trust (as compared to fee lands located within declared reservation boundaries) unfairly penalize tribes whose reservations consist wholly of trust parcels not located within formal reservation boundaries. The IRA clearly did not contemplate this kind of harmful distinction between the tribes and was particularly focused on restoring reservation land bases for landless tribes or tribes with very small land bases.

It is simply good governance for the governments with jurisdiction over or around those parcels to work together for the provision of public health and safety services such as water, fire, emergency services and law enforcement. Tribes often reach such agreements with their surrounding state and local jurisdictions over tribal land held both in trust and in fee or restricted status. While these agreements are often done outside of the trust land application process, sometimes they are also reached during the

NEPA review portion of the land-into-trust process to mitigate traffic or other concerns.[5] Importantly, however, these are agreements appropriately reached by contracting parties on equal footing to obtain a certain desired result in the interest of both parties. To require these types of agreements to be included in the land-into-trust process would place a tribe on unequal footing and thus subject to either acquiescing to the demands of the other jurisdiction or being forced to not grow their land base.

The IRA does not require the Department to consider comments of public citizens or state and local concerns when evaluating a land-into-trust application. In fact, the IRA was passed to *protect* tribes from those very interests who–much like today–sought to keep land out of tribal ownership. The only possible place to consider citizen, state or local concerns is strictly within the NEPA review process, and there, once the environmental concerns are adequately mitigated, then the citizen, state or local jurisdiction concerns should not interfere with the fiduciary duty of the Secretary to acquire land-into-trust on behalf of the applicant tribe.

10. How else can the process be streamlined?

Of considerable concern to MBCI is the addition of a two-tier review and approval process in the October Letter Draft Revisions. First, unilateral denial without conducting a complete review of the application will result in additional costs for a tribe – not less. A tribe whose application is denied in the first review will have to expend valuable resources to appeal the decision which–if they succeed in overturning the initial decision – will then require them to continue proceeding through the remainder of the process. Many tribes may not have the resources to sustain the application through such delay and cost and then would be deprived of their right to an increased land base. We know that delay is a common tactic utilized by well-funded tribal land acquisition opponents and this would only serve to bolster such opposition.

Second, an initial denial will substitute a tribe's positive determination with the Department's negative determination. Congress has recognized the right of a tribe to make its own decisions in exercise of its sovereignty many times over. If a tribe determines that placing a parcel of land into trust – no matter where located or whether that land is within its ancestral homelands– then the Department should respect that tribe's decision and process the application with all due deliberation.

The Department should do away with its reinstatement of an additional 30 day appeal period. This proposed administrative repeal of the so-called "*Patchak* Patch" is contrary to the stated goal of the revisions – preservation of tribal resources. In 2012, the Supreme Court of the United States held in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak,* 567 U.S. 209 (2012) ruled that the law does not bar Administrative Procedure Act challenges to the Department of the Interior's determination to take land in trust even after the United States acquires title to the property thus ensuring there is an opportunity for judicial review of the Secretary's trust land acquisitions. This eliminates the original reason for creating the prior thirty (30) day delay period. *See, Dept. of the Interior v. South*

[5] *See* https://www.walkingoncommonground.org/ for many examples of intergovernmental agreements between tribes and state and local governments.

Dakota, 519 U.S. 919 (1996); *City of Oacoma v. Dept. of the Interior,* 423 F.3d 790 (8th Cir. 2006) Acquiring the land-into-trust immediately allows a tribe to proceed with its development plans without undue delay. It does *not* prejudice a potential challenger from filing a lawsuit challenging the Secretary's decision as that challenge can be brought for 6 years after the decision has been made. Alternatively, reinstating the 30-day period before placing the land-into-trust *does* prejudice a tribe that may be faced with a lawsuit brought within the 30-day period and an injunction prohibiting it from proceeding with its gaming plans and benefitting from that economic development opportunity while the challenge is litigated.

As the Department knows, most tribes are operating on the smallest of financial margins and constantly looking for additional resources in order to provide for tribal members, this proposed revision opens those tribes up to an additional drain on scarce resources which could result in a missed opportunity to reacquire lost trust land simply because the tribe does not have the resources available to sustain a prolonged legal battle.[6]

Conclusion

On behalf of the Mississippi Band of Choctaw Indians, we appreciate the opportunity to comment on the Department's draft revisions and strongly urge you to carefully consider our concerns and Congress's intent when passing legislation to return land to tribal ownership in light of your federal fiduciary responsibilities.

Sincerely,

C. BRYANT ROGERS

Cc: Phyliss J. Anderson, Chief, MBCI
Cheryl Hamby, Acting Attorney General, MBCI

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[6] *See generally* http://www.standupca.org for example of group committed to opposing tribal gaming endeavors in California. Such groups operate in other states, such as Mississippi.

Public Law 106–228
106th Congress

An Act

June 29, 2000
[S. 1967]

To make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw Indians, to take certain land into trust for that Band, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

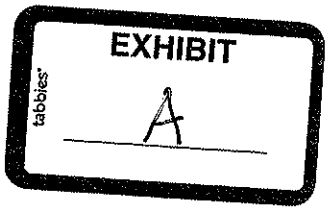
SECTION 1. STATUS OF CERTAIN INDIAN LANDS.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) all land taken in trust by the United States for the benefit of the Mississippi Band of Choctaw Indians on or after December 23, 1944, shall be part of the Mississippi Choctaw Indian Reservation;

(2) all land held in fee by the Mississippi Band of Choctaw Indians located within the boundaries of the State of Mississippi, as shown in the report entitled "Report of Fee Lands owned by the Mississippi Band of Choctaw Indians", dated September 28, 1999, on file in the Office of the Superintendent, Choctaw Agency, Bureau of Indian Affairs, Department of the Interior, is hereby declared to be held by the United States in trust for the benefit of the Mississippi Band of Choctaw Indians; and

(3) land made part of the Mississippi Choctaw Indian Reservation after December 23, 1944, shall not be considered to be part of the "initial reservation" of the tribe for the purposes of section 20(b)(1)(B)(ii) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(B)(ii)).



(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter the application or the requirements of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) with respect to any lands held by or for the benefit of the Mississippi Band of Choctaw Indians regardless of when such lands were acquired.

Approved June 29, 2000.

LEGISLATIVE HISTORY—S. 1967:

SENATE REPORTS: No. 106–307 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 146 (2000):
June 14, considered and passed Senate.
June 19, considered and passed House.

○

publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 11, 2012.

Ann Marie Oliva,

Deputy Assistant Secretary for Special Needs (Acting).

[FR Doc. 2012–25404 Filed 10–18–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions: Mississippi Band of Choctaw Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of transfer of federally owned lands.

SUMMARY: The Secretary of the Interior (Secretary) accepted the transfer of approximately 163.48 acres from the Director, Real Property Division, Atlanta Regional Office, U.S. General Services Administration (GSA), without reimbursement, to be held in trust for the benefit and use of the Mississippi Band of Choctaw Indians, Choctaw Reservation, Mississippi (Tribe). This notice announces that the Secretary took the approximately 162.48 acres into trust for the Tribe on the dates set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Randall Trickey, Regional Realty Officer, Eastern Region, Bureau of Indian Affairs, 545 Marriott Dr., Suite 700, Nashville, TN 37214; Telephone: (615) 564–6770, Email: *Randall.Trickey@bia.gov.*

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 Departmental Manual 2. Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93–599 dated January 2, 1975 (88 Stat. 1954), the below described property was on the dates set out below transferred by the Director, Real Property Division, Atlanta Regional Office of GSA to the Secretary, without reimbursement, to be held in trust for the benefit and use of the Tribe, and were taken into trust for the Tribe on the dates set forth as follows:

Mississippi Choctaw Reservation Community	County records book and page of recorded deed originally conveying the title to the U.S.	Date of original deed to U.S. for Choctaw school lands and acreage	Date of GSA transfer to U.S. to be held in trust for the tribe	Township	Range	Section
Boque Chitto	NESHOBA LLL/241	2/22/30 (15.00 ac)	10/27/97	11N	13E	2
Conehatta	NEWTON 52/206	6/29/27 (5.40 ac)	10/27/97	07N	10E	15
Conehatta	NEWTON 70/101	6/12/39 (0.88 ac)	10/27/97	07N	10E	10
Conehatta	NEWTON 114/377	5/3/57 (2.65 ac)	10/27/97	07N	10E	10
Conehatta	NEWTON 114/377	5/3/57 (1.85 ac)	10/27/97	07N	10E	15
Pearl River	NESHOBA YY/254	8/13/20 (65.00 ac)	4/3/95	11N	10E	25
Pearl River	NESHOBA A61/107	6/11/64 (15.00 ac)	4/3/95	11N	10E	25
Red Water	LEAKE 21/143	5/25/23 (20.00 ac)	10/27/97	11N	07E	36
Standing Pine	LEAKE 15/149	9/2/19 (30.00 ac)	4/3/95	10N	08E	35
Tucker	NESHOBA YY/231	1/30/20 (7.70 ac)	10/27/97	10N	12E	22

Dated: October 11, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–25811 Filed 10–18–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO–921000–L51100000–GA0000–LVEMC11CC140; COC–74813]

Notice of Availability of the Environmental Assessment and Notice of Public Hearing for the Blue Mountain Energy, Inc., Federal Coal Lease Application, COC–74813

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and notice of public hearing.

SUMMARY: In accordance with the Federal coal management regulations, the Blue Mountain Energy, Inc., Federal Coal Lease-By-Application (LBA) Environmental Assessment (EA) is available for public review and comment. The United States Department of the Interior, Bureau of Land Management (BLM) Colorado State Office will hold a public hearing to receive comments on the EA, Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources for Blue Mountain Energy, Inc., COC–74813.

DATES: The public hearing will be held at 6 p.m., November 28, 2012. Written comments should be received no later than November 20, 2012.

ADDRESSES: The public hearing will be held at the BLM White River Field Office (BLM/WRFO) 220 East Market Street, Meeker, Colorado 81641. Written comments should be sent to Paul Daggett at the same address or sent via email to *pdaggett@blm.gov.* You may also send Paul Daggett a fax at 970–878–3805. Copies of the EA, unsigned Finding of No Significant Impact (FONSI) and MER report are available at the field office address above.

FOR FURTHER INFORMATION CONTACT: Kurt M. Barton at 303–239–3714, *kbarton@blm.gov,* or Paul Daggett at 970–878–3819, *pdaggett@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: An LBA was filed by Blue Mountain Energy, Inc. The coal resource to be offered is limited to coal recoverable by underground mining methods. The Federal coal is in the lands outside established coal production regions and

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March 27, 2006

BY FEDERAL EXPRESS

Michelle Singer
Department of the Interior
Bureau of Indian Affairs
1849 C Street NW, Mail Stop 4141
Washington D.C., 20240

Re: Initial Tribal Comments on Proposed Draft Regulations for Land Acquisitions Under 25 CFR Part 151

Dear Ms. Singer:

As counsel to the Chitimacha Tribe of Louisiana, Duckwater Shoshone Tribe, Ely Shoshone Tribe, Mississippi Band of Choctaw Indians, Pueblo de Cochiti, and Pueblo of Jemez, we hereby submit initial tribal comments to the draft regulations for land acquisitions under 25 CFR Part 151 as were provided to tribal leaders via a letter from Associate Deputy Secretary Jim Cason, dated December 27, 2005. These comments are submitted pursuant to the March 2, 2006 letter from Mr. Cason extending the deadline for submission of comments until March 31, 2006.

1. Tribal consultation and involvement on the fee-to-trust regulation revision process is imperative.

The Department's effort to consult with tribes prior to publishing its proposed revisions to various trust regulations, including 25 CFR Part 151, involving the fee-to-trust acquisition process, is commendable. The willingness of the Department to extend the initial comment deadline until March 31, 2006 is also appreciated given the large volume of proposed revisions. However, the land acquisition process is such an important issue to tribes nationwide that we encourage the Department to approach the consultation process for Part 151 revision in a manner to allow the fullest consultation and involvement of tribes. Even with the extension until March 31, there is still the need for additional time to allow tribes and the Department to discuss the changes that the Department is proposing and provide full and meaningful tribal input on those changes. We urge the Department to conduct additional national meetings that will focus on the Part 151 revisions before proposed regulations are published in the Federal Register. These meetings will provide insight into the concerns of the tribes as regards the fee-to-trust process and will be helpful to the Department when developing the proposed regulations to be published for public comment. We also urge the Department not to rush the regulatory process; but, instead to use the consultation process to address issues and develop regulations that are reflect the intent

EXHIBIT
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of the federal policy to acquire lands for the benefit of tribes, are responsive to the needs of the tribes and reasonably address the concerns of the Department.

2. The established federal policy favoring trust land acquisitions under Section 5 of the Indian Reorganization Act to rebuild tribal land bases to protect tribal communities and improve tribal economic conditions should be reflected in any proposed Part 151 revisions.

One of the primary goals of Congress when enacting the Indian Reorganization Act of 1934 ("IRA") was to facilitate the rebuilding of tribal land bases. Section 5 specifically authorizes the acquisition of land for Indians:

> The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased for the purpose of providing land for Indians.

Section 5 of the IRA, 25 U.S.C. §465, was "designed to improve the economic status of Indians by ending the alienation of tribal land and facilitating tribes' acquisition of additional acreage and repurchase of former tribal domains." (Emphasis added). See Cohen, *Cohen's Handbook of Federal Indian Law*, §1.05 (Matthew Bender 2005 Ed.); *U.S. v. John,* 437 U.S. 634, 645 (1978) ("In the 1930's, the federal Indian policy had shifted back toward the preservation of Indian communities generally. This shift led to the enactment of the Indian Reorganization Act of 1934..."); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152 (1973) ("The purpose of the Indian Reorganization Act of 1934 was 'to rehabilitate the Indian's life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.'" (quoting H.R. Rep. No. 1804, 73rd Cong. 2d Sess., 1 (1934)); see also, *State of Florida, Dept. of Business Regulation v. United States Dept. of Interior*, 768 F.2d 1248, 1256 (11th Cir. 1985)("The grant of authority to the Secretary of the Interior to acquire land for the Indians was central to this purpose."), *cert. denied,* 475 U.S. 1011 (1986).

Thus, the IRA evidences Congress' intent to establish a new direction for federal Indian policy intended to promote and improve tribal economic development, strengthen tribal self-determination and enhance tribal cultural well-being through the acquisition of land into trust for tribes. See *U.S. v. John,* 437 U.S. at 646. (Recognizing the "...federal policy of encouraging the preservation of Indian communities with commonly held lands...")

As perspective on the rationale prompting these regulations, just prior to the beginning of the allotment era in 1887 there was over 100 million acres set aside by the Federal Government as reservation land for tribes. "Since the Allotment Act of 1887, approximately 90 million acres of land were removed from Indian hands" [Scrivner, New England Law Review, Vol. 37:3, 04/24/2003, page 604]. Presently, the BIA holds about 56 million acres of trust land of which 46

million acres is held in trust for tribes. Over a recent six year period, the BIA acquired approximately 290 thousand acres into trust, but during the same time tribes and Indians lost about 120 thousand acres through condemnation, eminent domain, voluntary removals from trust, and mortgage foreclosures [Scrivner, pg. 604].

The fee-to-trust process of land acquisition is thus a dynamic process, subject to both additions to and subtractions from the tribal land base over time and characterized by a small (6 million acre) net increase over the last 62 years (since IRA). This reflects an acquisition rate of less than 100,000 acres a year nationally. *There clearly has been no shift back into Indian hands of massive amounts of real estate* under the IRA. Today there is not even remotely close to the amount of land in Indian hands that existed 120 years ago in 1887. The current regulations have been entirely adequate to fulfill the intent of Section 5 of the IRA.

The proposed revisions do not reflect this underlying policy of the IRA, the controlling statutory authority for trust land acquisitions, since they:

a. create a process that makes the taking of land into trust very difficult, very time consuming and very expensive for the majority of land acquisitions sought by tribes;

b. limit the types of acquisitions that would be considered to be "on-reservation" acquisitions and define more acquisitions to be "off-reservation" acquisitions subject to more burdensome legal and financial requirements;

c. presume that all off-reservation acquisitions are for controversial economic development purposes and that all will trigger jurisdictional disputes;

d. start from a presumption that off-reservation land trust acquisitions should be denied and require that tribes overcome that presumption rather than starting from the foundational policy of the IRA which requires that the Department start from the premise that acquiring lands in trust on behalf of, and for the benefit of tribes, should be encouraged, not discouraged;

e. favor non-tribal (private) and state and local government interests in deciding whether to take land into trust – interests which are outside the scope of the Secretary's fiduciary and statutory duties that arise from the U.S. Trust Responsibility to the Indian tribes and the pro-tribal land acquisition policies established in Section 5 of the IRA. Except in the case of some large scale commercial developments, which will confer significant economic benefits on off-reservation communities, those non-tribal interests will virtually always oppose tribal efforts to take land into trust for community and non-commercial purposes;

f. afford greater protection to and incentive for state and local governments, local communities and non-tribal (private) parties to oppose trust acquisitions.

The proposed regulations do not reflect the intent and purpose of Section 5 of the IRA to facilitate reacquisition of portions of tribes' lost land bases located off-reservation because the affect of the proposed revisions would be to impede or discourage the acquisition of such land into trust. This adverse affect will be especially devastating for the tribes which have no fixed, exterior reservation boundaries, e.g. where their reservations consist of separate trust parcels; and, for tribes who wish to obtain off-reservation lands for traditional uses or cultural/resource preservation rather than for commercial development.

Any proposed regulations implementing the trust land acquisition sections of the IRA must recognize the purpose of the IRA to address the devastating effects of the loss of tribal land, the establishment of a policy promoting the acquisition of lands for Indian tribes for the preservation of their communities and culture as well as improving economic opportunities for tribes and their members. *See,* authorities cited, *supra; also see, Carcieri v. Norton*, 423 F.3d 45 (1st Cir. 2005) ("...[t]he legislative history identifies goals of 'rehabilitating the Indian's economic life' and 'developing the initiative destroyed by ... oppression and paternalism,' of the prior allotment policy" (internal citations omitted)).

3. The establishment of a presumption against taking off-reservation land into trust and creation of a process that favors non-tribal interests over tribal needs for land acquisition will have detrimental effects on tribes' efforts to acquire off-reservation land.

The proposed regulations at §151.18 identify the criteria that will be used to evaluate an off-reservation request. These criteria establish a presumption against taking off-reservation land into trust. There is no legal justification for creating a presumption against taking land into trust simply because it is located off-reservation. This is clearly contrary to the Congressional intent of Section 5 of the IRA to acquire and take land into trust for the benefit of tribes. See *Meehan v. Federal Election Commission,* 414 F.3d 76 (D.C. Cir. 2005) (A definition within the Federal Election Commission's regulations violated Congress' clearly expressed intent under *Chevron* step one when it added a fourth element that was not contained in or suggested by the statute.)

A presumption against taking off-reservation land into trust will adversely affect many tribes whose only option for acquiring lands for governmental, cultural, or economic development purposes are off-reservation. The practical reality is that land contiguous to existing trust lands, or which is located within reservation boundaries is often not available because it is held by non-tribal interests or the federal, state or local governments who do not wish to sell.. In these circumstances, tribes are forced to seek land off-reservation in order to meet their needs. The negative presumption, along with the very burdensome requirements established under §151.8, will make it very costly and very difficult, if not impossible, for many tribes to ever acquire lands outside of their reservation boundaries. Given that most land applications will be reviewed

under the "off-reservation" criteria based on the new definitions for "on" and "off-reservation" acquisitions, this negative presumption will have a significant, detrimental impact on acquisitions for most tribes.

In addition to establishing a presumption against off-reservation land acquisitions, the proposed regulations create an unprecedented and unwarranted process that favors non-tribal governmental and private interests over those of tribes as regards their needs for off-reservation trust lands. Under §151.18(c), the BIA will not approve an off-reservation acquisition if there are significant negative impacts to local governments and local communities regardless of whether the tribe satisfies the balancing test found at §151.18(b).[1] This in effect gives non-tribal stakeholders an inappropriate veto even if there is a finding by the Department that the trust acquisition is necessary. There is no basis in law or in the policy of the IRA for the Department of the Interior to favor the non-tribal interests over those of tribes in this way. Thus, denials of proposed off-reservation trust land acquisitions based on these regulations would be vulnerable to future legal challenges. There are many instances in which proposed regulations and federal actions based on those regulations have been held to constitute arbitrary and capricious or otherwise unlawful executive action made in derogation of an agency's statutory authority. *See*, *Public Lands Council v. Babbitt,* 167 F.3d 1287 (10th Cir. 1999)("Even under *Chevron's* second step, however, 'an agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning that the statute can bear.' (*citing MCI Telecomm. Corp. v. AT&T,* 512 U.S. 218, 229 (1994)); *Southern Ute Indian Tribe v. Amoco Prod. Co.*, 119 F.3d 816, 835 (10th Cir. 1997) ("Even under the deference mandated by *Chevron*, 'legislative regulations are [not] given controlling weight [if] they are arbitrary, capricious, or manifestly contrary to the statute.'" (alterations in original)(quoting *Chevron*, 467 U.S. at 844.)); *Mountain Side Mobile Estates Partnership v. Secretary of Housing & Urban Development,* 56 F.3d 1243, 1248 (10th Cir. 1995) ("[N]o deference is warranted if the interpretation is inconsistent with the legislative intent reflected in the language and structure of the statute or if there are other compelling indications that it is wrong."); *Santa Fe Snyder Corp. v. Norton,* No. 03-30648 (5th Cir. 10/04/2004) (Regulations promulgated by the Interior conflict with the Deep Water Royalty Relief Act and are unlawful; hence, Interior's final agency decision denying royalty relief on the basis of those regulations cannot stand.). In our opinion, the proposed regulations in re off-reservation acquisitions would, if challenged, be found unlawful on these grounds.

As an example of the expanded involvement and empowerment which these regulations would confer on non-tribal interests, the proposed regulations at §151.9(a) will provide direct notice to state, county and local governments having regulatory jurisdiction over the land and allow those governments to forward the notice to other "state and local governmental entities that may be

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[1] In the time since the December 2005 regulation draft was circulated to tribal leaders, we have seen subsequent DOI revisions to the proposed regulation which changes the level of negative impact found at §151.18(c)(1) – (3) from "significant" negative impact to "severe" negative impact. We support this change in standard for determining negative impact. However, as noted in the main text, the Department still has no legal authority to create a presumption that favors the interests of non-tribal local governments and local communities over the interests of tribes as regards off-reservation trust land acquisitions.

interested in the trust acquisition." The regulation language considers other governmental entities to be "school boards, utility districts, fire districts, etc." This appears to limit or restrict input and comment to governmental-type entities. However, §151.18(a)(4) allows the Secretary to consider the "impacts on the local community" but does not define or identify within the regulations what constitutes the "local community." While eliciting comment from the "local community" is a legitimate part of the process, this affords non-governmental private or social groups the same kind of standing and role in the process as "state and local governmental entities." *See,* §151.18(c)(3). Creating additional criteria which favors non-tribal private interests and invites such opposition, simply compounds the problem of giving special weight to the concerns of the state and local government, over the interests of tribes. Giving this kind of special weight to the views of non-tribal private interests is contrary to the policy of the IRA and the Secretary's duties to tribes under the IRA.

Section 5 gives the Secretary discretion on whether to take particular tracts of land into trust when requested by a tribe, e.g. to decline to take into trust a toxic waste dump for use as a tribal housing site. But that discretion is not unbounded. It must be exercised in accord with the pro-land acquisition policies underlying §5 of the IRA. Thus, Section 5 does not give the Secretary the discretion or the authority to contravene or undermine the basic purposes of the IRA -- to promote tribal governmental, cultural and economic advancement through trust land acquisitions made for their benefit. In this regard, the Secretary may exercise her discretion to deny a particular proposed tribal trust land acquisition if in her judgment the proposed acquisition would not be in the best interest of the Indians, but could not lawfully deny such acquisition under Section 5 solely because non-tribal interests opposed that acquisition. State and local government interests will almost never favor trust land acquisitions for Indian tribes. Thus, Section 5 on its face was intended to subordinate the interests of private non-tribal and state and local entities – interests which are inherently antithetical to the taking of any additional lands into trust for Indian tribes. Expanding tribal land bases through Section 5 trust acquisitions will almost always be at odds with the interests of state and local governments and of non-tribal interests who generally oppose any expansion of tribal jurisdiction. *U.S. v. John, supra.* This underlying jurisdictional tension remains, however, the tribes and states have in recent decades made great strides in building cooperative intergovernmental relationships and in working jointly to promote economic development in reservation areas – both on and off-reservations for the mutual benefit of tribal and non-tribal communities in reservation areas.

Any regulation which seeks to change the balance of interests by tilting that balance away from Indians in favor of non-tribal interests is contrary to the clear purposes and objectives of Congress in enacting Section 5 of the IRA. The Secretary cannot lawfully issue regulations that will create legal and financial barriers to solely for the purpose of favoring the interests of entities who oppose off-reservation trust land acquisitions for Indians. Such barriers are contrary to the intent of Congress. See *Chevron U.S.A. Inc. v. Natural Resources Defense Council,* 467 U.S. 837, 842-843 (1984) ("First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."); *Hines v. Davidowitz,* 312 U.S. 52 (Miss. 1941) (Government action which . .

."stands as an obstacle to the accomplishments and execution of the full purposes and objectives of Congress" held preempted by federal statute).

In fact, Section 5 of the IRA imposes an affirmative and on-going duty on the Secretary of the Interior, as the trustee for Indian tribes, to take land into trust, both on and off-reservation, for the benefit of the tribes. Any decision by the Secretary on trust land applications must acknowledge the long-standing Congressional policy which favors taking land into trust for tribes and must reflect exercise of her discretion in a manner that protects and promotes Indian interests and encourages trust land acquisition as required by the IRA.

The overall effect of the proposed regulations would be to create a presumption that an off-reservation acquisition will be denied unless the tribe is able to overcome substantial legal barriers against taking such land into trust, part of which is created by giving non-tribal private entities standing to oppose off-reservation trust acquisitions. This creates a very heavy burden for many tribes to overcome and will prevent many tribes from even attempting to acquire much needed off-reservation land or will result in many tribes expending considerable financial resources for each trust acquisition request. In many instances, it will prove impossible for a tribe to acquire an off-reservation parcel of land unless it has the support and approval of the local community and local government, regardless of the purpose for the acquisition.

4. The proposed regulations should address land into trust acquisitions for gaming purposes separately.

What has changed since IRA and the passage of IGRA in 1988 has been the amount of financial resources available to gaming tribes to purchase land. Many of these gaming tribes, as well as prospective gaming tribes, have sought fee land both on and off reservation for this purpose. None of these prospective purchases of land for gaming involve large portions of land. They are in fact limited to the amount needed for a casino and ancillary amenities such as hotels, parking lots and retail space. The potential impact of land sought to be acquired and used for gaming purposes requires a more comprehensive and detailed investigation of impacts. Section 20 of IGRA was enacted to address these issues and does expressly require a careful weighing of those interests under the Section 20 "two part" determination text. 25 U.S.C. §2719(b)(1)(A). Concerns over that process, or over the "within or contiguous" to reservation boundaries provisions at 25 U.S.C. §2719(a)(1), can better be addressed in connection with the proposed Section 20 regulations. There is no need to make (and no legitimate reason for making) wholesale revisions to the Part 151 regulations in response to concerns over land acquisitions for gaming.

Many of the proposed Part 151 revisions overlook the IGRA Section 20 process and appear to have been developed in response to a few controversial off-reservation trust land acquisition applications involving gaming. As a result, concerns about off-reservation land acquisitions for gaming seem to be driving the Part 151 regulation revisions rather than the overall federal policy that supports land acquisition for the advancement of other governmental, social and economic

needs of tribes. Yet, the information requested and considered in an off-reservation trust acquisition focuses on the concerns of the state and local government and local community and which support the presumption against taking the land into trust. While approval of the state is required for off-reservation gaming applications under Part 20 of the Indian Gaming Regulatory Act (IGRA), there is no such requirement under the IRA for off-reservation trust land acquisitions that do not involve gaming. However, as discussed above, the proposed revisions give state and local governments and other non-tribal non-governmental interests significant new weapons with which to oppose all off-reservation trust land acquisitions, even those which do not involve gaming.

There are clear distinctions between the applications for land that is sought for gaming purposes and the majority of the off-reservation trust acquisitions. Most of the off-reservation acquisitions will not involve gaming, are not controversial, and are intended to expand the tribe's land base for housing, small scale development or other non-gaming, non-commercial uses. This is in contrast to the off-reservation gaming projects that are subject to other statutory restrictions under IGRA and its regulatory process which already call for consideration of similar, if not more stringent, criteria which may or must be considered before the Secretary can make a determination on whether lands can or should be taken into trust for gaming, or otherwise used for gaming purposes, e.g. 25 U.S.C. §2719(B). Yet, the proposed regulation provisions would subject all off-reservation non-gaming acquisitions to the same legal and policy considerations that apply to gaming. This creates an undue and unfair burden on tribes seeking to acquire land off-reservation for non-gaming purposes. We urge the Department to address issues and concerns involved in off-reservation gaming acquisitions separately from non-gaming acquisitions within the regulations and to reassess (and reduce) the type of information and standards that would be required for non-gaming off-reservation acquisitions. Tribal consultation respecting proposed Sectin 20 regulations has now begun. *See,* proposed Section 20 regulations issued for initial tribal comments on March 15, 2006.

Finally, the proposed regulations do not address the one narrow issue which arises respecting land taken into trust under CFR 25 Section 151 for non-gaming purposes but land later used for gaming contrary to law. Interior Inspector Earl Devaney, in testimony before the Committee on Indian Affairs on April 27, 2005, stated that his office found 10 instances since 1988 in which tribes converted the use of lands taken into trust for non-gaming purposes (25 CFR 151 process) to gaming purposes without approval of the BIA or the NIGC. Mr. Devaney quite properly observes that unless a tribe abides by the rules and applies for approval [under Section 20 of IGRA], conversion of trust lands to gaming purposes "goes essentially unchecked. Neither the Department nor NIGC has a way to ensure that Indian gaming being conducted on approved lands."

The best that can be done to address this problem, via regulations is to have the Section 20 regulations prohibit Class II and Class III gaming on non-contiguous, off-reservation lands taken into trust under 25 CFR 151 after October 17, 1988 for non-gaming purposes unless the lands are approved for that (gaming) use through an IGRA Section 20 2 part determination or unless one

of the other Section 20 exceptions apply. Indeed, the IGRA already requires this. Similar language reiterating this point could be included in the the Part 151 regulations. This prohibition can then be enforced by local U.S. Attorneys, via civil actions or criminal prosecutions as is already the case under current law. This avoids completely the complication and inequities involved in defining "on" and "off" reservation lands and unduly restricting the proper implementation of Section 5 of the IRA. In fact, if the primary driver of the proposed regulations is the issue noted by Mr. Devaney, the proposed solution represented by the draft regulations can only be construed as an attempt to eviscerate the letter and intent of Section 5 of the IRA, clearly beyond the scope of the Department's regulatory authority.

5. The proposed regulations for off-reservation acquisitions are unduly burdensome on tribes and some of the requirements are not relevant for non-controversial non-gaming acquisitions.

The information required under §151.8 for off-reservation land acquisitions has been greatly expanded from the current regulations. However, as discussed above, the proposed regulations seem to assume that all off-reservation acquisitions of land will be for controversial business or gaming activities and will involve jurisdictional disputes. As a result, the required information focuses on those types of activities and issues. Typically, this forces tribes to provide a substantial amount of information and address issues that may not be relevant to the purpose for which the land is being acquired. For example, a tribe that is seeking to acquire off-reservation lands for cultural or religious purposes would still be required to address items that are not relevant to the proposed use of the land. These irrelevant items would include things like transportation, utilities, zoning and jurisdictional or land use conflicts that do not exist for the parcel to be acquired. There are no provisions for waiving any of the required elements under §151.8(h) which states that the applicant "must address each of the ...issues." This is overly burdensome for tribal applicants with lands that are not being acquired for business or gaming purposes. It becomes even more costly and burdensome if a tribe seeks to have several small parcels of land taken into trust for non-gaming purposes since the information requirements for each parcel would have to be satisfied separately for each application.

In addition to addressing items that may not be relevant to the proposed purpose of the land, tribes are required to provide information that they may not have access to or as to which other parties are better situated to address the issue. For example, tribes are required to provide information about the impacts on the state and local governments that would result from taking the land into trust. A tribe is required to describe the effect of removing the land from the tax olls. This raises the question of whether it should be is the responsibility of the tribes to describe potential detrimental effects on the state and local governments and provide information that is not in the tribe's possession. See §151.8(g). First, this seems redundant since this is the same type of information that is requested of the state and local governments under the notice provisions. The tribes are still given the opportunity to address the comments from the state and local governments under §151.13. This creates an unnecessary duplication of effort by the tribes. Second, if there are concerns about detrimental effects on the state and local governments, these

concerns are more appropriately raised by those governments, and the burden should be upon them to properly document any adverse impacts that a proposed trust acquisition may cause.

A tribe must also show what provisions it will make to compensate the state or local governments for lost revenue due to removal of the land from the tax rolls. As noted above, there will always be some (typically marginal) negative impact upon a state or local government by removing a parcel from local tax rolls and into federal "Indian Country" jurisdiction. However, the proposed regulations give more weight to lost state and local government tax revenue and blur the distinction between off-reservation gaming acquisitions and non-gaming, non-controversial land acquisitions. The regulations also create the sense that a tribe must affirmatively provide some offsetting remedy to the state or local government in order to overcome the presumption against taking off-reservation land into trust. This puts an undue burden on the tribe and favors the concerns of the non-tribal governmental entities over the needs of a tribe for acquiring the land. Moreover, the Congress has already determined that off-reservation lands should be taken into trust for tribes and that once placed into trust, those lands will no longer be subject to state and local taxation. *See,* the last paragraph of §5 of the IRA, 25 U.S.C. §465 (lands taken into trust for Indian tribes under §5 "shall be exempt from State and local taxation"). Issuing regulations which make tribes pay to secure an outcome which the Congress has already required to happen would plainly be in excess of the Secretary's powers under the IRA.

We believe that providing a separate section to address off-reservation gaming acquisitions, that is consistent with the requirements of IGRA, or leaving those issues to be addressed under the Section 20 regulations will allow the Department to better focus on issues that are of concern regarding non-gaming trust and acquisition in the Part 151 regulations. This segregation should also allow for processing of other non-controversial acquisitions in a more focused manner – one which considers other factors of great importance, but of a much different nature, when the acquisition is for cultural or historical purposes. Those types of non-controversial applications should be subject to a less rigorous standard than what is being proposed for all off-reservation acquisitions.

6. The proposed regulations should provide for protection of confidentiality of religious or cultural sites located on lands to be acquired in trust.

The new regulations at §151.14 contain provisions confirming that the Request for Trust Acquisition and all supporting documents and information prepared and submitted to the BIA as part of a tribe's trust acquisition application are subject to disclosure under the Freedom of Information Act, 5 U.S.C. §552 (FOIA). Certain commercial and proprietary documents and information submitted to the BIA as part of a trust application packet may be withheld under Exemption 4 of FOIA which protects trade secrets and commercial or financial information that is privileged or confidential. However, there is no protection for confidential information that is contained in an application for land that a tribe is seeking to acquire for cultural preservation or sacred site protection. A tribe would be required under the proposed regulations to provide

detailed information about the location of the land, its cultural or historical interest in the land and proposed usage. This type of information is then subject to a FOIA request, and because there is no specific FOIA exemption that would protect such sensitive information, this information would be releasable and available to the public. This could subject the property and sacred sites to "pot hunters," looting and vandalism. It also exposes traditional or cultural practices such as pilgrimages to sacred sites on the proposed trust lands to the public in a manner that could interfere with the continued practice of these activities. There should be some mechanism to allow tribes to maintain the confidentiality of this information within a trust acquisition application while meeting the need for information to justify the trust acquisition.

One option might be to develop an exemption for such information if the acquisition is clearly for cultural or traditional purposes and then allow the tribe to maintain such information or records at the tribe's cultural preservation offices or tribal archives and provide the BIA access to such information as needed for purposes of rendering a decision on the trust acquisition application. This would not place sensitive cultural information within the BIA system and subject this information to disclosure under FOIA. This type of segregation of information or documents will need to be done on a case-by-case basis. However, for this type of approach to work, the determination for these types of trust acquisitions would best be made at the local Regional level by staff who are familiar with the requesting tribe's culture and practices. See Section 10 below for additional comments on where trust acquisition applications should be decided.

7. All applications to take lands contiguous to a reservation or trust lands should be considered under the on-reservation provisions.

The proposed regulations would treat all acquisitions of fee lands located within the exterior boundaries of a tribe's reservation as "on-reservation" acquisitions. However, the regulations would treat all other acquisitions of fee lands located outside of, but adjacent to or contiguous to a reservation as "off-reservation acquisitions," unless the tribe's reservation has no fee land within the boundaries of its reservation or if the reservation consists solely of scattered tracts of land in trust." In other words, if a reservation has any fee lands within its boundaries, then all acquisitions of contiguous parcels would be governed by the more stringent "off-reservation" provisions found at §151.8 and §151.18, rather than the "on-reservation" provisions. The initial concern is that there are a great number of reservations that have fee parcels within the reservation boundaries. This fee land element alone would put most acquisitions of "contiguous" parcels under the category of "off-reservation" acquisitions which are subject to more difficult and expensive requirements. The increased burden for off-reservation acquisitions will make it more difficult for such tribes to acquire any additional off-reservation trust lands, even if the proposed land acquisitions are contiguous to their existing trust lands. It is unclear why having no fee land within a reservation boundary makes a difference in determining whether to apply

"on-reservation" acquisition criteria to "contiguous land" acquisitions.[2]

Likewise, it is unclear why the term "scattered" is used to determine whether a "contiguous" land parcel would be treated as "on-reservation" for purposes of trust acquisition for tribes which have no fixed exterior boundary.[3] The term "scattered" is not defined, is subject to a broad range of interpretation (how much separation between trust tracts is required for them to be deemed "scattered?")and does not add clarity to the determining whether a "contiguous" acquisition would come within the "on-reservation" process. If one of the Department's concerns is consistency between the various BIA regions decisions on fee-to-trust acquisitions, adding the term "scattered" does not provide a standard for consistent review and decision-making.

The proposed regulations move away from the policy of the IRA and would treat many applications for trust acquisitions of land contiguous to a reservation as "off-reservation" applications. A primary purpose of the IRA was to enable tribes to rebuild their tribal land bases. Thus, any trust acquisition of "contiguous" land that allows tribes to create larger contiguous blocks of land that are conducive to effective land use and management, environmental protection and clear jurisdictional boundaries should be favored under proposed regulations and treated as "on-reservation" acquisitions. Over time, this will tend to make such separate trust land parcels less "scattered" in a certain sense. But that should not then be used to penalize such tribes as regards future land acquisition efforts. Indeed, leaving in the word "scattered" would actually create an incentive to acquire lands in more far flung (more "scattered") locations to facilitate its acquisition into trust. Instead, there should be a preference within the trust process for contiguous land acquisition applications. To facilitate rather than discourage such contiguous acquisitions we recommend that the term "scattered" be deleted from the proposed regulation definition.

8. Issues of management responsibility and liability for trust land raised as a result of the *Cobell* litigation should not unduly prejudice decisions to take land into trust on behalf of tribes.

The new regulations would give significant weight to whether a proposed trust acquisition would impose a "significant administrative burden on the Department." Although current regulations allow the Secretary to consider whether the BIA is able to carry out the additional responsibilities for the land if acquired in trust, it appears that this "administrative burden" factor has been given additional weight as grounds for denying an acquisition in light of the *Cobell* litigation. The liability and management issues of *Cobell* should not change the established federal policy of Section 5 of the IRA which is to "provide lands for Indians." It is important to

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[2] As stated in Footnote 1, above, we have seen subsequent DOI revisions to the proposed regulation which removes the language regarding fee lands within the boundaries of the reservation. We support this change to remove the reference to fee lands within the reservation boundaries.

[3] As stated in Footnote 1, above, there has also been a subsequent DOI revision to the proposed regulation that an acquisition is "contiguous to the reservation only if the tribe's reservation consists of a single tract or scattered tracts of trust land." We support this change, but recommend removal of the term "scattered" as discussed in text.

note that liability of the type raised in the *Cobell* case typically involved Interior's problems in handling fractionated interests in lands and revenues derived from such lands or where leasing was done without tribal input or at below market rates. These types of situations are not the norm in most trust acquisition requests. In fact, most of the acquisitions involve land where the tribes are already exclusively managing the land and resources because of the limited BIA resources. In those instances, there will not be significant additional responsibilities for the BIA. The *Cobell* case has undoubtedly lead the Department of Interior to becoming more cautious about trust management issues, however, the issues raised in the *Cobell* case should not become the deciding factor to deny trust land acquisitions which benefit the tribes.

9. The proposed regulations provide important timelines for processing applications but do not address how the Department of Interior will treat pending trust acquisition applications if new regulations are adopted.

There is no timeframe under the current regulations for the Secretary to make a decision on a trust acquisition application. The lack of deadlines for processing fee-to-trust application, along with the lack of resources and staffing within the BIA to handle the applications, has resulted in many tribes having trust land applications pending for long periods of time – often for years. The proposed regulations provide important timelines for processing trust applications that hopefully will prevent the long delays and lead to timely processing of trust acquisition applications. However, the proposed regulations do not provide any clarification regarding the affect of those regulations on the treatment of applications submitted under the current regulations that will still be pending when the new regulations become final.

These new regulations will not bring with them new resources for addressing either the large backlog of pending applications nor the ones to be filed under the new regulations. However, Interior will have a regulatory deadline for processing new applications which (as proposed) won't apply to the old, pending applications. There is, therefore, a well-founded fear that action on the old, pending applications which have no deadline will again be deferred to address the new ones which do. As a result, tribes may be faced with the option of reapplying under the new regulations in order to get the benefit of the 120 day deadlines under §151.16 or simply continue waiting for action on the (old) pending applications during which time the Secretary will still be obliged to give priority to newly filed applications. A tribe which chooses to re-file an application will have lost considerable time and will need to expend additional resources to comply with the new and more expansive acquisition requirements. A tribe which chooses to continue to wait out the process in order to have their applications reviewed under the current regulations will still have no guarantee that their application will be processed before the Department moves on to applications filed under the new regulations.

We recommend that the regulations be revised to require that while those older pending applications will be reviewed under the regulations in place at the time those applications were submitted but to subject the decision making process for those old applications to the same 120 day time limit to commence publication of the new (final) regulations. Another option would be

to return all pending off-reservation non-gaming applications to the Regional Offices and allow the Regional Offices to render a final decision on these applications within the 120 day timeframe. See Section 10 below for additional discussion about where trust acquisition decisions should be made.

10. All applications for on-reservation trust acquisitions and non-gaming related off-reservation trust acquisitions should be decided at the Regional Office level and all Part 20 gaming related acquisitions should be handled at the Central Office level in order to meet the proposed application decision deadlines.

Many of the problems with the current trust acquisition process stem from the BIA's lack of resources to adequately implement the current regulations and timely process the large number of pending applications. This has also been compounded by the policy decision to have all off-reservation trust acquisitions from across the country be handled at the Central Office level. This has created an obvious backlog of applications at the Central Office level. An ancillary effect of this practice is that the applications are being finally processed and decided by Central Office staff who may not be familiar with the land for which trust status is requested, the state and local area and issues, and is forced to rely on information and recommendations of the Regional Office staff. The more complex trust application process now proposed will further exacerbate this problem. To mitigate this "backlog" problem, we recommend that all on-reservation and on non-gaming related off-reservation trust acquisition applications be decided at the Regional Office level while Central Office retains authority over gaming related acquisition requests. This allows each Regional Office to review and decide those trust acquisition applications from tribes within their region. This familiarity will benefit the timely processing of applications. Such segregation of applications between the Regional Offices and Central Office will also allow the Central Office to render consistent decisions for the most controversial of the off-reservation trust acquisition requests – those related to gaming.

Conclusion

We thank the Department of Interior for the opportunity to provide initial tribal comments in advance of publication of the proposed regulations. Our comments are of a general nature and we look forward to being involved in this on-going consultation process on the Part 151 regulations.

Sincerely,

C. BRYANT ROGERS

CBR/jt

Cc: Jerry Millett, Chairman, Duckwater Shoshone Tribe

Diana Buckner, Chairperson, Ely Shoshone Tribe
Phillip Martin, Chief, Mississippi Band of Choctaw Indians
Donald L. Kilgore, Choctaw Attorney General
Cippy Crazyhorse, Governor, Pueblo de Cochiti
Alton LeBlanc, Chairman, Chitimacha Tribe of Louisiana
Roger Madalena, Governor, Pueblo of Jemez
Joseph Garcia, President, NCAI
John Dossett, Esq., Counsel to NCAI

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BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Public Notice of Lands Previously Conveyed Into Trust and Proclaimed as Reservation For Mississippi Band of Choctaw Indians by Act of Congress

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is giving public notice of the act of Congress which has conveyed certain fee properties into trust and proclaimed reservation status for the Mississippi Band of Choctaw Indians.

FOR FURTHER INFORMATION CONTACT: Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639–MIB, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: The original reservation proclamation establishing the Mississippi Choctaw Indian Reservation was issued December 23, 1944 (9 FR 14907), by virtue of the authority of the Act of June 21, 1939 (53 Stat. 573), and section 7 of the Act of Juñe 18, 1934 (48 Stat. 986). Pursuant to section 1(a)(2) of the Act of June 29, 2000, Public Law 106–228 (114 Stat. 228), certain lands then held in fee by the Mississippi Band of Choctaw Indians were placed into federal trust status. The Act provided:

"All land held in fee by the Mississippi Band of Choctaw Indians located within the boundaries of the State of Mississippi, as shown in the report entitled "Report of Fee Lands owned by the Mississippi Band of Choctaw Indians," dated September 28, 1999, on file in the Office of the Superintendent, Choctaw Agency, Bureau of Indian Affairs, Department of the Interior, is hereby declared to be held by the United States in trust for the benefit of the Mississippi Band of Choctaw Indians; * * *."

Section 1(a)(1) of Public Law 106–228 also provided that "all lands taken in trust by the United States for the benefit of the Mississippi Band of Choctaw Indians on or after December 23, 1944, shall be part of the Mississippi Choctaw Indian Reservation." This Act was amended by section 811 of the Act of December 27, 2000, Public Law 106–568 (114 Stat. 2868), which provided:

Section 1(a)(2) of Pub. L. 106–228 (an Act to make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw Indians, to take certain land into trust for that Band, and for other purposes) is amended by striking "September 28, 1999" and inserting "February 7, 2000."

The February 7, 2000, report referenced in section 811 of Public Law 106–568 added lands to those originally identified in the September 28, 1999, report referenced in section 1(a)(2) of Public Law 106–228. All of those lands were placed into trust and made a part of the reservation. Revised legal descriptions for some of those lands were approved by Congress by section 107 of the Act of March 2, 2004, Public Law 108–204 (118 Stat. 542), as reflected in a Report of May 17, 2002, on file at the Choctaw Agency, Bureau of Indian Affairs. Legal descriptions for all parcels initially placed into trust and reservation status for the Mississippi Band of Choctaw Indians by Public Law 106–228, as amended by Public Law 106–568, as amended by Public Law 108–204, are referenced in Appendix I to this Notice.

Additional lands have been taken into trust by the United States for the Mississippi Band of Choctaw Indians pursuant to 25 U.S.C. 465 after December 23, 1944, and before June 29, 2000. All such lands were made part of the Mississippi Choctaw Indian Reservation by section 1(a)(1) of Public Law 106–228. The legal descriptions for those other tracts are not set out in this notice.

Pursuant to section 1(a)(1) of Public Law 106–228, if and when additional lands are taken into trust by the United States for the Mississippi Band of Choctaw Indians, pursuant to 25 U.S.C. 465 or by other authority, each such additional land parcel shall automatically become a part of the Mississippi Choctaw Indian Reservation without the need for any other formal declaration to that effect pursuant to 25 U.S.C. 467.

All of the Choctaw reservation lands referenced in this notice constitute Indian Country under 18 U.S.C. 1151(a).

Dated: March 24, 2007.

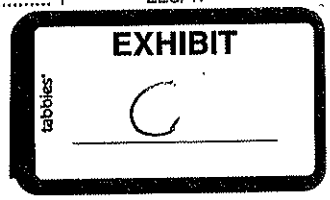
Carl J. Artman,

Assistant Secretary—Indian Affairs.

APPENDIX I

Lands placed into trust and reservation status for the Mississippi Band of Choctaw Indians within the State of Mississippi by Public Law 106–228, 114 Stat. 462, Act of June 29, 2000, as amended by Title VIII, Sec. 811 of Public Law 106–568, Act of December 27, 2000, 114 Stat. 2868 and Sec. 107 of Public Law 108–204, Act of March 2, 2004, 118 Stat 542. The reference numbers shown below are from Exhibit A to the report of May 17, 2002, on file at the Choctaw Agency, Bureau of Indian Affairs, Philadelphia, Mississippi, as referenced in Sec. 107 of Public Law 108–204, Act of March 2, 2004, 118 Stat. 542.

Reference Nos.	Choctaw reservation community	Township	Range	Section	County	Book & page from county records
1	Bogue Chitto	14N	15E	16	NOXUBEE	553/503
2	Bogue Chitto	11N	14E	7	KEMPER	268/220
3	Bogue Chitto	11N	14E	18	KEMPER	280/193
4	Bogue Chitto	12N	14E	32	KEMPER	A222/845
5	Bogue Chitto	12N	13E	2	NESHOBA	A223/6
6	Bogue Chitto	11N	14E	17	KEMPER	280/193
7	Bogue Chitto	11N	14E	7	KEMPER	270/71
8	Bogue Chitto	11N	14E	5	KEMPER	A222/845
9	Bogue Chitto	11N	14E	7	KEMPER	274/14
10	Bogue Chitto	11N	13E	10	NESHOBA	A221/258
11	Bogue Chitto	12N	13E	36	NESHOBA	A217/346
12	Bogue Chitto	12N	14E	30	KEMPER	A222/845
13	Bogue Chitto	11N	13E	1	NESHOBA	A217/343
14	Bogue Chitto	11N	13E	2	NESHOBA	A219/269
15	Bogue Chitto	11N	13E	13	NESHOBA	A221/258
16	Bogue Chitto	11N	13E	12	NESHOBA	A217/343
17	Bogue Chitto	11N	13E	1	NESHOBA	A217/346
18	Bogue Chitto	12N	13E	25	NESHOBA	A222/845
19	Bogue Chitto	11N	14E	27	KEMPER	228/47
22	Bogue Chitto	11N	14E	28	KEMPER	228/47



Reference Nos.	Choctaw reservation community	Township	Range	Section	County	Book & page from county records
23	Bogue Chitto	12N	13E	1	NESHOBA	A223/6
24	Bogue Chitto	11N	14E	21	KEMPER	228/47
25	Bogue Chitto	12N	14E	31	KEMPER	A222/845
26	Conehatta	07N	10E	28	NEWTON	262/692
27	Conehatta	07N	10E	3	NEWTON	267/474
28	Conehatta	07N	10E	9	NEWTON	266/167
29	Conehatta	07N	10E	9	NEWTON	252/33
32	Conehatta	07N	10E	10	NEWTON	252/33
35	Conehatta	07N	10E	21	NEWTON	262/692
36	Crystal Ridge	14N	13E	35	WINSTON	218/220
37	Bogue Chitto	12N	13E	3	WINSTON	238/375
38	Bogue Chitto	12N	13E	2	WINSTON	230/206
39	Bogue Chitto	11N	12E	30	NESHOBA	A228/897
41	Bogue Chitto	11N	12E	30	NESHOBA	A93/144
43	Pearl River	11N	10E	28	NESHOBA	A217/90
44	Pearl River	11N	11E	20	NESHOBA	A239/448
45	Pearl River	11N	10E	33	NESHOBA	A239/779
46	Pearl River	11N	11E	29	NESHOBA	A239/270
47	Pearl River	11N	11E	2	NESHOBA	A227/100
48	Pearl River	11N	10E	34	NESHOBA	A226/879
49	Pearl River	11N	10E	33	NESHOBA	A239/777
50	Pearl River	11N	10E	28	NESHOBA	A239/779
51	Pearl River	11N	11E	29	NESHOBA	A230/823
52	Pearl River	11N	11E	1	NESHOBA	A227/100
53	Pearl River	11N	11E	9	NESHOBA	A227/100
54	Pearl River	11N	11E	4	NESHOBA	A227/100
55	Pearl River	11N	11E	3	NESHOBA	A227/100
56	Pearl River	11N	11E	10	NESHOBA	A227/100
57	Pearl River	11N	10E	28	NESHOBA	A230/823
58	Pearl River	11N	11E	14	NESHOBA	A223//65
59	Pearl River	11N	11E	30	NESHOBA	A146/50
60	Pearl River	11N	10E	29	NESHOBA	A238/40
61	Pearl River	11N	09E	18	NESHOBA	A228/465
62	Pearl River	11N	11E	13	LEAKE	A228/465
64	Pearl River	11N	11E	29	NESHOBA	A151/704
65	Pearl River	11N	11E	29	NESHOBA	A150/577
66	Pearl River	11N	11E	6	NESHOBA	A235/124
67	Pearl River	11N	11E	29	NESHOBA	A151/22
68	Pearl River	11N	11E	29	NESHOBA	A151/24
69	Pearl River	11N	10E	20	NESHOBA	A220/842
70	Pearl River	11N	11E	28	NESHOBA	A217/255
71	Pearl River	11N	11E	30	NESHOBA	A216/716
72	Pearl River	11N	10E	30	NESHOBA	A239/270
73	Pearl River	11N	11E	36	NESHOBA	A161/528
74	Pearl River	11N	11E	29	NESHOBA	A150/581
75	Pearl River	11N	11E	29	NESHOBA	A232/764
76	Pearl River	11N	11E	30	NESHOBA	A201/138
77	Pearl River	11N	11E	18	NESHOBA	A140/142
78	Pearl River	11N	11E	19	NESHOBA	A140/142
79	Pearl River	11N	11E	31	NESHOBA	A239/270
80	Pearl River	11N	11E	29	NESHOBA	A231/15
81	Pearl River	11N	10E	29	NESHOBA	A238/408
83	Pearl River	11N	11E	11	NESHOBA	A223/650
84	Pearl River	11N	11E	20	NESHOBA	A219/550
85	Pearl River	11N	11E	30	NESHOBA	A146/221
86	Red Water	10N	07E	32	NESHOBA	A239/270
87	Red Water	10N	07E	2	LEAKE	228/627
88	Red Water	11N	07E	2	LEAKE	228/630
89	Red Water	11N	07E	36	LEAKE	235/549
90	Red Water	11N	07E	35	LEAKE	235/696
91	Red Water	11N	07E	36	LEAKE	163/440
92	Red Water	10N	08E	26	LEAKE	233/424
93	Red Water	10N	08E	6	LEAKE	235/483
96	Standing Pine	10N	09E	34	LEAKE	154/624
97	Standing Pine	09N	08E	29	LEAKE	221/614
98	Standing Pine	10N	09E	2	LEAKE	143/726
99	Standing Pine	09N	08E	30	LEAKE	221/614
100	Standing Pine	10N	09E	3	LEAKE	221/633
101	Standing Pine	10N	12E	9	LEAKE	221/616
102	Tucker	10N	12E	28	NESHOBA	A229/665
103	Tucker	13N	7E	21	NESHOBA	A229/665
105	Red Water			36	ATTALA	607/612

Reference Nos.	Choctaw reservation community	Township	Range	Section	County	Book & page from county records
106	Red Water	13N	7E	25	ATTALA	607/612
107	Red Water	12N	7E	1	LEAKE	607/612
108	Red Water	12N	7E	2	LEAKE	607/612
109	Red Water	13N	7E	35	ATTALA	607/612
110	Bogue Chitto	11N	14E	5	KEMPER	294/568

[FR Doc. E7–6143 Filed 4–2–07; 8:45 am]
BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Amendment to the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes an amendment to the Liquor Ordinance of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation of Montana (Tribe). This amendment brings the existing Liquor Ordinance of the Tribe which regulates and controls the possession, sale and consumption of liquor within the Tribe's reservation into conformance with state law. The Liquor Ordinance allows for possession and sale of alcoholic beverages within the Tribe's Indian reservation, and increases the ability of the tribal government to control the Tribe's liquor distribution and possession. At the same time it will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Louise Reyes, Indian Services Officer, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th St., Billings, MT 59101, Telephone: (406) 247–7988, Telefax: (406) 247–7566; or Ralph Gonzales, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone No. (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the Federal Register notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Chippewa Cree Business Committee adopted this amendment to their Liquor Ordinance by Resolution No. 27–06 on March 9, 2006. The purpose of this amendment is to bring their current Liquor Control Ordinance into conformance with State law.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Amendment to the Liquor Ordinance of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation was duly adopted by the Chippewa Cree Business Committee on March 9, 2006.

Dated: March 28, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

The Amendment to the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation Liquor Ordinance reads as follows:

Chippewa Cree Law and Order Code Alcoholic Beverage Control Ordinance

Chapter 1 General Provisions

Section 1.1 *Title*—This Ordinance shall be known as the "Alcoholic Beverage Control Ordinance." The Tribe previously passed Ordinance I–70 which was certified by the Commissioner of Indian Affairs on June 16, 1970, and published in the Federal Register on June 25, 1970, authorizing the introduction, sale or possession of intoxicating beverages on the Rocky Boy's Reservation (35 FR 10384, 1970). This Ordinance replaces Ordinance I–70 to include the following provisions as adopted by the Chippewa Cree Tribal Business Committee.

Section 1.2 *Purpose*—This Ordinance regulates the consumption, delivery and sale of alcoholic beverages within the exterior boundaries of the Rocky Boy's Reservation and other lands subject to Tribal jurisdiction for the purpose of protecting the health, safety and welfare of the Chippewa Cree Tribe and its members as well as the general public.

Section 1.3 *Authority*—This Alcoholic Beverage Control Ordinance is enacted pursuant to Article VI, Section 1(p) of the Constitution and Bylaws of the Chippewa Cree Tribe. Federal law currently prohibits the introduction of alcoholic beverage into Indian Country (18 U.S.C. 1154), and expressly delegates to tribes the decision regarding when and to what extent alcoholic beverage transactions shall be permitted (18 U.S.C. 1161). Unless otherwise provided in this Ordinance, standards for the sale and transaction of alcoholic beverages shall be in conformity with the laws of the State of Montana, as required by, and in accordance with 18 U.S.C. 1161.

Section 1.4 *Declaration of Public Policy*

(a) The introduction, possession, and sale of alcoholic beverage on the Rocky Boy's Reservation are a matter of special concern to the Chippewa Cree Tribe.

(b) Compliance with this ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Montana.

(c) In 1970, the Chippewa Cree Tribe passed Ordinance I–70, authorizing the introduction, sale or possession of alcoholic beverages on the Rocky Boy's Reservation. This Ordinance replaces Ordinance I–70 recognizing that a need still exists for strict regulation and control over alcoholic beverages transactions within the Rocky Boy's Reservation because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of alcoholic beverages. The Chippewa Cree Tribal Business Committee finds that Tribal control and regulation of alcoholic beverages necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of Tribal members, and to address specific concerns relating to alcohol use on the Rocky Boy's Reservation.

(d) It is in the best interests of the Chippewa Cree Tribe to enact a Tribal ordinance governing alcoholic beverage sales on the Rocky Boy's Reservation, which provides for purchase, distribution, and sale of alcoholic beverages only on specific Tribal lands within the exterior boundaries of the Rocky Boy's Reservation, as designated

TESTIMONY OF CHIEF PHILLIP MARTIN
CHIEF OF THE MISSISSIPPI BAND OF CHOCTAW INDIANS
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ORIGINAL

March 29, 2000

Chairman Campbell, Vice Chairman Inouye, and Members of the Committee, my name is Phillip Martin, elected Chief of the Mississippi Band of Choctaw Indians ("Tribe"), a Federally recognized tribe of 8,400 members with a small reservation of 29,000 scattered acres in seven communities in East Central Mississippi. I am honored to appear before the Committee to present the Tribe's views on S. 1967, a bill to make technical corrections to the status of certain lands held in trust for the Tribe and to take certain fee lands into trust for the Tribe.

Before I begin to present the Tribe's views on the legislation, I want to thank Senator Thad Cochran and his staff for their understanding and assistance with this bill as well as Chairman Campbell and the Committee staff and Majority Leader Lott for their support.

This bill is critical to the Mississippi Band of Choctaw Indians' ability to develop business enterprises to fund tribal government programs needed for a rapidly growing population (3.8% in 1998); assist in consolidating an extremely fractionated reservation land situation; and to provide the Tribe with additional trust lands for the construction of housing, schools and out-reach health centers for our members in the seven communities.

History of Mississippi Band of Choctaw Indians Land Acquisitions

When Mississippi became a State on December 10, 1817, the Choctaws still retained

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Federally recognized claims to over three-fourths of the land within the State's boundaries. The pressure to make these lands not obtained in previous treaties available to non-Indians was so great the State passed a series of laws abolishing the Choctaw government, even though it had no authority to do so. The Federal Government under President Andrew Jackson, pursuing a policy of Indian removal from lands east of the Mississippi River, pressured the Tribe into ceding the last of its lands in the Treaty of Dancing Rabbit Creek in 1830.

This Treaty ultimately resulted in the migration of about two-thirds of the Choctaw Tribe to the Oklahoma Territory over the next fifty years. Provisions were made in the treaty, however, for Choctaws who wished to stay in Mississippi to be issued allotments of 640 acres. Through Federal Government incompetence, corruption and outright theft by unscrupulous land speculators, those who stayed soon lost all their land and became sharecroppers, living a precarious subsistence existence.

While the removal of the Choctaw to Oklahoma remained the primary goal of Federal policy in the mid-to-late 1800s, Washington later recognized the desperate conditions of the Mississippi Choctaws in 1916 when the appropriations for the Bureau of Indian Affairs that year included $1,000 for the Secretary of the Interior to "investigate the conditions of the Indians living in Mississippi." After a hearing on the issue, a general appropriation in 1918 included funds for the establishment of an agency with a physician, for the maintenance of schools, and for the purchase of land and equipment. Lands purchased through these appropriations were to

be sold on contract to individual tribal members.

In the 1930s Federal Indian policy shifted back toward preservation of Indian communities and tribal lands reflected in the Indian Reorganization Act of 1934 (IRA). By this time, it was evident that the original method of land purchase authorized in 1918 was inconsistent with the new Federal policy and of marginal benefit to the Mississippi Choctaws. In 1939, Congress passed an Act directing title to all lands purchased for the Mississippi Choctaws would be held "in the United States in trust for such Choctaw Indians of one-half or more Indian blood, resident in Mississippi, as shall be designated by the Secretary of the Interior." (53 Stat. 851). In December, 1944, the Assistant Secretary of the Interior officially proclaimed all the lands then purchased in aid of the Choctaws in Mississippi – just more than 15,000 acres – to constitute the Mississippi Choctaw Indian reservation (9 Fed. Reg. 14907). In April, 1945, the Mississippi Band of Choctaw Indians adopted a constitution and bylaws under the IRA re-establishing its Federal recognition as a tribe and government (U.S. v. John, 437 U.S. 634 (1978).

U.S. v. John, supra finally and favorably resolved almost a decade of litigation the 1970s over the Tribe's legal status and the Indian Country status of our lands [U.S. v. State Tax Comm'n of the State of Mississippi, 505 F.2d 633 (5th Cir. 1974), rehearing denied, 535 F. 2d 300, aff'd on rehearing en banc, 541 F. 2d 469 (1976); Tubby v. State, 327 So. 2d. 272 (Miss. 1976); John v. State, 347 So. 2d 959 (Miss. 1977); United States v. John, 560 F. 2d 1202 (5th Cir.

1977), reversed, 437 U.S. 634 (1978).].

Resolving those issues opened the door to our later economic progress and our improved relations with the State of Mississippi. Our State-Tribe relations are now guided by the spirit of cooperation and mutual respect rather than confrontation.

Despite this progress, we are still left with a fragmented, checkerboard land base spread over several counties, but largely concentrated in the seven recognized Choctaw communities referenced in our Constitution. We are working diligently to consolidate and fill-in the checkerboard areas within each of those communities. In doing so, we will simplify jurisdictional and development issues for the Tribe and for the State.

Many of these difficulties result from simple confusion. Confusion stemming from our Tribe's unique history, its fragmented land situation, its mix of formal and informal reservation and trust lands (with no single exterior reservation boundaries), the evolving U.S. Supreme Court case law on what constitutes Indian Country, and our long stalled fee to trust land transfers. These circumstances have given rise to delayed development and construction of needed government and commercial facilities on our lands.

All of our trust lands have the same legal and jurisdictional status as "Indian Country" under the controlling statutes and U.S. Supreme Court rulings. 18 U.S.C. Sec. 1151, construed

Okl. Tax Comm'n v Chickasaw Nation, 115 S.Ct 2214 (1995)

in, State of Alaska v. Native Village of Venetie, 522 U.S. 520 (1998); Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Tribe of Okla., 498 U.S. 505 (1991); United States v. John, supra.

Okl. Tax Comm'n v Sac & Fox Nation, 113 S.Ct 1985 (1993)

However, the use of different terms in these cases – trust lands, formal reservation lands, informal reservation lands, dependent Indian communities, Indian Country – to refer to lands which all have the same jurisdictional status breeds confusion and uncertainty.

Business doesn't like confusion and uncertainty. One of the purposes of this legislation is to put all of our Tribe's lands under the same label as formal Indian reservation lands, and eliminate any basis for confusion over these different words.

This legislation follows the same approach used by the Congress in 1939 – when all fee lands theretofore purchased for our Tribe were placed into trust by statute (53 Stat. 851); and, by the Secretary of the Interior in 1944 when all the lands placed into trust by the 1939 Act or acquired pursuant to IRA were all declared to constitute the Choctaw Indian Reservation. U.S. v. John, supra. Now, over half a century later, it is time for Congress to again address our lands and place them all into formal Indian reservation status.

Achieving this will improve our ability to do what we do best – turning marginal economic opportunities into large economic successes.

Choctaw Economic Development and Tribal Governmental Services

I have testified at a number of forums recently, that economic success for tribes is based upon three pillars: (1) a tribal land base under tribal government control and in trust status; (2) a stable tribal government; and (3) the sovereignty and institutional structure to make calculated business decisions. Like a three-legged stool, if one of these elements is missing the stool will fall and economic development is unlikely.

Over the last 15 years, the Tribe has followed this model to develop a reservation economy. Since the 1970s, the Tribe has decreased unemployment from over 75% to 4%; increased per capita income 346%; and provided 6600 jobs (over 3,600 of which are filled by non-Indians in the surrounding communities). Today, the Tribe carries a payroll of over $100 million and manages 12 enterprises with over $300 million in annual sales.

The Tribe's positive economic contributions to the State of Mississippi, based upon its use of its trust lands, are clearly documented. Mississippi Attorney General Mike Moore in his November 29, 1999, letter of support to the Committee regarding this legislation stated "The Tribe continues to make substantial and positive contributions to the State of Mississippi, and we encourage you to help them continue these achievements." A 1999 study performed by the Goodman Group and Mississippi State University detailed the Tribe's economic impact on the local communities and the state. The report documents the positive effects the Tribe's business enterprises have had on Neshoba County and the surrounding areas. I have attached a summary

of the study for the Committee's review and the hearing record. **Attachment 1**.

Lands acquired by the Tribe and placed into trust have played an essential role in the Tribe's efforts to attain economic achievement and a level of self-sufficiency. In order for the Tribe to expand its enterprises to meet the growing needs of all our members, we must be able to have additional lands taken into trust. More importantly, having additional trust land available will also enable the Tribe to move forward with its plans to provide governmental services to its members through the construction of much needed housing, health service facilities and the replacement of dilapidate schools.

As Senator Cochran clearly stated in his introductory remarks on S. 1967, the Tribe has worked diligently with the Bureau of Indian Affairs for the past 20 years through the regular Department of Interior trust land acquisition process to transfer numerous fee lands to trust status. Unfortunately, the fee-to-trust process has failed to keep up with the Tribe's development plans, creating an enormous backlog of requests by the Tribe at the Bureau's Eastern Regional Office. Over this time period, the Tribe had been told countless times that their applications had been lost or that action would occur soon.

These delays have come at a significant cost to the Tribes in lost economic development opportunities and the ability to provide improved services and living conditions to our members. The severe backlog is causing undue hardship to the Tribe. Thus, the Tribe believed it necessary

to seek these routine transfers by the Congress.

The Tribe currently has the 76 active requests totaling 8,511 acres for processing its backlog of land purchases or Federal excess property into trust before the BIA. Some of these requests date back two decades. S. 1967 would place into trust for the benefit of the Tribe the lands located within the State of Mississippi and identified in the updated list ("Updated List of Mississippi Band of Choctaw Indians Fee Land to Trust") submitted to the Choctaw Agency on February 7, 2000. **Attachment 2.** Enactment of the legislation will eliminate the current backlog and enable the Tribe to move forward with its development strategy.

The conversion of the backlog of the Tribe's fee land purchases to trust land will also allow it to consolidate the highly fragmented trust parcels into units of sufficient size to develop economically, to build housing developments, replace dilapidated schools, construct out-reach health clinics and to preserve land for traditional uses. The maps attached provide a visual example of the current fractionated and unique structure of the Mississippi Band of Choctaw Indians tribal trust lands. **Attachment 3.**

The Tribe believes that the primary reason for this complete failure of the BIA's fee to trust process is its lack of resources. Nowhere is this funding shortfall more noticeable than in the funding of BIA realty offices. Recently, officials in the Eastern Regional Office have straightforwardly informed me and my staff that a heavy realty workload and backlog of

trust applications combined with understaffing and the competing interests of the other 25 tribes the office serves makes the swift processing of our fee-to-trust applications (those that are backlogged and future applications) impossible. Due to this situation, the Tribe's only alternative was to turn to the Congress for assistance. S. 1967 will solve this problem of a backlog that, left unaddressed, will never be eliminated by the BIA.

This past year, the BIA and the Tribe agreed to "fast-track" four parcels of land that were obstructing the Tribe's ability to move its shopping center. The fast tracking of the parcels was a good-faith effort by the Bureau to expedite the fee-to-trust transfers so development on these lands were not stifled by further delays. There were no environmental or title issues with these four properties. Today, 13 months later, the parcels are still not in trust, although they are close to it. The Tribe's economic plans remain at a standstill while this process sluggishly moves along. During this one and a half year period, the Tribe purchased five more properties to be taken into trust, adding to the backlog.

I want to commend the Eastern Regional Office staff for their diligence during this effort. They continue to work very hard with my staff on all our trust applications and other matters. Franklin Keel, Eastern Regional Director, and Ron Walker, Regional Realty Officer, are in the extremely difficult position of working within a framework and process that is broken and unable to keep pace with the Tribe's needs. S. 1967 will in the short-term eradicate the bulk of the Tribe's fee-to-trust applications and lighten the Eastern Regional Office's realty workload.

The Tribe is concerned about how the Bureau intends to process our future fee-to-trust applications in a timely manner which does not hinder the Tribe's development plans. The Tribe would like to work closely with the Committee and the Bureau to develop a constructive and mutually acceptable solution to remedy the current fee-to-trust process. Although the Tribe fully recognizing that fee-to-trust land acquisition is a trust obligation of the Federal Government, the Tribe, with its strong interest in timely completion of the process, may be willing to provide technical assistance in an mutually agreed upon manner.

Environmental Status of Choctaw Fee Lands to be Taken into Trust

The Eastern Regional Office informed the Tribe that as a matter of policy the Department of Interior will not take land into trust that does not meet certain environmental specifications. In order to meet the Department's environmental threshold, the Tribe, at a cost of over $70,000, contracted to have the Level I environmental surveys completed on all 76 properties to be taken into trust. What has not been done by the BIA in 15 years was completed in three weeks by the Tribe. All the properties were classified in good condition, with no major pollution or contaminate problems identified beyond already identified and manageable ones regarding possible asbestos in the old BIA school buildings in the Standing Pine and Tucker communities.

Indian Gaming Regulatory Act

Section 1(3) and Section 1(3)(b) of the legislation ensures that the application of or the

requirements of the Indian Gaming Regulatory Act (IGRA) are strictly adhered and that nothing in the Act shall be construed to relieve or alter the IGRA for any lands held by or for the Mississippi Band of Choctaw Indians.

Conclusion

In summary, the passage of S. 1967 is of vital importance to the future of the Mississippi Band of Choctaw Indians. The bill's provisions address key issues that currently obstruct economic development for the Tribe and places into trust lands that are critical for housing, health facilities and schools. The measure also eliminates the backlog of applications that have been languishing at the Bureau for two decades and clarifies the status of the Tribe's lands. Enactment of the legislation will enable the Tribe to continue its current pace of economic development, to the joint benefit of tribal members and non-tribal residents of the State of Mississippi.

I urge all Members to support this bill. This concludes my testimony, and I will be pleased to answer any questions you may have.

Attachment 1

The Economic Impact of the Mississippi Band of Choctaw Indians and Their Affiliated Enterprises on The State of Mississippi

Presented to The Mississippi Band of Choctaw Indians

Principal Contractor: Center for Community and Economic Development, The University of Southern Mississippi

Principal Subcontractor: The Goodman Group, Inc.

June 15, 1999

INTRODUCTION

This economic impact study was commissioned by the Mississippi Band of Choctaw Indians. The impetus for this study is the general perception by the public that the reservation is a consumer of public wealth and gives nothing back to the general public.

The Mississippi Band of Choctaws contracted with the Center for Community and Economic Development at The University of Southern Mississippi to prepare an economic impact study of the reservation's economic activities. USM subcontracted coordination of this study to the Goodman Group, Inc., a Mississippi-based economic consulting company. Much of the field work was accomplished by interns in USM's Masters of Economic Development program, under the coordination of Dr. Ron Swager. Mark Folden was the lead intern on the project. The proceeding study and analysis is the culmination of that endeavor.

We want to thank the Mississippi Band of Choctaws for the opportunity to develop this impact analysis. We also want to thank Chief Philip Martin and his economic development department staff, Mr. John Hendrix and Mr. Randy Spears for their assistance in completing this study.

It became clear early in this study that the Mississippi Band of Choctaws is a major economic force within the state of Mississippi. The further we delved into the data the more clearly several factors stood out.

First and foremost, the overall leadership has done a superb job. This is particularly evident in the continuity of activities. This is not the case with reservations in general.

Secondly, the reservation leadership focused on economic issues and was not derailed by politics. This manifested itself through the quality of section and department leadership, a clear benefit in a study such as this.

On behalf of the USM Center for Community and Economic Development and the Goodman Group Inc., it has been our pleasure to work with the Mississippi Band of Choctaws on this project.

Robert Ingram
Executive Director Of Economic Development
USM

Dr. Lowell Goodman
The Goodman Group, Inc.

Dr. Ronald Swager
Department of Economic Development
USM

PURPOSE OF THIS STUDY

There is a general perception by the public at large that trust lands and their inhabitants simply reach out for public assistance and return nothing to the public at large.

This study was commissioned to analyze the benefits and impact the Mississippi Band of Choctaw Indians' reservation has on the surrounding region and the state of Mississippi.

Over the past twenty years, the Mississippi Band of Choctaw Indians has become a significant economic engine. Education and infrastructure were the emphasis in the 1970s and 1980s. Jobs and economic growth were the focus in the 1980s and 1990s. With the prevailing perception and the tremendous growth that has taken place, the tribal leadership felt it was important to show how the Choctaws benefit the region and the state. Through employment, construction, purchases and other spending, the tribe causes state taxes to be paid through income taxes, sales taxes, car tags, gas tax and a host of retail expenditures, resulting in an impact which is felt throughout the state. Tribal leaders therefore contacted USM Center for Community and Economic Development to develop an economic impact study of the Mississippi Band of Choctaw Indians.

This publication is the result of that effort.

THE APPROACH

Our task in this study is to quantify the economic activity, both regionally and statewide, generated by the existence of the reservation. The approach we have taken is to track jobs and purchases resulting from activity on the reservation. These two broad categories are the activities that directly impact the outside. From these direct activities the indirect impact is developed.

The exchange of money and the purchase of goods and services create state income tax, retail sales, rent, sales tax, gasoline tax, and of course additional jobs.

We will compare these findings with economic impact models developed by the U. S. Chamber of Commerce and the multipliers developed for the state of Mississippi.

Our principal goal is to measure the visible impact including active jobs and purchases off the reservation and the economic activity generated as a result.

THE MISSISSIPPI BAND OF CHOCTAWS

The Choctaws in Mississippi have a land scheme different from western tribes. Nearly all western tribes have relatively large contiguous tracts, whereas the Choctaws have several small tracts. To compensate for this inconvenience, the tribe has been following a "growth point" plan for development.

The governmental and largest of these dispersed parcels, Pearl River, is the principal point of growth and development. The outlying parcels are housing communities. Consequently, commuting is a way of life.

The communities of the Choctaws are Pearl River, Redwater, Standing Pine, Bogue Chitto, Tucker, Conehatta, Bogue Homa and Crystal Ridge.

The Choctaw reservation, principally in East Central Mississippi, includes portions of Neshoba, Attala, Jackson, Jones, Kemper, Leake, Newton, Scott and Winston counties.

Eight communities and additional land encompass more than 25,000 acres with a population of more than 8,300, all of whom have a minimum of 50 percent Choctaw blood quantum. Tribal headquarters are located in the Pearl River Community[2]

[2] Choctaw-Mississippi Band of Choctaw Indians Demographics 1997

The following two charts show the progress the tribe has made over the past 10 to 15 years. Both employment and income have grown. 1998 shows 2,003 native Choctaws employed full time.

Employment Status of Adults by Community: 1997 Census

	Employed		Seeking Work		Homemaker		Student		On Welfare	
Community	Freq	Perc	Freq	Perc	Freq	Perc	Freq	Perc	Freq	Perc
Bogue Chitto	295	48.0	109	17.8	146	23.9	69	11.2	15	2.4
Bogue Homa	54	41.9	24	18.9	52	40.9	28	21.9	16	12.4
Conehatta	283	50.9	82	14.6	181	32.1	103	18.2	9	1.6
Crystal Ridge	47	47.0	21	21.0	42	42.9	9	9.1	11	11.0
Pearl River	765	60.6	207	17.6	252	21.6	227	19.3	49	4.2
Red Water	191	55.9	65	19.0	83	24.6	48	14.1	3	0.9
Standing Pine	165	63.2	25	9.6	82	27.3	35	13.2	6	2.3
Tucker	209	58.9	43	12.0	89	24.9	60	16.7	9	2.5
TOTALS	1960	55.3	576	16.3	917	26.0	579	16.3	118	3.6

Source: Tribal Census 1997

The following chart shows the progress the tribe has made over the past 11 years.

Income by Household: 1986, 1990 and 1997						
Income Level	1986		1990		1997	
	Number	Percent	Number	Percent	Number	Percent
Under $3000	110	13.1	170	19.0	79	5.3
$3000-$7999	215	25.5	195	21.8	151	10.1
$8000-$14,999	271	32.2	273	30.6	248	16.6
$15,000-$24,999	158	18.8	176	19.7	424	28.4
$25,000-$40,000	77	9.1	62	6.9	368	24.7
Over $40,000	13	1.4	16	1.8	221	14.8
TOTALS	844	100.1	892	99.8	1491	99.9

Sources: Tribal Census 1997

By 1998 there were over 5,800 employees working on the reservation. Good medical facilities are also available at Pearl River. There is a hospital, clinic and senior's home in the complex. The senior's retirement facility is for both native and non-Indian. There is presently a waiting list of about a year. The greatest economic event was the completion of the Silver Star Casino and Resort Hotel. This development employs 2,200 and generates large amounts of cash for the reservation.

Today the Mississippi Band of Choctaw Indians encompasses 25,000 acres of land and is home to 8,300 people.

ECONOMIC DEVELOPMENT

The Mississippi Band of Choctaw Indians has experienced rapid economic growth during the last 15 years. Lacking in natural resources, the tribe created an industrial economy in 1979. The completion of the first phase is a 80-acre industrial park.

The success of tribal economic enterprises has led to a decrease in unemployment from 75 percent to four percent in 1998. From 1981 to 1997, per capita income increased 346 percent. Since then, the tribe has added several successful new ventures, contributing to continued economic growth.

The following manufacturing, retail and commercial services are in operation:

- Choctaw Development Enterprise Construction, Pearl River, est. 1969
- Chahta Enterprise, Automotive, wiring harnesses, Pearl River, DeKalb, Conehatta, est. 1979, 196,800 sq. ft.
- American Greetings, Hand-finished greeting cards, Pearl River, est. 1981, 120,000 sq. ft.

- Choctaw Electronics Enterprise, Automotive speakers, Pearl River, est. 1985, 61,000 sq. ft.
- Choctaw Manufacturing Enterprise, Wiring harnesses, printed circuit boards, Red Water, est. 1986, 85,000 sq. ft.
- Choctaw Residential Center, 120-bed nursing home, Pearl River, est. 1988, 42,000 sq. ft.
- Choctaw Shopping Center, Retail center, Pearl River, est. 1988, 65,000 sq. ft.
- First American Printing & Direct Mail, Commercial printing, direct mail, inquiry fulfillment, Ocean Springs, est. 1990, 74,000 sq. ft.
- Choctaw Construction Enterprise, Construction, Pearl River, est. 1993
- First American Plastic Molding Enterprise, Plastic injection molding, Ocean Springs, est. 1994, 22,000 sq. ft.
- Silver Star Resort & Casino, Casino and 509-room hotel, Philadelphia, est. 1994, 515,000 sq. ft.
- Dancing Rabbit Golf Club, 36-hole championship golf course, Pearl River, est. 1996 and expanded in 1999.

These businesses and industrial enterprises employ more than 5,800 people. The industrial, service and governmental sectors combine to place the tribe among the 10 largest employers in the state of Mississippi.

ASSUMPTIONS

Discretionary Income: This is spendable income and in the State of Mississippi it calculates to be 41% of total wages.

Mississippi Income Withholding is estimated to average $600.27 per employee. (Note that Tribal members living on the Reservation do not pay State Income Tax, and are not included in this figure).

Property taxes are estimated to average $480 per household.

MULTIPLIERS

Three approaches were utilized

1. State of Mississippi
2. U.S. Chamber of Commerce
3. U.S. Chamber Technique of 1 job for every $100,000 spent. This is added to the total employment.

The multiplier used here was computed to be 2.03 for each FT employee on the reservation, 1.03 people are employed elsewhere as a result.

Executive Summary

Direct Impact

The Mississippi Band of Choctaw Indians and their affiliated enterprises employ **5822** people who are paid **$100,941,052** in wages throughout the State of Mississippi. Of these employees, 2637 are Indian, 3578 are non-Indian, 2338 live on the reservation, and 3877 live off the reservation. These employees are distributed across 42 counties throughout the State of Mississippi.

It is estimated that the following tax revenues are generated by employment by MBCI and its affiliated enterprises:

- **$2,328,800** in State Income Tax.
- **$3,035,681** in sales tax, of which **$622,314** returns to the community in which the transaction took place.
- **$2,796,680** in property taxes
- **$466,160** in car tag fees
- The payment of **$512,901** in motor fuel taxes through commuting 62,688,000 miles annually consuming 2,849,450 gallons of gasoline. This commuting pattern is the equivalent to circumnavigating the earth 10.03 times every working day.

These employees also generate **$8,347,680** in rent payments annually. Additionally, the MBCI and their affiliated enterprises purchase **$95,251,973** in goods and services throughout 66 counties in the State of Mississippi. These expenditures generate additional demand for goods and services in the economy that would otherwise not exist.

Indirect Impact

Using multiplier data from the U.S. Chamber of Commerce, the Western Regional Economic Council, and the Bureau of Economic Analysis, the overall multiplier for MBCI and its affiliated enterprises is **2.03**. In other words, for each employee for MBCI and its affiliated enterprises there are 1.03 jobs created in the economy. Using this multiplier and U.S. Chamber of Commerce statistics stating that for every $100,000 spent, one job is created and that 41% of an employee's income is discretionary, the indirect jobs can be calculated:

	Indirect Jobs		Indirect Wages		Spendable $
5822 * 1.03 =	5997	* $11,400 =	$68,365,800	*.41 =	$28,029,978
$28,029,978/$100,000 =	280	* $11,400 =	$3,192,000	*.41 =	$1,308,720
$1,308,720/$100,000 =	13	* $11,400 =	$148,200	*.41 =	$61,170
Total	**6290**		**$71,706,000**		**$29,399,868**

It is estimated that the following tax revenues are generated by indirect employment resulting from MBCI and its affiliated enterprises:

- **$2,516,000** in State Income Tax.
- **$2,057,990** in sales tax, of which **$421,888** returns to the community in which the transaction took place.
- **$3,019,200** in property tax.
- **$503,200** in car tag fees.
- **$257,318** in motor fuel tax.

These indirect employees also generate approximately **$754,800** in rent payments annually.

Total Impact

Total direct and indirect impact of the Mississippi Band of Choctaw Indians and their affiliated enterprises is estimated as follows:

- **12,112** jobs
- **$172,647,000** in wages paid
- **$9,102,480** in rent paid.
- **$4,844,800** in State Income Tax
- **$5,093,671** in sales tax, of which **$1,044,202** returns to the communities in which the transaction took place.
- **$5,815,880** in property taxes
- **$969,360** in car tag fees.
- **$770,219** in motor fuel taxes.

The total impact can be further broken down to indicate what each person employed by MBCI and its affiliated enterprises is responsible for generating in the general economy and in tax revenues in the State of Mississippi.

- **$1,563** in rent payments.
- **$832** in State Inocme Tax paid.
- **$875** in sales tax, **$179** of which returns to the community in which the transaction took place.

- **$999** in property taxes to counties.
- **$166** in car tag fees.
- **$132** in motor fuel taxes.
- **$29,476 in retail sales and purchases by MBCI and affiliated enterprises** per employee.

Statistical Breakdown of Retail Sales Created by Employees of MBCI and Their Affiliated Enterprises

Retailer	% of Spendable Income	$ Spent	$Spent/5822 Employees
Food	18.00%	$13,115,059	$ 2,252.67
Auto Accessories	20.00%	$14,572,288	$ 2,502.97
General Retail	10.20%	$ 7,431,867	$ 1,276.51
Department Stores	8.50%	$ 6,193,222	$ 1,063.76
Eating and Drinking	8.50%	$ 6,193,222	$ 1,063.76
Gas	7.00%	$ 5,100,301	$ 876.04
Furniture	5.00%	$ 3,643,072	$ 625.74
Clothing	5.00%	$ 3,643,072	$ 625.74
Lumber & Hardware	9.00%	$ 6,557,530	$ 1,126.34
Drug Stores	2.80%	$ 2,040,120	$ 350.42
Liquor	2.00%	$ 1,457,229	$ 250.30
Variety	2.00%	$ 1,457,229	$ 250.30
		$ 72,861,439	**$ 12,514.85**

Source: Extrapolated from the U.S. Census

Appendicies

The remainder of this report are tables and maps showing the contribution of MBCI and its affiliated enterprises to the direct impacts shown in the findings of this study followed by a summary of the direct impacts to each county.

In the maps, concentrations of employment with MBCI and affiliated enterprises (blue) and purchases made by MBCI and affiliated enterprises (green) are as follows:

Dark Solid: Over 50%
Medium Solid: Between 10% and 49.99%
Light Solid: Between 1% and 9.99%
Striped: Less than 1%

Attachment 2

MISSISSIPPI BAND OF CHOCTAW INDIANS

TRIBAL OFFICE BUILDING
P. O. BOX 6010
PHILADELPHIA, MISSISSIPPI 39350
TELEPHONE (601) 656-5251

MEMORANDUM

TO: Ray Thomas
Superintendent, Choctaw Agency

FROM: Phillip Martin
Chief

SUBJECT: Updated List of Mississippi Band of Choctaw Indians Fee Land to Trust Submitted to Choctaw Agency

DATE: February 7, 2000

By this Memorandum I am updating the list of fee land to trust submitted to Choctaw Agency on September 28, 1999. Please replace the list submitted on September 28, 1999, (attached) with this update.

Phillip Martin, Chief

FORMER OWNERS	NUMBER OF ACRES	DATE SENT TO EAO	COMMUNITY	COUNTY	REMARKS:
ALLEN, TIM	1251.5	7/8/99	PEARL RIVER	NESHOBA	
ALLEN, TIM	160	12/29/99	BOGUE CHITTO	NESHOBA	
ALLEN, TIM	1131	12/29/99	BOGUE CHITTO	KEMPER	
ALLEN, TIM	120	12/29/99	BOGUE CHITTO	WINSTON	
ALLEN, TIM	235	12/29/99	BOGUE CHITTO	NESHOBA	
ALLEN, TIM	30	12/29/99	NANIH WAIYA AREA	WINSTON	
ALLEN, TIM	90.3	1/29/99	CONEHATTA	NEWTON	
ALLEN, TIM	944	7/8/99	BOGUE CHITTO	KEMPER	
B & G WOOD PRODUCTS	173		BOGUE CHITTO	KEMPER	
BARRETT	8.84	10/1/94	PEARL RIVER	NESHOBA	GOVT. SCHOOL LANDS
BATES	15	2/7/97	BOGUE CHITTO	NESHOBA	GOVT. SCHOOL LANDS
BATES & GRANTHAM FARMS	530		RED WATER	LEAKE & ATTALA	
BILLY, FRANK	40	11/13/96	STANDING PINE	LEAKE	
BOYDSTON	119		PEARL RIVER	NESHOBA	
BRIGGS, EDDIE	35	2/4/00	PEARL RIVER	NESHOBA	
BURRAGE, OLEN JR.	177	8/16/99	PEARL RIVER	NESHOBA	
BYARS, DAVID & NEDA	36	11/12/97	PEARL RIVER	NESHOBA	
~~CARROLL~~	~~79.89~~	~~9/15/95~~	~~TENNESSEE~~	~~LAUDERDALE~~	
~~CARROLL~~	~~88.15~~	~~9/14/95~~	~~TENNESSEE~~	~~LAUDERDALE~~	
CATHOLIC DIOCESE	7.7	2/7/97	TUCKER	NESHOBA	GOVT. SCHOOL LANDS
CHATA TO MBCI	80	11/13/96	STANDING PINE	LEAKE	
DUNGAN, W.W.	199	11/12/97	BOGUE CHITTO	NESHOBA	
EDWARDS, DAVID	74.95	9/14/98	BOGUE CHITTO	NESHOBA	
FERGUSON, BOB	0.25	11/1/96	PEARL RIVER	NESHOBA	
GARDNER, CLYDE	0.825		PHILADELPHIA	NESHOBA	
GATES, MARK & LARRY	10.5		RED WATER	LEAKE	
GIBSON, JIMMY	16.58	1/13/99	PEARL RIVER	NESHOBA	
GOLDMAN	14	11/1/96	PEARL RIVER	NESHOBA	
GRAHAM	5	11/1/96	PEARL RIVER	NESHOBA	
GRAY, EARL	94	12/29/99	BOGUE CHITTO	NESHOBA	
GRIFFIN	65	10/1/94	PEARL RIVER	NESHOBA	GOVT. SCHOOL LANDS
GWARTNEY/MARTIN	1	11/15/96	PHILADELPHIA	NESHOBA	
HALL, ANDERSON	209	1/29/99	BOGUE CHITTO	NESHOBA	
HANDCOCK, JOHN	40		PEARL RIVER	NESHOBA	
HARALSON, BILLY E	40	1/7/00	CONEHATTA	NEWTON	
HENRY, FRANK & ANNIE	3.1	1/13/99	PEARL RIVER	NESHOBA	
HOLLOWAY/MALCOLM	4.5	12/29/99	RED WATER	LEAKE	
INTERSTATE GEO. CO.	498.6		BOGUE CHITTO	NESHOBA & KEMPER	
JENKINS, RONALD	51.87		STANDING PINE	LEAKE	
JONES, MACK & SUE	129.52	1/29/99	PEARL RIVER	NESHOBA	
JONES, SHELBA	250		BOGUE CHITTO	KEMPER	
KITTRELL, LARRY & DONNA	69		PEARL RIVER	NESHOBA	
LANGFORD	10.78	2/7/97	CONEHATTA	NEWTON	GOVT. SCHOOL LANDS
LANGFORD, MYERL	127.9	11/12/97	CONEHATTA	NEWTON	
LEAKE CO. INDUSTRL .	3.46	11/15/96	RED WATER	LEAKE	
LEAKE CO. INDUSTRL .	10.36	7/28/99	RED WATER	LEAKE	
LOCKHART	10	11/1/96	PEARL RIVER	NESHOBA	
LONG	4.7	9/10/98	RED WATER	LEAKE	
MARTIN, FRED	2.43	11/22/96	PEARL RIVER	NESHOBA	
MAYO	5	11/1/96	PEARL RIVER	NESHOBA	
MBCI	3	2/7/97	BOGUE CHITTO	NESHOBA	GOVT. SCHOOL LANDS
McDILL, GARY	80	6/2/99	CONEHATTA	NEWTON	
McNEIL, JERRY	3.55		PEARL RIVER	NESHOBA	
McNEIL, JERRY	3.71		PEARL RIVER	NESHOBA	
MULHOLLAND	11.87	9/10/98	RED WATER	LEAKE	
NATIONWIDE MORTAGE	86.51		STANDING PINE	LEAKE	
RISHER, SIDNEY & SUSAN	110	11/22/96	PEARL RIVER	NESHOBA	
SAVELL, LARRY	115	7/20/99	TUCKER	NESHOBA	
STRINGFELLOW	37	11/22/96	CRYSTAL RIDGE	WINSTON	
SULLIVAN, SONYUNA	3.94	1/13/99	PEARL RIVER	NESHOBA	
THOMPSON	117.59	1/29/99	PEARL RIVER	NESHOBA	
TINGLE, J.V.	1	1/29/99	PEARL RIVER	NESHOBA	
TINGLE, LOUIS	105.88	11/15/96	PEARL RIVER	NESHOBA	
TINGLE, OREN	133	12/29/99	PEARL RIVER	NESHOBA	
TINGLE, ROBERT	91	11/15/96	PEARL RIVER	NESHOBA	
WALLACE	20	2/7/97	RED WATER	LEAKE	GOVT. SCHOOL LANDS
WALLACE, RICHARD	4	4/21/99		NOXUBEE	
WHITE ESTATE (HAYES)	162.25		PEARL RIVER	NESHOBA	
WHITE, JAMES ALLEN	48.55		PEARL RIVER	NESHOBA	
WHITE, LAVERN	28		PEARL RIVER	NESHOBA	
WHITTEN, GEORGE	92.03		STANDING PINE	LEAKE	
WILLIS, GLENDALE	7	1/29/99	BOGUE CHITTO	NESHOBA	
WRIGHT	51.54	9/10/98	RED WATER	LEAKE	
YORK	30	10/1/94	STANDING PINE	LEAKE	GOVT. SCHOOL LANDS
HENDERSON-MOLPUS	25	2/7/97	PHILADELPHIA	NESHOBA	CHOCTAW AGENCY
DEES	5	2/7/97	PHILADELPHIA	NESHOBA	CHOCTAW AGENCY
TOTAL ACRES	~~8,679.13~~				
	8,511.08				

STATE OF MISSISSIPPI
COUNTY OF NESHOBA
CHOCTAW INDIAN RESERVATION

AFFIDAVIT OF DELIVERY

Personally appeared before me, the undersigned authority, in and for the jurisdiction aforesaid, the undersigned Deyondria J. Williams, who, after being duly sworn by me states on her oath that on the 28th day of September, 1999, she personally hand delivered to the Bureau of Indian Affairs, Choctaw Agency in Philadelphia, Mississippi the attached **MISSISSIPPI BAND OF CHOCTAW INDIANS FEE LAND TO TRUST SUBMITTED TO CHOCTAW AGENCY** consisting of 3 pages numbered 1 through 3 consecutively and that she requested and received the attached receipt for same and that she personally witnessed the signature of the receiving party.

Affidavit further states that she is an employee of the office of the Tribal Attorney General, is above the age of 18 years and she is under no legal disability which would impair or prohibit the making of this affidavit.

Further affidavit saith not.

Deyondria J. Williams
Deyondria J. Williams

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 28TH DAY OF SEPTEMBER, 1999.

KAREN H. BRAM NOTARY PUBLIC NESHOBA COUNTY, MS

NOTARY PUBLIC

MY COMMISSION EXPIRES:
03/16/2001

MISSISSIPPI BAND OF CHOCTAW INDIANS
FEE LAND TO TRUST SUMITTED TO CHOCTAW AGENCY

COMMUNITY	DATE OF DEED	GRANTOR	TOWNSHIP	RANGE	SECTIONS	NUMBER ACRES	COUNTY	COUNTY RECORDS	BOOK	PAGE
	04/21/99	WALLACE, RICHARD & JOANN	14N	15E	16	4.00	NOXUBEE	553/503	A	456
BC	11/21/95	JONES, SHELBA	11N	14E	7	250.00	KEMPER	268/220	A	290
BC	09/08/97	HALL, ANDERSON & MARTHA	11E	14N	18	89.00	KEMPER	280/193	A	388
BC	03/14/97	ALLEN, TIM	12N	14E	32	40.00	KEMPER	A222/845	A	351
BC	03/17/97	ALLEN, TIM	12N	13E	2	80.00	NESHOBA	A223/6	A	355
BC	09/08/97	HALL, ANDERSON & MARTHA	11E	14N	17	120.00	KEMPER	280/193	A	388
BC	03/13/96	INTERSTATE GEOPHYSICAL CO., INC.	11N	14E	7	60.00	KEMPER	270/71	A	340
BC	03/14/97	ALLEN, TIM	11N	14E	5	154.00	KEMPER	A222/845	A	351
BC	11/22/96	WILLIS, GLENDALE	11N	14E	7	7.00	KEMPER		A	348
BC	11/19/96	EDWARDS, DAVID	11N	13E	12	3.25	NESHOBA	A221/258	A	343
BC	03/13/96	DUNGAN, W.W.	12N	13E	36	40.00	NESHOBA	A217/346	A	335
BC	03/14/97	ALLEN, TIM	12N	14E	30	456.00	KEMPER	A222/845	A	351
BC	03/13/96	INTERSTATE GEOPHYSICAL CO., INC.	11N	13E	1	30.00	NESHOBA	A217/343	A	337
BC	07/26/96	GRAY, EARL "JUNIOR"	11N	13E	2	94.00	NESHOBA	A219/269	A	346
BC	11/19/96	EDWARDS, DAVID	11N	13E	13	68.78	NESHOBA	A221/258	A	343
BC	03/13/96	INTERSTATE GEOPHYSICAL CO., INC.	11N	13E	12	408.60	NESHOBA	A217//343	A	337
BC	03/13/96	DUNGAN, W.W.	11N	13E	1	199.00	NESHOBA	A217/346	A	335
BC	03/14/97	ALLEN, TIM	12N	13E	25	160.00	NESHOBA	A222/845	A	351
BC	10/16/98	ALLEN, TIM	11N	14E	27	224.00	KEMPER	228/47	A	425
BC	02/22/30	BATES	11N	13E	2	15.00	NESHOBA	LLL/241	A	48
BC	04/10/62	MBCI	11N	13E	2	3.00	NESHOBA	A55/389	A	138
BC	10/16/98	ALLEN, TIM	11N	14E	28	480.00	KEMPER	228/47	A	425
BC	03/17/97	ALLEN, TIM	12N	13E	1	155.00	NESHOBA	A223/6	A	355
BC	10/16/98	ALLEN, TIM	11N	14E	21	240.00	KEMPER	228/47	A	425
BC	03/14/97	ALLEN, TIM	12N	14E	31	480.00	KEMPER	A222/845	A	351
C	04/23/98	ALLEN, TIM	07N	10E	28	40.00	NEWTON	262/692	A	422
C	02/11/99	HARALSON, BILLY & BARBARA	07N	10E	3	40.00	NEWTON	267-474	A	449
C	11/12/98	McDILL, GARY T.	07N	10E	9	80.00	NEWTON			0
C	09/17/96	LANGFORD, MYERL	07N	10E	9	76.55	NEWTON	252/33	A	322
C	06/29/27	LANGFORD	07N	10E	15	5.40	NEWTON	52/206	A	33
C	06/12/39	LANGFORD	07N	10E	10	0.88	NEWTON	70/101	A	113
C	09/17/96	LANGFORD, MYERL	07N	10E	10	51.35	NEWTON	252/33	A	322
C	05/03/57	LANGFORD	07N	10E	10	2.65	NEWTON	114/377	A	136
C	05/03/57	LANGFORD	07N	10E	15	1.85	NEWTON	114/377	A	136
C	04/23/98	ALLEN, TIM	07N	10E	21	50.30	NEWTON	262/692	A	422
CR	11/15/93	STRINGFELLOW	14N	13E	35	37.00	WINSTON	218/220	A	276
NANIH WAIYA	03/17/97	ALLEN, TIM	12N	13E	3	30.00	WINSTON	238/375	A	359
NANIH WAIYA	03/17/97	ALLEN, TIM	12N	13E	2	120.00	WINSTON	230/206	A	355
PHILA	04/28/98	GARDNER, ROY CLYDE	11N	12E	30	1.00	NESHOBA	A/228-897	A	437
PHILA.	07/29/29	HENDERSON-MOLPUS	11N	12E	30	25.00	NESHOBA	KKK/171	A	43
PHILA.	10/04/73	GWARTNEY	11N	12E	30	1.00	NESHOBA	A93/144	A	161
PHILA.	10/21/39	DEES	11N	12E	30	5.00	NESHOBA	UUU/123	A	115

MISSISSIPPI BAND OF CHOCTAW INDIANS
FEE LAND TO TRUST SUMITTED TO CHOCTAW AGENCY

COMMUNITY	DATE OF DEED	GRANTOR	TOWNSHIP	RANGE	SECTIONS	NUMBER ACRES	COUNTY	COUNTY RECORDS	BOOK	PAGE
PR	01/23/96	JOHN HANDCOCK MUTUAL LIFE INS.	11N	10E	28	40.00	NESHOBA	A217/90	A	325
PR	08/26/96	WHITE, LAVERN	11N	11E	20	28.00	NESHOBA	A219/686	A	309
PR	11/25/97	WHITE ESTATE	11N	10E	33	116.00	NESHOBA	A226/874	A	398
PR	05/07/99	BURRAGE, OLEN JR., & RUTH ANN	11N	11E	29	7.00	NESHOBA	A234/856	A	459
PR	10/31/97	ALLEN, TIM	11N	11E	2	310.00	NESHOBA	A227/100	A	391
PR	11/26/97	WHITE, JAMES ALLEN	11N	10E	34	50.00	NESHOBA	A226/879	A	404
PR	11/25/97	WHITE ESTATE	11N	10E	33	9.00	NESHOBA	A226/877	A	401
PR	11/25/97	WHITE ESTATE	11N	10E	28	40.00	NESHOBA	A226/874	A	398
PR	01/16/98	KITTRELL, LARRY & DONNA	11N	11E	29	64.00	NESHOBA		A	419
PR	10/31/97	ALLEN, TIM	11N	11E	1	62.00	NESHOBA	A227/100	A	391
PR	10/31/97	ALLEN, TIM	11N	11E	9	26.50	NESHOBA	A227/100	A	391
PR	10/31/97	ALLEN, TIM	11N	11E	4	400.00	NESHOBA	A227/100	A	391
PR	10/31/97	ALLEN, TIM	11N	11E	3	445.50	NESHOBA	A227/100	A	391
PR	10/31/97	ALLEN, TIM	11N	11E	10	13.00	NESHOBA	A227/100	A	391
PR	01/16/98	KITTRELL, LARRY & DONNA	11N	11E	28	5.00	NESHOBA	A230/823	A	419
PR	05/01/97	JONES, MACK & SUE DUET	11N	10E	14	28.02	NESHOBA	A223/650	A	368
PR	11/28/83	FERGUSON	11N	11E	30	0.25	NESHOBA	A146/501	A	180
PR	07/14/97	BYARS, DAVID & NEDA	11N	11E	29	36.00	NESHOBA	A224/891	A	374
PR	04/19/97	THOMPSON ESTATE	11N	10E	18	60.50	NESHOBA	A228/465	A	361
PR	04/19/97	THOMPSON ESTATE	11N	09E	13	57.09	LEAKE	A228/465	A	361
PR	08/13/20	GRIFFIN	11N	10E	25	65.00	NESHOBA	YY/254	A	3
PR	06/15/84	LOCKHART	11N	11E	29	10.00	NESHOBA	A151/704	A	197
PR	06/04/84	TINGLE, R	11N	11E	29	91.00	NESHOBA	A150/577	A	185
PR	05/19/99	BRIGGS, EDDIE & REBECCA	11N	11E	6	35.00	NESHOBA	A/235-124	A	461
PR	06/15/84	GRAHAM	11N	11E	29	5.00	NESHOBA	A151/24	A	199
PR	06/15/84	MAYO	11N	11E	29	5.00	NESHOBA	A151/24	A	201
PR	08/26/96	TINGLE, J.V.	11N	11E	20	1.00	NESHOBA	A220/842	A	318
PR	03/07/96	BOYDSTUN	11N	10E	28	119.00	NESHOBA	A217/255	A	298
PR	02/09/96	McNEIL, JERRY & LINDA	11N	11E	30	3.71	NESHOBA	A216/716	A	333
PR	05/07/99	BURRAGE, OLEN JR., & RUTH ANN	11N	11E	30	5.40	NESHOBA	A234/856	A	459
PR	12/02/85	GOLDMAN	11N	10E	36	14.00	NESHOBA	A161/528	A	213
PR	06/06/84	TINGLE, L.	11N	11E	29	105.88	NESHOBA	A150/704	A	190
PR	01/06/99	GIBSON, JIMMY	11N	11E	29	16.58	NESHOBA	A/232-764	A	447
PR	07/14/93	MARTIN, FRED	11N	11E	30	2.43	NESHOBA	A-210/138	A	274
PR	02/25/83	FULTON/RISHER	11N	11E	18	40.00	NESHOBA	A140/142	A	170
PR	02/25/83	FULTON/RISHER	11N	11E	19	70.00	NESHOBA	A140/142	A	170
PR	05/07/99	BURRAGE, OLEN JR., & RUTH ANN	11N	11E	31	4.90	NESHOBA	A234/856	A	459
PR	09/15/98	SULLIVAN, SONYUNA	11N	11E	29	3.94	NESHOBA	A/231-15	A	442
PR	10/16/98	HENRY, FRANK & ANNIE LEE	11N	11E	29	3.10	NESHOBA	A231/503	A	428
PR	06/11/64	BARRETT	11N	10E	25	8.84	NESHOBA	A61/107	A	150
PR	05/01/97	JONES, MACK & SUE DUET	11N	10E	11	101.50	NESHOBA	A223/650	A	368
PR	08/16/96	TINGLE, OREN & LESSIE	11N	11E	20	133.00	NESHOBA	A219/550	A	307
PR	10/04/83	McNEIL	11N	11E	30	3.55	NESHOBA	A146/221	A	176
PR	05/07/99	BURRAGE, OLEN JR., & RUTH ANN	11N	11E	32	160.00	NESHOBA	A234/856	A	459
RW	05/01/97	GATES, MARK & LARRY	10N	07E	2	10.50	LEAKE	228/627	A	371
RW	04/28/97	HOLLOWAY & MALCOLM	10N	07E	2	4.50	LEAKE	228/630	A	364
RW	03/10/98	LEAKE CO. INDUSTRIAL DEV. ASSOC.	11N	07E	36	10.36	LEAKE	235/549	A	410

MISSISSIPPI BAND OF CHOCTAW INDIANS
FEE LAND TO TRUST SUMITTED TO CHOCTAW AGENCY

COMMUNITY	DATE OF DEED	GRANTOR	TOWNSHIP	RANGE	SECTIONS	NUMBER ACRES	COUNTY	COUNTY RECORDS	BOOK	PAGE
RW	04/02/98	WRIGHT, WILMA, HOYT & PAUL	11N	07E	35	51.54	LEAKE	235/696	A	415
RW	06/06/84	LEAKE COUNTY INDUSTRIAL	11N	07E	36	3.47	LEAKE	163/440	A	193
RW	12/10/97	LONG, JOHN S., WILLIAM & FRANK	11N	07E	26	4.70	LEAKE	233/424	A	382
RW	03/13/98	MULHOLLAND, ROY DWIGHT	10N	08E	10	11.87	LEAKE	235/483	A	407
RW	05/25/23	WALLACE	11N	07E	36	20.00	LEAKE	21/143	A	12
SP	09/02/19	YORK	10N	08E	35	30.00	LEAKE	15/149	A	1
SP	08/04/81	BILLY	10N	08E	34	40.00	LEAKE	154/624	A	169
SP	05/07/96	WHITTEN, GEORGE	10N	09E	29	72.03	LEAKE	221/614	A	300
SP	04/13/78	PEOPLES TO CHATA DEV. TO MBCI	09N	08E	2	80.00	LEAKE	143/726	A	164
SP	05/07/96	WHITTEN, GEORGE	10N	09E	30	20.00	LEAKE	221/614	A	300
SP	05/08/96	NATIONWIDE MORTAGE	09N	08E	03	86.51	LEAKE	221/633	A	303
SP	05/07/96	JENKINS, RONALD	10N	09E	09	51.87	LEAKE	221/616	A	320
T	06/23/98	SAVELL, LARRY	10N	12E	28	10.00	NESHOBA	A/229-665	A	439
T	06/23/98	SAVELL, LARRY	10N	12E	21	105.00	NESHOBA	A/229-265	A	439
T	01/30/20	CATHOLIC DIOCESE	10N	12E	22	7.70	NESHOBA	YY/231	A	2
TENNESSEE	05/04/95	CARROLL	MAP 117	PAGE 20.009	0	79.89	LAUDERDALE	356/103	A	287
TENNESSEE	03/12/93	CARROLL	MAP 17	PARECL 20	0	88.15	LAUDERDALE	HENNING, TENNESSEE (BK.332, PG.536)	A	271
Total:						8022.39				

U.S. DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS
CHOCTAW AGENCY
PHILADELPHIA, MS

RECEIPT

This acknowledges my receipt of the attached **MISSISSIPPI BAND OF CHOCTAW INDIANS FEE LAND TO TRUST SUBMITTED TO CHOCTAW AGENCY** consistency of **3** pages numbered **1** through **3** consecutively on this the 28th day of September, 1999, at the Bureau of Indian Affairs, Choctaw Agency at Philadelphia, Mississippi.

Ray C. Thomas

Ray Claude Thomas
Agency Superintendent

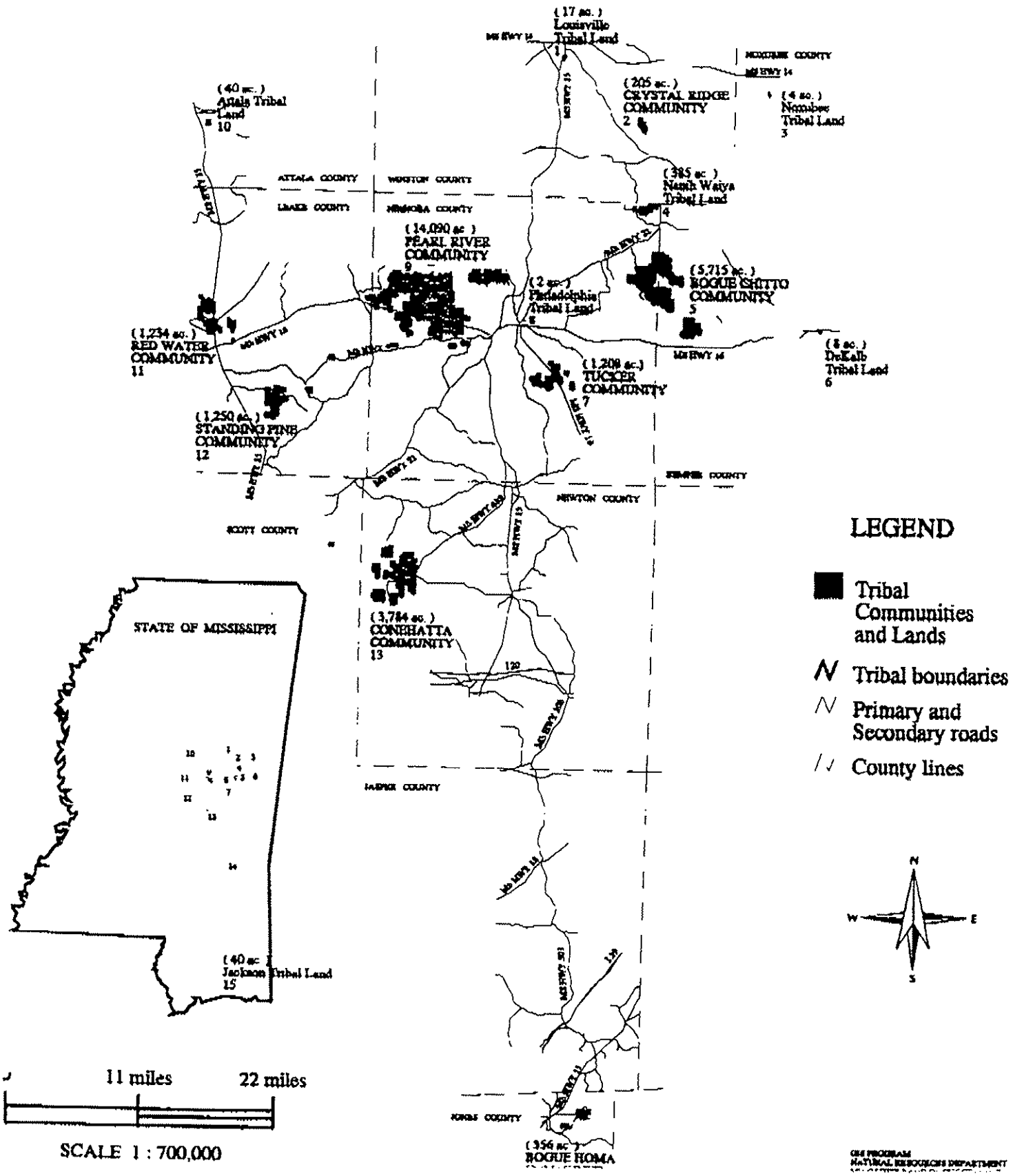
WITNESS:

Deyondria J. Williams

Deyondria J. Williams

TRIBAL COMMUNITIES AND LANDS

MISSISSIPPI BAND OF CHOCTAW INDIANS (28,338 ac.)



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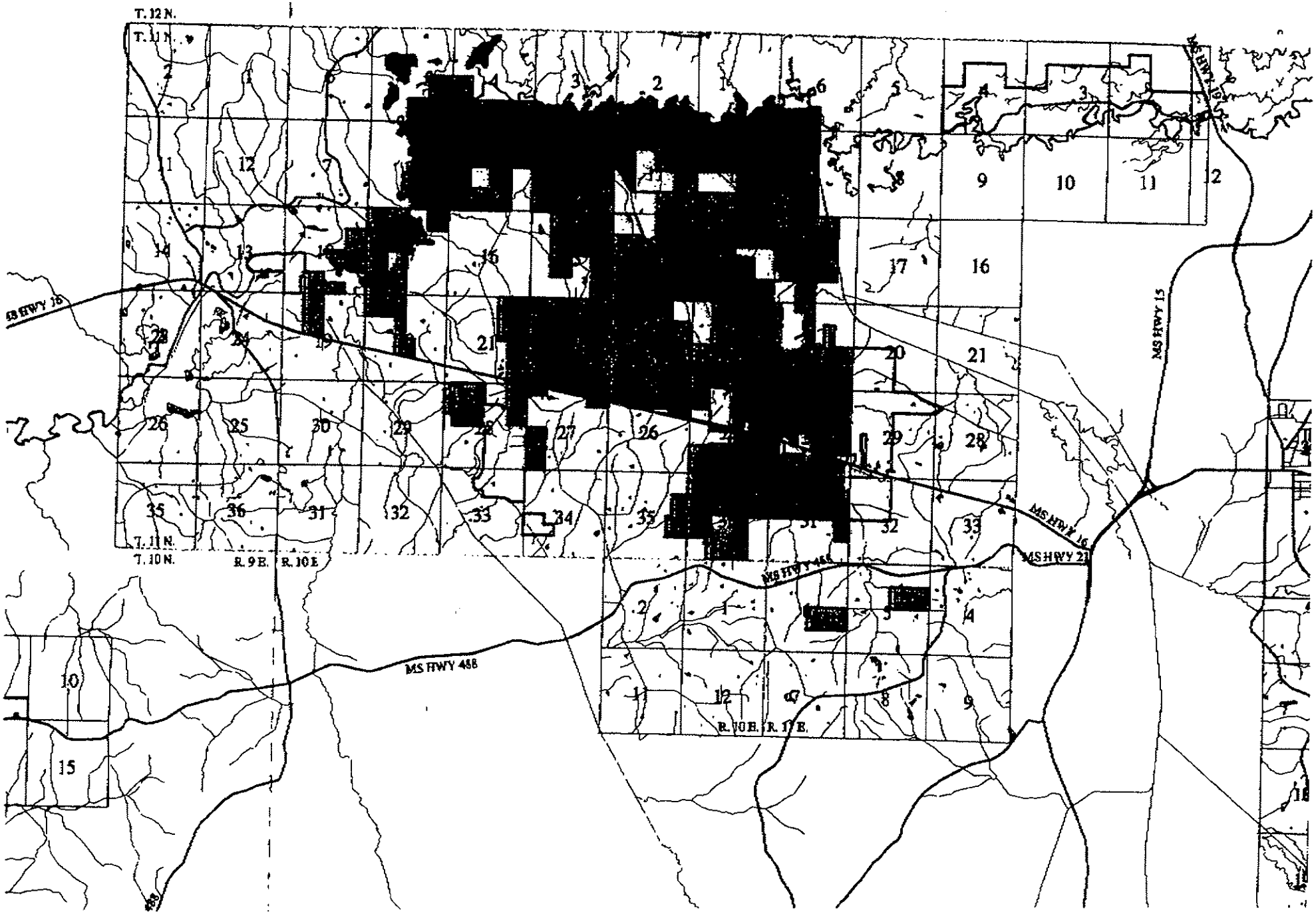
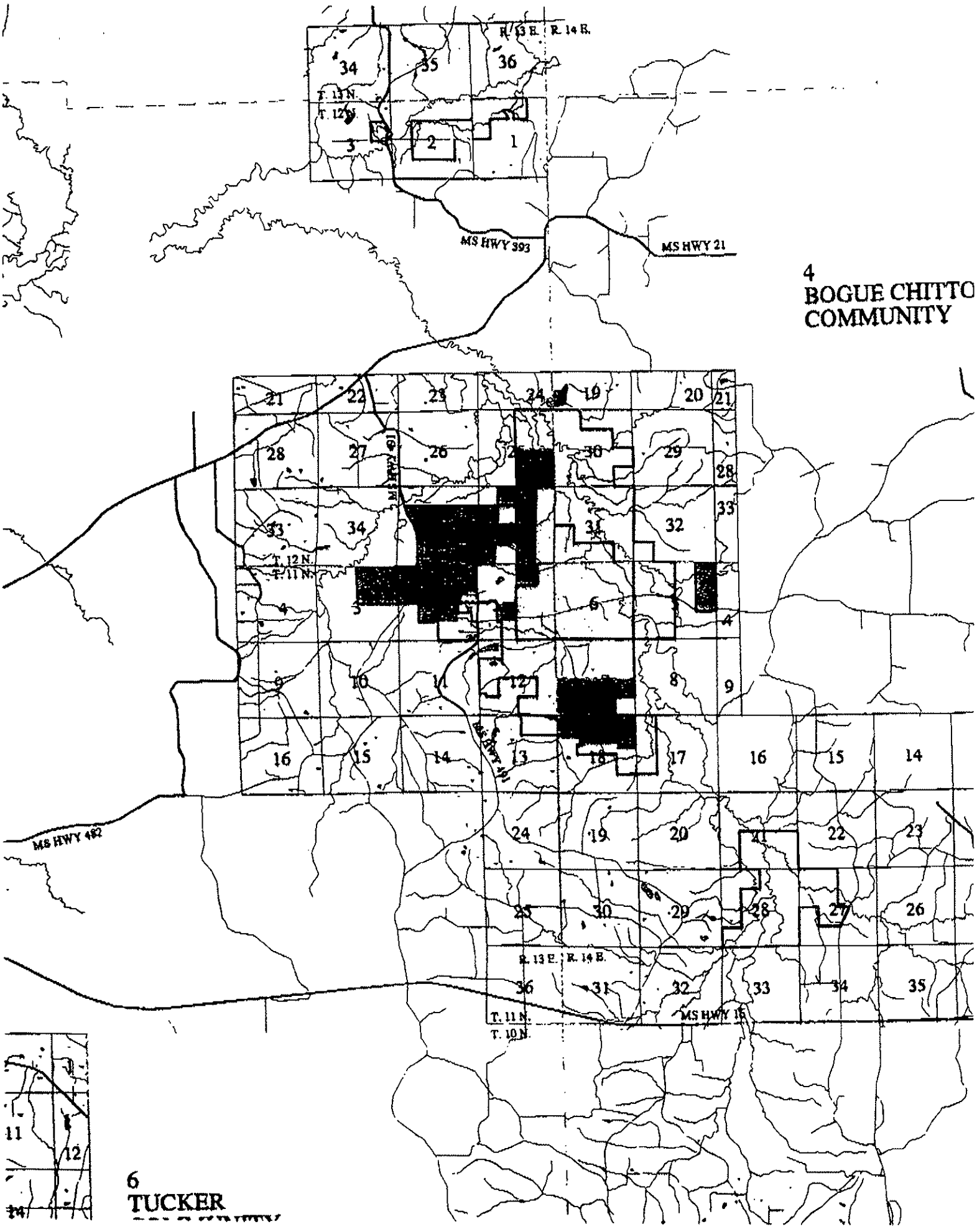
PEARL RIVER COMMUNITY

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COMMUNITY
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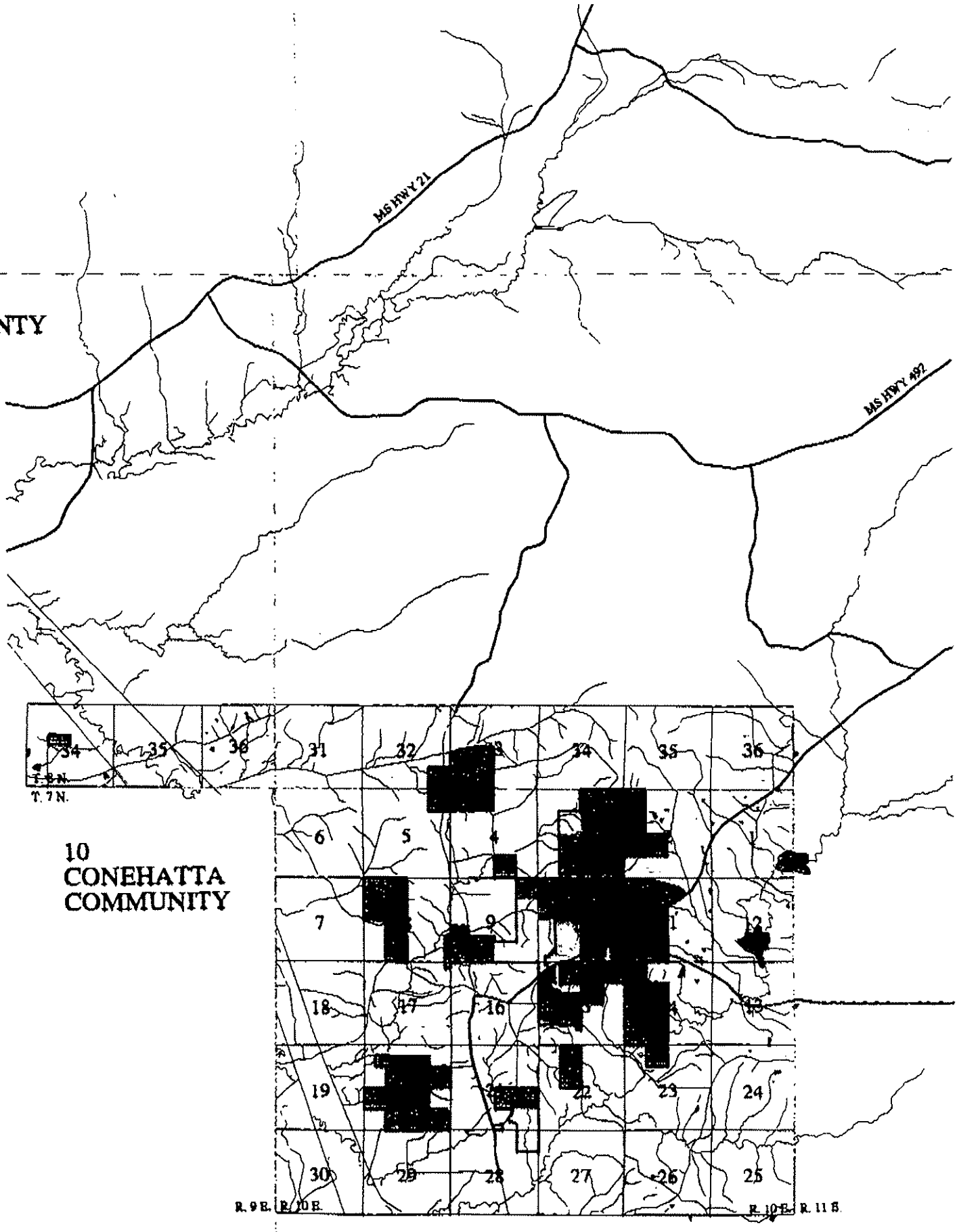
6
TUCKER

T COUNTY



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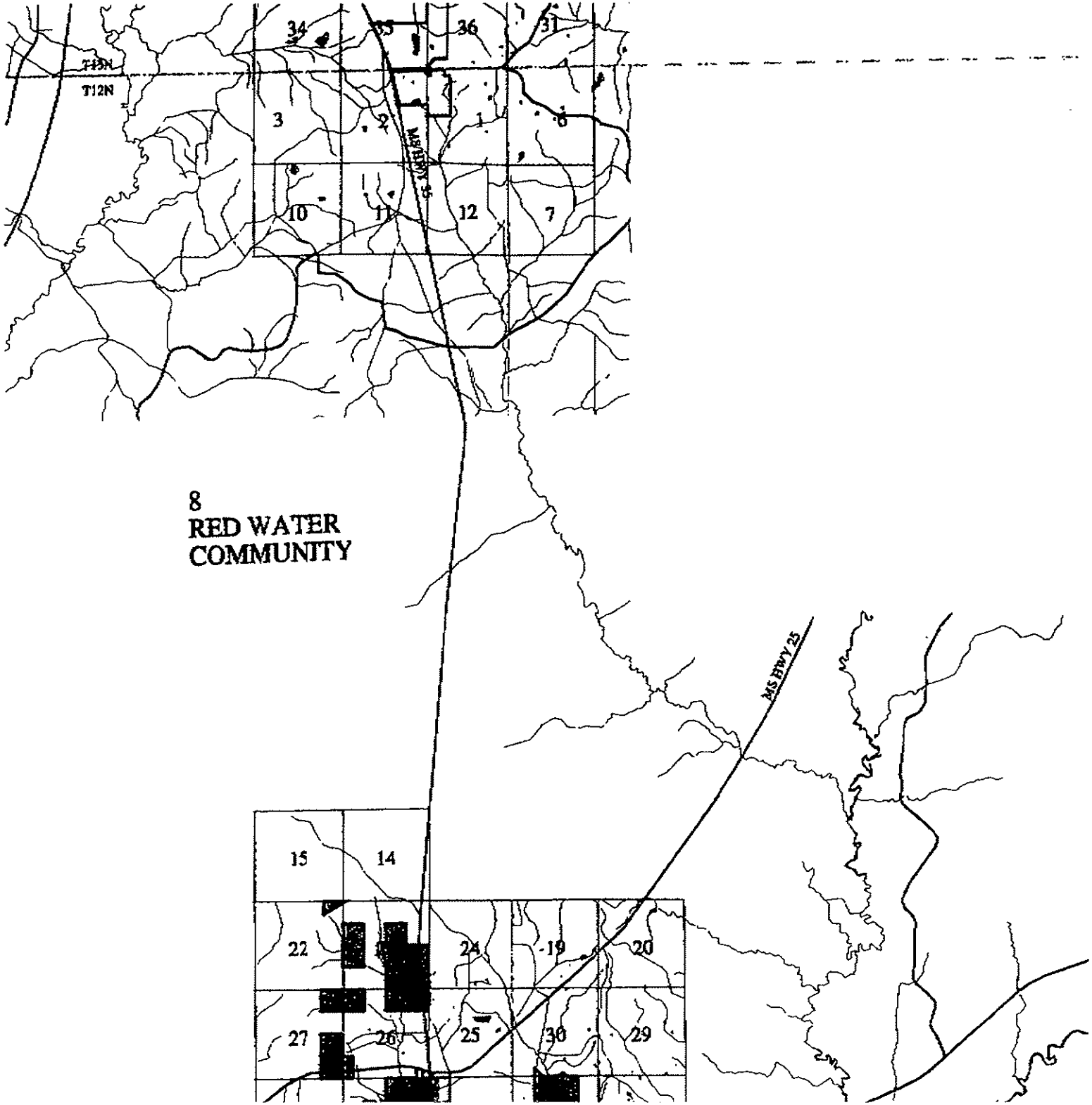
COMMUNITY



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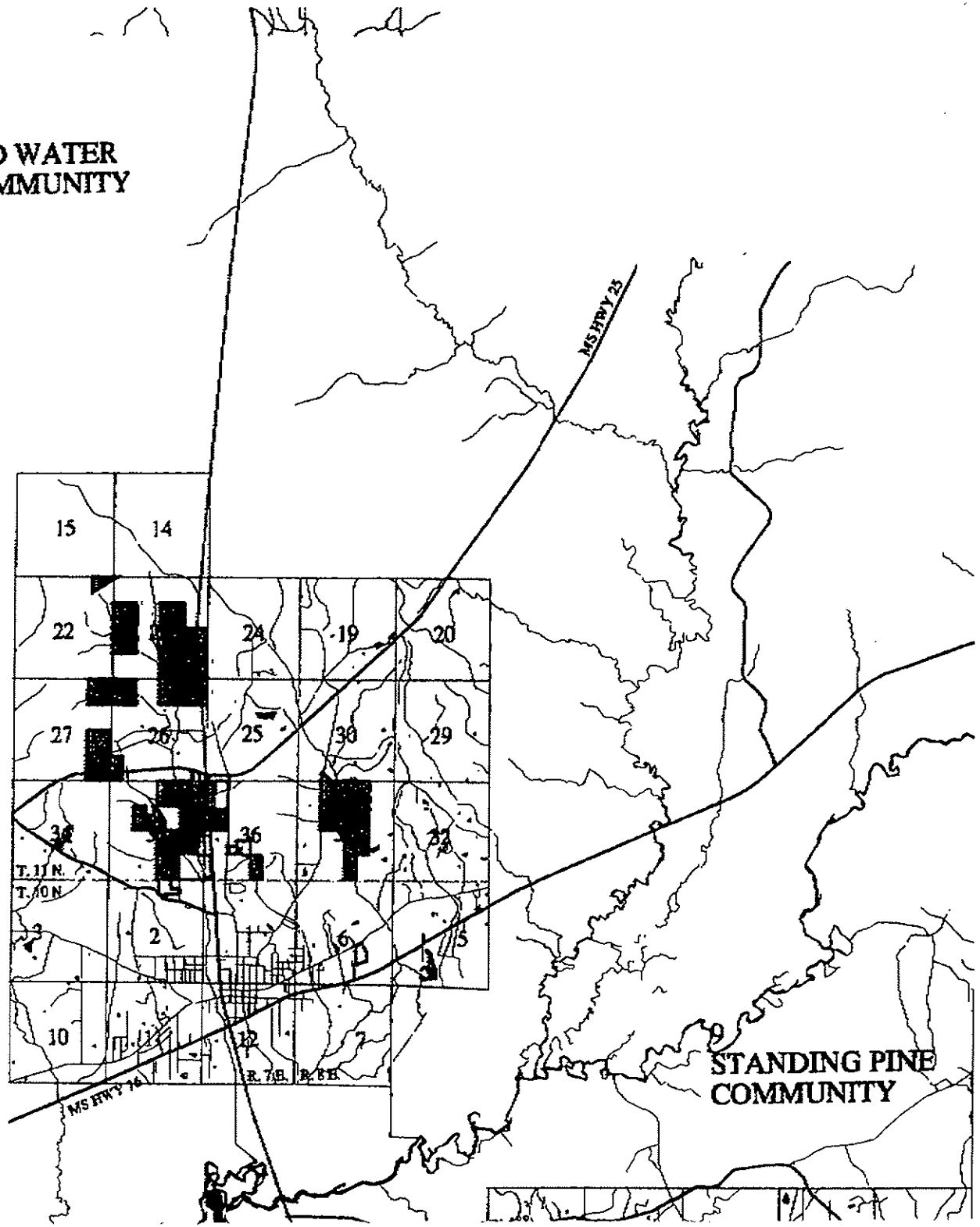
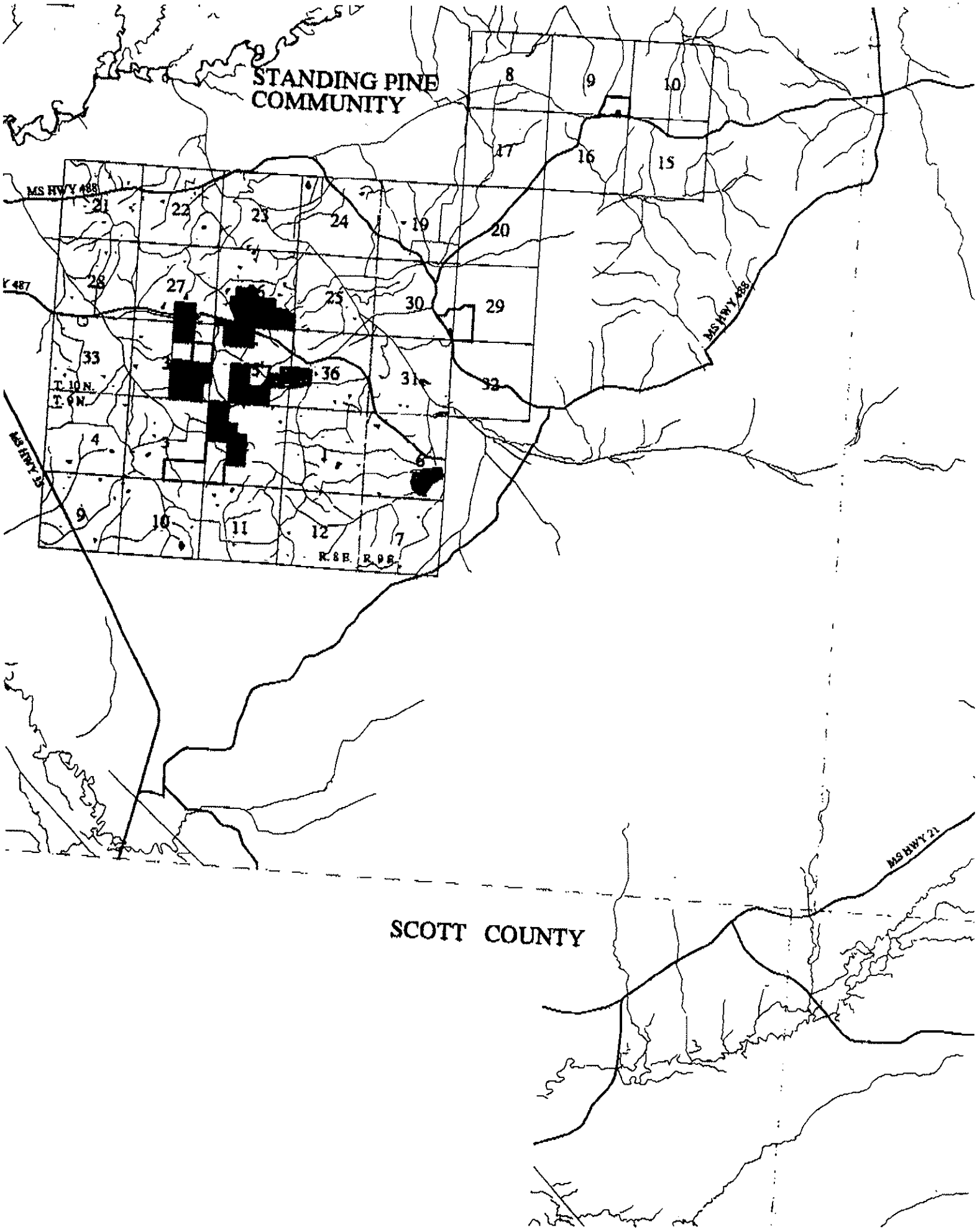
COMMUNITY

8
RED WATER
COMMUNITY

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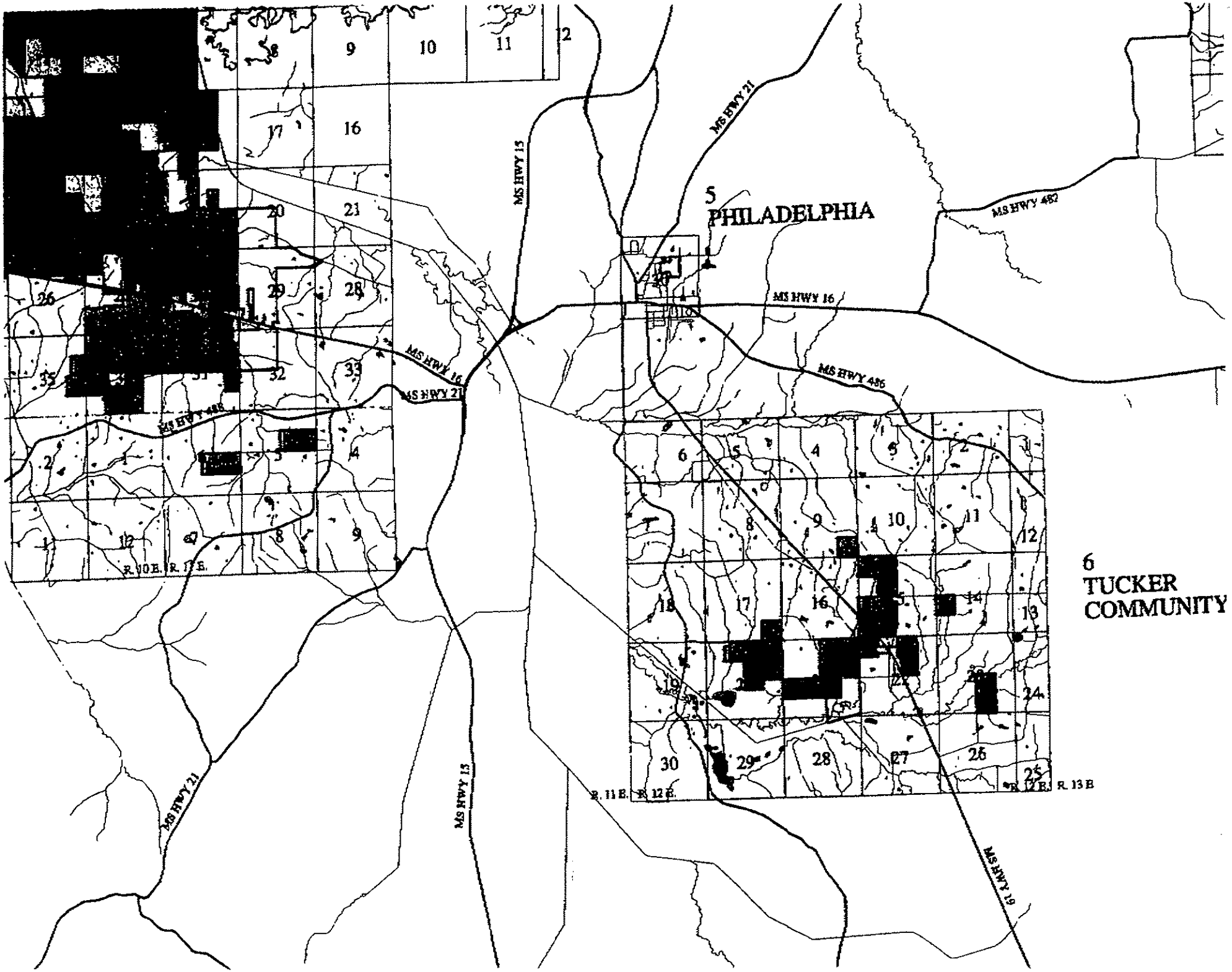
SCOTT COUNTY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PHILADELPHIA
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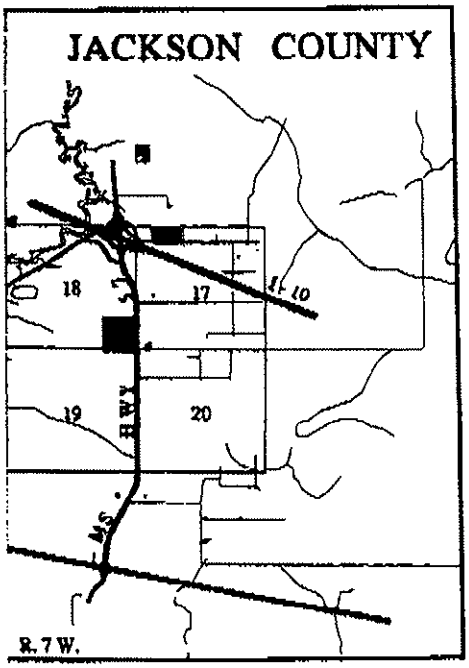

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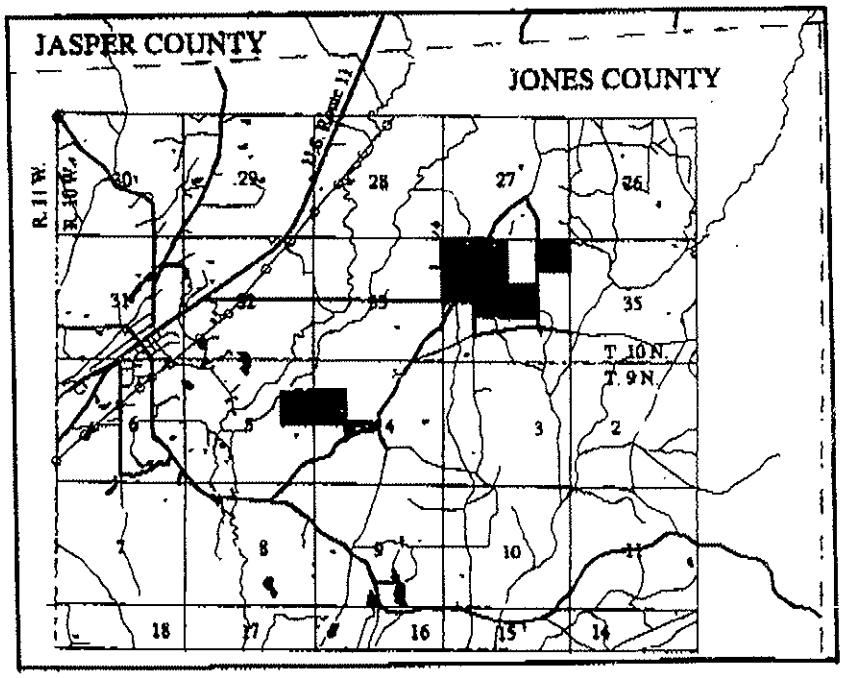
COMMUNITY



S. Rept. 106-307 - TO MAKE TECHNICAL CORRECTIONS TO THE STATUS OF CERTAIN LAND HELD IN TRUST FOR THE MISSISSIPPI BAND OF CHOCTAW INDIANS, TO TAKE CERTAIN LAND INTO TRUST FOR THAT BAND, AND FOR OTHER PURPOSES

106th Congress (1999-2000)

Report Type: Senate Report

Accompanies: S.1967

Committees: Indian Affairs

Calendar No. 595
106th Congress Report
SENATE
2d Session 106-307

TO MAKE TECHNICAL CORRECTIONS TO THE STATUS OF CERTAIN LAND HELD IN TRUST FOR THE MISSISSIPPI BAND OF CHOCTAW INDIANS, TO TAKE CERTAIN LAND INTO TRUST FOR THAT BAND, AND FOR OTHER PURPOSES

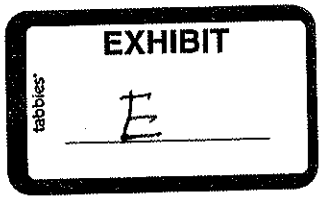
June 13, 2000.--Ordered to be printed

Mr. Campbell, from the Committee on Indian Affairs, submitted the following

R E P O R T

[To accompany S. 1967]

The Committee on Indian Affairs, to which was referred the bill (S. 1967) to make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw



Indians, to take certain land into trust for that Band, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

purpose

The purpose of S. 1967 is to declare that specified lands are held in trust for the Mississippi Choctaw Tribe; and provide that lands subsequently taken into trust are part of the Choctaw Reservation.

background

History of the Choctaw Indian Tribe

Throughout the 19th Century, the federal government and the State of Mississippi engaged in various, and generally unsuccessful, efforts to remove the Choctaw Indian Tribe to lands west of the Mississippi River. A number of treaties were negotiated, and sometimes ratified by the United States Senate, but the terms were rarely fulfilled by the federal government. For example, the Treaty at Doak's Stand, 7 Stat. 210 (1820) could not be executed because the land promised to the Choctaw by the United States was already occupied. In an effort to ``encourage'' the tribe to move west, the Mississippi Legislature enacted a law ``purporting to abolish the Choctaw government and [imposing] a fine upon assuming the role of chief.'' \1\ As the Supreme Court explained, the numerous chapters in federal government's treatment of the Choctaw tribe are ``best left to historians.'' The Supreme Court noted the palpable effect of this history on Congress:

\1\ United States v. John, 437 U.S. 634, 640 (1978).

> It is enough to say here that the failure of these attempts, characterized by incompetence, if not corruption, proved to be an embarrassment and an intractable problem for the Federal Government for at least a century.\2\

\2\ Id. at 643-4.

The Senate ratified the Treaty of Dancing Rabbit Creek in 1831 with the intent that it would be a final resolution to the Choctaw's tribe's presence in Mississippi. But the Treaty stopped short of requiring all Choctaws to leave the state. In fact, those who remained were to retain their Choctaw citizenship, although they were not to share an annuity that was provided for those who were removed. In addition, lands were reserved for those who remained behind. As a result of this policy, and the general unwillingness of the Indians to relocate, by the 1890's it was clear that a number of tribal members still resided in Mississippi. Nevertheless, it was not until 1916 that the federal government took affirmative steps to address the situation. In that year Congress appropriated $1,000 to investigate the condition of the Indians living in Mississippi. Subsequent appropriations were made to provide for

medical care, housing, administration, schools, and land. However, the status of the lands acquired by the government was complicated by the fact that the lands were sold to individual Indians, rather then being held collectively.

When Congress sought to rehabilitate tribal governments, through the enactment of the Indian Reorganization Act of 1934 (IRA), the Mississippi Choctaw Tribe voted to organize under the IRA. To bring the Choctaw landholdings more in line with federal policy, which sought to consolidate Indian land ownership in each tribal government, a 1939 Act declared all lands previously purchased for the Choctaw tribe to be held in trust. In 1944, the Assistant Secretary of Interior declared that more than 15,000 acres were so held. Nevertheless the State of Mississippi resisted attempts to treat this land as an Indian reservation, even going so far as to argue that the IRA was not intended to apply to the Mississippi Choctaw Tribe. These issues were resolved by a decision of the United States Supreme Court in its 1978 decision in United States v. John.

In United States v. John, the Supreme Court ruled unanimously that the federal government's actions through 1939 were sufficient to bring these lands within the definition of ``Indian reservation,'' as it is used to determine the scope of federal criminal jurisdiction. Moreover, ``if there were any doubt about the matter in 1939, when * * * Congress declared that title to land previously purchased for the Mississippi Choctaws would be held in trust, the situation was completely clarified by the proclamation in 1944 of a reservation and the subsequent approval of the constitution and bylaws adopted by the Mississippi Band.'' \3\

\3\ Id. at 649.

The Supreme Court's decision permanently resolved any lingering questions about the status of those lands that were already held in trust for the tribe. It did not address, however, the effect of previous government policies on the tribe's land base. Specifically, the land held in trust for the tribe was not adequate to support the tribe's membership or the infrastructure needed to support the tribe's expanding and increasingly diversified economic base. To address its need for land, the tribe made use of the administrative process established by the IRA for having land taken into trust.

Choctaw application to have land taken into trust

Pursuant to 25 CFR Sec. 151, the Mississippi Choctaw Tribe has filed applications with the Eastern Regional Office of the Bureau of Indian Affairs to have approximately 8,500 acres of land taken into trust. Under Part 151, CFR, the Secretary may accept title to land in trust for Indian tribes, and in some circumstances, members of such tribes. Evidence adduced at the Committee's hearing on S. 1967 indicates that these applications have not been acted upon for months or even years. Concerned about this situation, Mississippi Senators Lott and Cochran introduced S. 1967 to preserve tribal and federal resources by making the administrative process unnecessary with respect to the land addressed in S. 1967. The Mississippi

Attorney General's Office also wrote a letter in support of this legislation, evidencing the ongoing cooperative relationship between the Choctaw Tribe and the State of Mississippi.

The unique history of the Choctaw tribe appears to make the administrative process more complicated than those of other Indian tribes. For example, unlike other Indian tribes, the Choctaw tribe does not have defined reservation boundary that circumscribes the eight Choctaw communities. In addition, the delay in obtaining approval of these applications has caused the tribe to prioritize its applications; forcing it to choose between land needed forhousing, education, or economic development.

The ability to treat land as ``Indian country'' has proven to be an essential attribute of Congress' ability to carry out its Constitutional responsibility in the field of Indian Affairs. For example, when a tribe was removed from its aboriginal homeland, it was necessary for the federal government to guarantee that the tribe would continue to exercise governmental authority over those lands reserved for the tribe, often in a new state or territory. Similarly, when the federal government seeks to settle land claims, the parties will frequently negotiate to obtain a waiver of the tribe's claim in exchange for a federal guarantee that other lands will be acquired by or for the tribe and treated as ``Indian country,'' \4\ In the case of the Choctaw tribe the ``corruption and incompetence'' described by the Supreme Court in its 1978 decision provides analogous responsibility to address the Choctaw tribe's need for additional tribal lands, even if liability is not present.\5\

\4\ ``The Tribes typically negotiate for a land base and a settlement fund sufficient to promise a stable cultural and economic future. The State negotiates for [its interests]. The settlement in the end usually bears little relation to the positions set forth in the initial complaints and answers in the case.'' Staff Memorandum Re: Veto of S. 366, Sen. Rep. 98-877 (1983).

\5\ A number of courts have reached similar conclusions either based on the specific facts before the court, or the general result of the General Allotment Act and similar laws, See, e.g., Board of County Commissioners v. Seber, 318 U.S. 705 (1943), Chase v. McMasters, 573 F.2d 1011 (8th Cir. 1978), Stevens v. Commissioner, 452 F.2d 741 (9th Cir. 1971), and City of Takoma v. Andrus, 457 F. Supp. 342 (D. D.C. 1978), and Jicarilla Apache Tribe v. State of New Mexico, 742 F. Supp. 1487 (D. New Mex. 1990).

Another purpose of S. 1967 is to unify tribal land holdings, both physically and semantically. Physically, the bill will assist with consolidating tribal lands to reduce or eliminate confusion resulting from scattered holdings. As with other Indian tribes, the Choctaw tribe's current landholdings have more to do with the history of inconsistent federal policies applied to the tribe than its modern needs. By selectively adding to the lands already held in trust, the tribe will modernize its land-base. One federal judge characterized a similar endeavor as: ``self-respecting, and for that matter self-denying people, trying to preserve their tribe

as a viable entity and to maintain themselves with a modicum of dignity and self-support.''

With respect to semantics, the Choctaw tribe explains that it will facilitate its collaboration with off-reservation entities, especially institutions like banks and financiers, if the same commonly used term can be employed to describe all of the land taken into trust for the tribe. The tribe is correct when it notes that Supreme Court has assiduously refused to distinguish the nature of tribal or federal authority over Indian lands based on the labels used to describe them. For example, the government has used variety of phrases including trust lands, formal reservation lands, informal reservation lands, and others. Oklahoma Tax Commission v. Citizen Band of Potawatomi Tribe of Oklahoma, 498 U.S. 505 (1991). Nevertheless, the use of different terms is confusing to those entities that are new to Indian country. Also, it probably adds to the transaction costs of those doing business with the tribe if they must independently satisfy themselves that there is no legal distinction between land that is ``held in trust'' and ``reservation lands.'' The bill seeks to avert such confusion by bringing all of the tribe's trust lands under the same label as ``formal reservation lands.'' This is especially important in the case of the Choctaw tribe. As the Committee has been informed on a number of occasions, the exercise of tribal sovereignty can be used to offset other disadvantages that are frequently associated with Indian country. This approach can only be pursued if a tribe's jurisdiction over a parcel or project is unassailable. In this case, the Choctaw tribe's approach to economic development involves ``turning marginal economic opportunities into larger economic successes.'' By confirming the reservation-status of these lands, the tribe is free to concentrate on facilitating economic development by reducing the costs that are under its control.\6\

\6\ See, generally, Ferrara, The Choctaw Revolution (1998).

One of the questions addressed by the Committee is whether legislation taking land into trust should replace or supplant the administrative process. There appears to be a consensus that in general these decisions should be left to the administrative process and legislative decisions to take land into trust should be reserved for specific instances where a case can be made that a unique set of circumstances make it more appropriate for Congress to take the matter in hand. The facts in this matter present such a case. In addition, the record developed through the Committee's hearing on S. 1967 demonstrates that some or all of the effect of taking this land into trust will be more than offset by the tribe's effect on the economy in south central Mississippi. See, The Economic Impact of the Mississippi Bank of Chocaw Indians and Their Affiliated Enterprises on the State of Mississippi, University of Southern Mississippi, June 15, 1990.

Finally, the Choctaw tribe has committed significant resources to resolving any concerns that the United States will be assuming legal liability based on existing environmental conditions on the lands to be held in trust under this Act.

legislative history

S. 1967 was introduced on November 18, 1999 by Senator Cochran for himself and Senator Lott, and referred to the Committee on Indian Affairs. On March 29, 2000, the Committee held a legislative hearing on the bill.

committee recommendation and tabulation of vote

In an open business session on May 3, 2000, the Committee on Indian Affairs, by a voice vote, voted for the bill to be reported as it was introduced and ordered the bill reported to the Senate, with the recommendation that the Senate do pass S. 1967 as reported.

Section-by-Section Analysis

Section 1. Status of certain Indian lands

Subsection (a)(1) addresses the status of lands acquired in trust for the Tribe since December 23, 1944. The Supreme Court's 1978 decision recognized that a December 1944 proclamation by the Assistant Secretary established reservation-status for all lands purchased by the Choctaw tribe up to that date. Similarly, this provision will ensure reservation status for those lands taken into trust since that date, and into the future.

Subsection (a)(2) provides that those lands held in fee by the Choctaw tribe as shown in the report entitled ``Report on Fee Lands owned by the Mississippi Band of Choctaws,'' dated September 28, 1999, on file in the Office of the Superintendent, Choctaw Agency, BIA, is declared to be held in trust for the Tribe. This will ensure the trust status of those lands acquired by the tribe and listed in the report provided to the Choctaw Agency of the BIA. Pursuant to subsection (a)(1), these lands will also be treated as part of the Choctaw reservation.

Subsection (a)(3) addresses any concerns that the bill is intended to evade or gain an advantage with respect to the use of these lands for gaming purposes. Under the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. Sec. 2700 et seq. there is a general prohibition on the use of ``noncontiguous'' lands for gaming purposes if they were acquired by the Secretary in trust for a tribe after October 17, 1988. The Choctaw tribe has informed the Committee that it wishes to avoid even the slightest appearance that having the land taken into trust through legislation will establish an advantage or an exception in the use of land for gaming purposes. In other words, the tribe wishes to ensure that with respect to the IGRA these lands have the same status they would possess if they were taken into trust through the administrative process. In general, there is no argument that the status of the lands taken into trust or declared to be part of the Choctaw reservation will be any different if the lands were taken into trust under this bill versus the administrative process. However, the IGRA contains an exception the October 17, 1988 prohibition if the land acquired for a tribe constitutes a

tribe's ``initial reservation.'' While it is very unlikely that this exception could factually be applied to the Choctaw tribe's reservation, the tribe would rather explicitly eliminate any legal basis for its application, thereby obviating any need to make the case that the provision is factually inapplicable.

Similarly, subsection (b) will resolve any question that S. 1967 is intended to procure any special advantage with respect to the application of any other provisions of the IGRA.

Cost and Budgetary Consideration

The cost estimate for S. 1967 as calculated by the Congressional Budget Office, is set forth below:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 12, 2000.

Hon. Ben Nighthorse Campbell,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1967, a bill to make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw Indians, to take certain land into trust for that band, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette Keith.

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

S. 1967--A bill to make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw Indians, to take certain land into trust for that band, and for other purposes

S. 1967 would allow certain land owned by the Mississippi Band of Choctaw Indians to be held by the federal government in trust for the benefit of the band. CBO estimates that enacting this bill would have no significant impact on the federal budget. S. 1967 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local or tribal governments.

The CBO staff contact is Lanette Keith. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1967 will have a

minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has received no Executive Communications concerning S. 1967.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law: S. 1967 will not effect any changes in existing law.