



THE CATAWBA INDIAN NATION
OFFICE OF TRIBAL GOVERNMENT

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**Written Testimony of William Harris, Chief
Catawba Indian Nation**

On S. 790

**A bill to clarify certain provisions of Public Law 103-116, the Catawba Indian Tribe of
South Carolina Land Claims Settlement Act of 1993, and for other purposes**

**Before the
Senate Committee on Indian Affairs
May 1, 2019**

Chairman Hoeven, Vice Chairman Udall and Members of the Committee, thank you for this opportunity to provide testimony regarding S. 790. I am here to express the full support of the Catawba Indian Nation ("Tribe") for S. 790, which will clarify the rights restored to the Tribe in the Catawba Land Claims Settlement Act of 1993 ("Catawba Federal Settlement Act"), which itself reversed the 1959 termination of the Tribe's status.¹ In doing so, it will bring justice to the Catawba and assure that Catawba gaming operations are subject to the same strict regulation as other tribal gaming operations. As we note below, S. 790 does not create any concerning precedent. Rather, it restores the original intent of the Catawba Federal Settlement Act, while limiting the Tribe's land acquisition to its congressionally established service area, which was deemed in the Act to be the equivalent of "on or near reservation" for certain purposes, reflecting its historic significance to the Tribe. In this letter, I would like to provide some additional background on the need for the legislation and dispel some significant misstatements made by a project opponent. As an attachment, I have included a Myth/Fact sheet which directly addresses various questions that have been raised in our discussions with Committee staff.

Purpose of S. 790. By authorizing the acquisition of a 17-acre site in Kings Mountain, Cleveland County, North Carolina, S. 790 will fulfill the understanding of the Tribe, as well as Congressional and North Carolina leaders, that the Tribe could have land taken into trust in the Tribe's congressionally established service area in North Carolina, where it would not be subject to the restrictions the Tribe had negotiated in its settlement with South Carolina. Additionally, S. 790 will apply the strict requirements of the Indian Gaming Regulatory Act (IGRA) to the Tribe's activities at the Kings Mountain site, bringing Catawba gaming into the center of Federal Indian gaming policy by addressing an ambiguity in the Catawba Federal Settlement Act, which provides that the Tribe is not subject to IGRA.

¹ Catawba Tribe of South Carolina Division of Assets Act, Pub. L. 86-322, 73. Stat. 592 (Sept. 21, 1959) (formerly codified at 25 U.S.C. §§ 931-938).

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Working with our North Carolina friends to create 4,000 jobs and support economic development. Before advancing on this initiative to take land into trust in Kings Mountain, Cleveland County, the Tribe approached both the Kings Mountain and Cleveland County leadership, who welcomed the Tribe's proposal with open arms. See Attachment 1, Letters from Local Officials. This project will spark extraordinary economic development, providing critically needed employment in a hard hit area of North Carolina and South Carolina (the project is only one mile from the state border), in addition to allowing the Catawba to become economically self-sufficient. It will immediately create thousands of construction jobs, and up to 4,000 permanent jobs. Notably, the Tribe and Cleveland County have reached a detailed inter-governmental agreement to address public safety, taxation, jurisdiction, and other issues associated with the establishment of a casino/resort operation at the proposed location.

Confirming the understanding of all parties that the Tribe could have land taken into trust in North Carolina. Regrettably, the Catawba Federal Settlement Act, whereby the Catawba gave up claims in both North and South Carolina, is widely regarded as one of the worst land claim settlements for a Tribe in modern Federal Indian policy. Of course, the Catawba negotiated its settlement agreement with South Carolina at a time when the Tribe was at its weakest and therefore least able to resist the demands of South Carolina. The Act, which among other things implements the South Carolina agreement, was so troubling that this very Committee, in the accompanying Senate Report, emphasized:

Therefore, beyond furtherance of the general federal policies of encouraging consensual settlements, fostering Indian self-determination, and restoring terminated Indian tribes, the Catawba Land Claim Settlement Act has no general Indian policy implications. The Committee expressly intends that it not serve as precedent or a model for any other settlement and that it shall neither set forth nor impact in any way federal Indian policy.

Senate Report 103-124 at 27 (August 5, 1993). Notwithstanding its many flaws, the Tribe thought it had secured certain important rights through its enactment. The central, but not exclusive, purpose of the Catawba Federal Settlement Act was to settle the litigation brought by the Tribe in South Carolina over the dispossession of its former 15-mile square reservation ("Original Reservation") established in treaties with the British Crown.² As a result, the majority of the Catawba Federal Settlement Act's provisions address the Tribe's relationship with South Carolina, which has received all the benefits it secured under the Act, while the commitments made to the Tribe have largely been thwarted. However, the Tribe also gave up its land claims in North Carolina and understood, as did

² The Original Reservation was in the Province of Carolina. When the Province of Carolina was divided into two states, the state boundary line was set to trace the northern boundary of the Original Reservation placing it entirely in South Carolina while making a triangular indent into North Carolina. Of course, the Original Reservation was only a small portion of the aboriginal territory of the Catawba. As previously stated, the Kings Mountain site is less than 20 miles from the boundary of the Original Reservation.

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Congressional and North Carolina leadership, that it had secured the right to take land into trust in North Carolina within its congressionally established service area.

In support of the Tribe's understanding, the following have submitted signed statements: President Reagan's Secretary of the Interior, Manuel Lujan (who approved the original settlement agreement); former Congressman Bill Richardson, the chairman of the House subcommittee with jurisdiction over the original legislation; both House and Senate congressional staff (including Chairman Inouye's) directly responsible for the legislation; the Chair of the North Carolina Commission on Indian Affairs and the North Carolina Governor's general counsel at the time of passage of the Act; and other relevant Federal and Tribal officials. See Attachment 2, Statements of Key Leaders Regarding Tribal Rights in North Carolina and excerpts immediately below.

Interior: Key Interior officials involved in the negotiation of the Catawba Land Claim Settlement Act support the Catawba's understanding regarding the application of the Act to the Tribe's Federal service area in North Carolina, including Manuel Lujan, who served as Secretary of the Interior during the negotiation of the Act, and Bill Ott, who was the Interior witness and representative at the Senate hearing on the Act and also the Eastern Region Director for the Bureau of Indian Affairs at that time.

- **Secretary Manuel Lujan:**


"With the Eastern Cherokee within its borders, North Carolina was familiar with federally recognized tribes and a tribe's right to acquire land into trust. This was not a controversial issue at the time. For that reason, whether the Tribe could take land into trust in North Carolina did not require lengthy discussion. It was already understood that a mandatory land into trust acquisition by the Catawba would be an inevitable outcome of the Act."

"At the time, those of us reviewing the Act knew that the creation of a service area in North Carolina meant that the Tribe could fully exercise its sovereignty by acquiring land into trust in North Carolina. It was our mutual understanding that the Catawba could apply for mandatory trust status for its North Carolina lands."

"Your support for expeditious processing of the Catawba's mandatory application would be greatly appreciated and would bring a measure of justice to a Native people who have suffered repeated wrongs ."

- **Bill Ott, Eastern Region Director:**

"I was directed to represent Indian Affairs at a Congressional Hearing regarding proposed language for the Act which also incorporated Federal Recognition of the Catawba Tribe and provided for a Service Area which included adjacent counties



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in the State of North Carolina.... It was the understanding of Indian Affairs that the delineation of the Tribal Service Area outside of the State of South Carolina relative to the Federal Recognition Process was not an issue since the South Carolina Strictures would not apply there.

"[B]ased on my understanding of the Act, I suggested [to the Tribe] that taking land into trust pursuant to the Act's land acquisition provisions and establishing a gaming facility within the Tribe's delineated Service Area outside of the State of South Carolina (i.e., within one of the six counties in North Carolina) would be more feasible and compatible with their federal recognition status under the Act."

Tribe. The two principal tribal officials responsible for negotiating the terms of the Act were Chief Gilbert Blue and Executive Director Wanda George Warren. Both have very strong recollections regarding the negotiation of acquisition rights throughout the Tribe's service area, including the North Carolina portion.

- **Gilbert Blue, Catawba Chief:**

"It was our understanding that the Tribe would have full tribal rights within the six counties of North Carolina that we reserved under the Settlement Act. Rights that included taking land into trust in North Carolina for economic development."

"With economic development in mind we did extensive research with Pat Clark into the fee-to-trust process and fully expected that we could use lands in the North Carolina service area as part of our mandatory takings "as on or near the reservation." To the best of my knowledge, the other parties we negotiated with understood this as well."

"Our willingness to sign the Settlement Act was premised on inclusion of the six-county service area. That portion of the Act was added at the insistence of the Tribe and we would not have signed without it. We had hoped for similar rights in South Carolina but agreed to the limitations in the Act pertaining to South Carolina to address our neighbors concerns about environmental issues."

"I understood, as did the other Tribal leaders working on the Act, that the Tribe would be able to take land into trust in North Carolina pursuant to the mandatory provisions in the Act that authorize the Secretary to take land into trust that is not contiguous to the Tribe's current reservation and not within the Act's expansion zones."

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- **Wanda George Warren, Catawba Executive Director:**

"We knew that the creation of a service area in North Carolina meant that the Tribe could fully exercise its sovereignty by acquiring land into trust in North Carolina."

"The State of North Carolina did not have the same concerns regarding tribal sovereignty and jurisdiction because of its experience with the Eastern Cherokee."

"I understood, as did Pat [Patrick Clark, Chairperson, North Carolina Commission of Indian Affairs] and those of us working on the Act, that the Tribe would be able to take land into trust in North Carolina pursuant to the Act, and therefore on a mandatory basis, so long as the land was within the Tribe's service area."

Congress. The Tribe has spoken with key Congressional staff involved in the development of the Act, including Patricia Zell, Staff Director of the Senate Committee on Indian Affairs under the chairmanship of the late-Daniel Inouye (himself a great friend of the Tribe) and Marie Howard Fabrizio, a senior staffer on the House Natural Resources Committee. Both support the Tribe's right to acquire land in the North Carolina service area under the Act.

- **Marie Howard Fabrizio and Patricia Zell:**

"We are writing to provide a personal perspective on the Catawba Indian Land Claims Settlement Act in support of the Catawba Indian Nation's request to take land into trust on a mandatory basis within the Tribe's Federal service area in North Carolina."

"The land-into-trust applications for the establishment of this reservation were mandatory in nature, not discretionary."

"Additionally, the Federal service area in North Carolina would not be subject to those restrictions imposed by the Catawba Settlement Act that only reference South Carolina."

"The scope of the Tribe's rights in the Federal service area, including the North Carolina counties, was elaborated upon in the Senate report. ... This language should be broadly read consistent with the intent of Congress to aid the Catawbas and consistent [with] the Indian canon of construction that ambiguities are to be read in favor of Tribes... In the case of the Catawba, the Tribe has mandatory acquisition rights."



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"We urge you to support the mandatory and expedited taking of land into trust for the Tribe."

North Carolina. The key participants involved in the negotiation of the North Carolina service area, including the North Carolina officials, confirm that the premise and promise of the Act included that the Tribe would have the right to take land into trust in North Carolina pursuant to the Act and that this was the official position of the State of North Carolina and that the South Carolina restrictions would not apply in North Carolina. Set forth below are excerpts from a statement of the Chairperson of the North Carolina Commission of Indian Affairs, as well as from a statement of the general counsel to then-North Carolina Governor Martin confirming the Commission's authority to represent North Carolina in the Catawba Settlement Act negotiations.

- **Patrick Clark:**

"I served as the Chairperson of the North Carolina Commission of Indian Affairs ('Commission'), from 1990-1993 and in that capacity was centrally involved in shaping North Carolina policy relevant to the Catawba Indian Nation and negotiating the Catawba Indian Land Claims Settlement Act of 1993 ('Act')."

"I, and Chief Blue, agreed that inclusion of a service area in North Carolina was essential to ensuring that Catawba tribal members residing in North Carolina would retain benefits similar to those preserved for Catawba in South Carolina, including the benefit of pursuing economic development projects to benefit the Catawba Indian Nation."


"I understood, as did Chief Blue and Catawba representatives working on the Act, that the Tribe would be able to take land into trust in North Carolina pursuant to the Act, and therefore on a mandatory basis, so long as the land was within the Tribe's service area. This was a clear understanding during the drafting and negotiating of the Act."

"The state was aware that the Catawba could mandatorily acquire land into trust under the Act's provisions."

"It was always my understanding that the Catawba could apply for mandatory trust status for its North Carolina lands."

James R. Trotter, General Counsel, North Carolina Governor James Martin:

"Based on both the law and my personal experience, the NCSCIA is the lead agency representing the State in all matters pertaining to Indian Affairs."



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"I have reviewed the affidavit provided by Patrick Clark, who was the Chairperson of the NCSCIA during negotiation and passage of the Catawba Indian Land Claims Settlement Act of 1993 and I have no objections to its content, nor any reason to dispute her testimony."

"Then-NCSCIA Chairperson Patrick Clark has affirmed that it was the position of the State of North Carolina as represented by the NCSCIA that the Catawba Indian Nation, pursuant to the mandatory land acquisition provisions in its settlement act would be able to take land into trust in North Carolina, but limited to that portion of the Catawba's service area that falls within North Carolina. **As such, this represents the official position of the State of North Carolina during those negotiations.**" (Emphasis added.)

By expressly authorizing the acquisition of the Kings Mountain site, the Congress would be fulfilling this original understanding of the drafters of the Catawba Federal Settlement Act.

Staying inside the Catawba's congressionally established service area and aboriginal lands.

It was important to the Tribe to identify a site within the Tribe's congressionally established federal service area and aboriginal lands.

The Catawba Federal Settlement Act treats the Tribe's entire federal service area, including the location that the Tribe now proposes to have taken into trust, for certain purposes as "on or near the reservation", specifically stating at § 4(b) that "[f]or the purpose of eligibility for Federal services made available to members of federally recognized Indian tribes because of their status as Indian tribal members, Members of the Tribe in the Tribe's service area shall be deemed to be residing on or near a reservation." In the exact same paragraph, the Catawba Federal Settlement Act states that "the Tribe and the Members shall be eligible for all benefits and services [not just health services as some allege] furnished to federally recognized Indian tribes and their members because of their status as Indians." (emphasis added). This same paragraph in the Catawba Federal Settlement Act reinforces that: "the Tribe shall be eligible to the special services performed by the United States for tribes because of their status as Indian tribes." The taking of land into trust for tribes and their members is one of the most important services offered by the Department of the Interior (hence, the BIA Office of Trust Services, which handles tribal trust land issues). As the letters of support demonstrate (see Attachment 2), the Tribal leadership negotiated for these rights in return for the major cessions made by the Tribe.

The Tribe's Use and Occupancy of the King's Mountain Area is well established. The Catawba Federal Settlement Act was intended to settle a land claim brought by the Nation for its previous 144,000 acre, 15-mile square reservation ("Original Reservation"), which had been established pursuant to two treaties with the British Crown. In the Senate Report accompanying the Catawba Federal Settlement Act, this Committee noted:

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The Catawba Indian Tribe signed two treaties with King George III in 1760 and 1763. The Catawbans gained recognized title to 144,000 acres under the Treaty of Pine Tree Hill made in 1760, which was confirmed with the Treaty of Augusta made in 1763 with the King's Superintendent of Indian Affairs and the Governors of the Southern Provinces [a term which encompassed both present day North and South Carolina].³ In those two treaties the Tribe ceded its aboriginal territory and reserved a 144,000-acre tract comprising much of the present states of North and South Carolina.

Senate Report 103-124 at 15-16. The border of the Original Reservation, located in the heart of the Catawba's aboriginal lands, and well within the Tribe's congressionally established service area, is less than 20 miles from the site identified in S. 790. Indeed, as the Tribe has often reminded the United States, Catawba scouts were instrumental in the victory of the American revolutionaries at Kings Mountain⁴ over British forces, setting the stage for victory in the South. Further, the Kings Mountain area is identified as Catawba hunting grounds in more than one document, including the Treaty of Augusta (1763). For a more detailed description of the Catawba Nation's ties to the Kings Mountain area, see Attachment 3, Catawba Historical Nexus to the Congressionally Established Service Area in North Carolina and <http://www.native-languages.org/ncarolina.htm>, providing a historical map of the aboriginal territory in the State, a copy of which is attached.⁵

There is no crossing of state lines, nor is an extraordinary precedent being set by the Kings Mountain site. First, the Catawba are just as much a North Carolina tribe as they are a South Carolina tribe. This is evident from the historical record, as well as from the Catawba Federal

³ The Southern Provinces within British America consisted of the Province of Maryland, the Colony of Virginia, the Province of Carolina (in 1712 split into North and South Carolina) and the Province of Georgia. See Charter of Carolina (March 24, 1663), Lillian Goldman Law Library, Yale Law School, available at http://avalon.law.yale.edu/17th_century/nc01.asp.

⁴ The Kings Mountain battlefield is just south of the state border, but the movements of the forces were throughout both North and South Carolina in that vicinity.

⁵ The Eastern Band in its letter of opposition cites the Treaty of July 20, 1777 (also known as the Treaty of Long Island of Holston) assert that they ceded this specific land away and so it must be theirs. However, the Eastern Band does not reveal that this treaty was not between the Cherokee Nation as a whole with the United States, but rather was "between the Commissioners from the State of North Carolina in Behalf of the said State of the One Part and the Subscribing Chiefs of That Part of the Cherokee Nation Called the Overhill Indians of the Other Part." The "Overhill Cherokee" is the term for the Cherokee people located in their historic settlements in what is now Tennessee on the west side of the Appalachian Mountains. See <https://tennesseeoverhill.com/overhill-chokeee-heritage/>. The "treaty" itself is not specific to Cleveland County, but is a broad disavowal of any Overhill Cherokee claims to a broad swath of land stretching from the northern border of North Carolina to its southern border. As described in footnote 7 below, the U.S. Indian Claims Commission found that treaties of land cession did not indicate aboriginal title.

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Settlement Act, which states that "[i]n treaties with the Crown in 1760 and 1763, the Tribe ceded vast portions of its aboriginal territory in the present States of North and South Carolina in return for guarantees of being quietly settled on a 144,000-acre reservation." See § 2(a)(4)(A). The Catawba Federal Settlement Act also provided for the Tribe to give up all subsequent land claims in North Carolina and established a service area that expressly included the North Carolina counties adjacent to York County, the location of the Tribe's current trust lands.

Although the Tribe is not crossing state lines that issue is irrelevant in any case as the Department of the Interior has looked at and rejected prohibitions on so-called off-reservation acquisitions of "out of state" lands *where a tribe is near a border or where the land is within a tribe's service area.*⁶

⁶ During the same period that the Catawba Federal Settlement Act was under consideration the Department of the Interior was considering revisions to its own fee-to-trust regulations at 25 C.F.R. Part 151. On July 15, 1991, the Department of the Interior proposed amendments to its existing regulations governing the fee-to-trust process. See 56 Fed. Reg. 32278 (July 15, 1991). The Department's proposed amendments to 25 C.F.R. Part 151 included a new section governing the acquisition of lands "located outside of and noncontiguous to an Indian reservation," as well as a new section titled, "Considerations in evaluating requests when the land is located outside of and noncontiguous to an Indian reservation and will be used for gaming purposes." *Id.* As proposed, 25 C.F.R. § 151.11(b) would have established a general rule preventing tribes from acquiring trust lands located in other states:

(b) The land to be acquired in trust should, in general, be located within the state(s) in which the tribe's reservation or trust lands are currently located. **Exception to this requirement may be made for tribes which have lands in one state but are located near the border of another state,** or tribes which have no trust lands. In situations where the land to be acquired is in a state in which the tribe is not located, the Secretary will give greater weight to the considerations concerning the effect of the land acquisitions on state and local governments. However, all other things being equal, the greater the distance of the land proposed to be taken in trust from the tribe's current or former reservation or trust land, the greater the justification required to take the land in trust. As warranted and relevant to the proposal under consideration, the justification could address such factors as the cost and ability to administer the land to be acquired in trust. In addition, applications for trust land located within an urbanized and primarily non-Indian community must demonstrate that trust status is essential for the planned use of the property and the economic benefits to be realized from said property.

Id. at 32279 (emphasis added). The Department published the final rule amending 25 C.F.R. Part 151 on June 23, 1995, after Congress had enacted the Catawba Federal Settlement Act. See 60 Fed. Reg. Vol. 32874-79 (June 23, 1995). Importantly, the final rule did not include the general restriction against acquiring "out of state" land in trust on behalf of a tribe.



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The Tribe welcomes the strict imposition of IGRA's regulatory scheme on its gaming operations. The Catawba Federal Settlement Act set forth the Tribe's gaming rights in South Carolina, but it also broadly provides that IGRA does not apply to the Tribe. See Federal Settlement Act at § 14(a) ("The Indian Gaming Regulatory Act...shall not apply to the Tribe.") (internal citation omitted). This creates uncertainty regarding the regulation of Catawba gaming operations in North Carolina. For a host of reasons, including legal, financial, public safety and more, the Tribe will operate gaming at the Kings Mountain site in accordance with standards no less stringent than IGRA, whether or not IGRA is applied to the Tribe. Nonetheless, the Tribe supports Congress applying IGRA to the Tribe so that there are no lingering questions about the strictness of the Tribe's regulatory scheme, including the character of the Tribe's business partners.

The Tribe is working with industry leaders to provide comprehensive, highly regulated casino/resort operations. Without supporting evidence, the Eastern Band of Cherokee Indians has suggested that the Nation is under the sway of unscrupulous developers and that this legislation would lead to an undermining of the Indian gaming regulatory framework nationwide. To the contrary, the Tribe has partnered with Delaware North, a 103-year old global food service and hospitality company, which operates in the lodging, sporting, airport, gaming, and entertainment industries. Delaware North employs approximately 60,000 people worldwide and has over \$3.2 billion in annual revenues.

The Eastern Band's assertions are an irrational distraction from the fundamental goal of this legislation – which is to bring justice to the Catawba and to allow the Catawba to have the same gaming rights as other Tribes, subject to the same strict regulation that other tribes are subject to. *No one will manage or be associated in any way with Catawba gaming operations who cannot meet IGRA or higher standards.* The Tribe's support for the application of IGRA to the Tribe's gaming operation in S. 790 is proof positive that the Tribe will not tolerate suspect parties in the management of its gaming operations.

The Department ultimately rejected the proposal, stating, "The provisions which prohibit off-reservation acquisitions of 'out-of-state' lands have been deleted." *Id.* at 32,876. In doing so, it cited tribal comments on its proposed regulation:

Section 151.11(b) Geographic Limitations

Comment: Those provisions which prohibit off-reservation acquisitions of "out-of-state" lands (i.e., lands in a state other than that in which the acquiring tribe's "reservation or trust lands" are located) were opposed on the grounds that out-of-state lands may be historically significant, vital to tribal economic self-sufficiency, or *within a designated tribal consolidation area or tribal service area.*

60 Fed. Reg. 32875-76 (June 23, 1995)(emphasis added).

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Our Eastern Band brothers and sisters. In historic times, the Catawba and the Cherokee were bitter enemies. However, over the last 100 years we have been closely allied on many important issues of tribal sovereignty and tribal rights. There has also been significant inter-marriage between the two tribes and we consider the Cherokee to be our relatives. We have nothing but admiration for their success, not just in building a gaming empire consisting of two highly successful casinos, but more crucially in succeeding at lifting their people out of poverty. The Catawba aspire to a similar success for our own people. Because the Eastern Band has the experience, funding, and proven record of accomplishment in gaming, the Tribe has approached them on several occasions about partnering on the Kings Mountain project, but the Eastern Band leadership has not been interested. Nonetheless, as described immediately below, the Tribe has sought to be respectful of Eastern Band interests, without sacrificing Catawba rights.

Staying outside of the Eastern Band's agreed upon "Exclusive Gaming Zone." One very important consideration in identifying the Kings Mountain site was to stay outside of the Eastern Band's exclusive gaming zone. The Eastern Band, in its compact with the State of North Carolina, secured the exclusive right to live table gaming in all lands *west* of I-26 ("Eastern Band Exclusive Gaming Zone"), a line that roughly follows the generally agreed upon eastern edge of Cherokee lands. See Attachment 4, Excerpt EBCI-NC Compact. The Kings Mountain site is approximately 55 miles *east* of I-26. Notably, it is only about 20 miles from the boundary of the Original Catawba Reservation, which was in the center of Catawba aboriginal lands and which was the basis for the Catawba's land claim. The site is about 34 miles from the Tribe's current reservation lands.

Staying outside of the Eastern Band's Judicially Established Aboriginal Lands. The Cherokee Nation brought a successful claim for compensation for loss of aboriginal lands before the Indian Claims Commission. The Eastern Band joined into settlement of that claim. Before those claims could go forward there was a rigorous judicial process to determine the aboriginal lands of the Cherokee Nation. Attached is the map, published by the Indian Claims Commission as part of its final report, showing not only the great size of the judicially established Cherokee aboriginal lands, but also that the **Cherokee aboriginal lands do not include Cleveland County.**⁷ See Attachment 5. As the face of the map itself states, "This map portrays the results

⁷ A digitized version of the Indian Claims Commission's final map can be found here: <https://www.loc.gov/item/80695449/>. This definitive map should be contrasted with that of Charles C. Royce, which shows the territorial limits of the Cherokee and just reaches, at the boundary, Cleveland County. Royce did important map work, but with significant limitations. The Indian Claims Commission praises Royce's maps, but found that his maps show "cessions" but that "often the cession did not match the true ownership of the land." United States Indian Claims Commission, Final Report, September 30, 1978, p. 127, fn. 1. This is because non-Indian negotiators were always asking Tribal leaders to cede land far beyond the holdings of their own tribe. In contrast to the Royce maps, the Indian Claims Commission goes on to state that "This map [meaning the Indian Claims Commission's final map] is a positive

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of cases before the U.S. Indian Claims Commission or U.S. Court of Claims in which an American Indian tribe proved its original tribal occupancy of a tract within the continental United States." The Cherokee, for reasons well known to the Catawba, could not prove aboriginal title to Cleveland County.

On behalf of the Catawba people, I thank this Committee for its consideration of this important legislation. With the passage of S. 790, the Committee will restore justice to the Catawba and enable us to lift all of our people out of poverty while rejuvenating an entire region of North and South Carolina.

Respectfully,

William Harris, Chief

expression of land determined [in a rigorous process] to have been owned, without special reference to the cession or extinguishment processes."



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CATAWBA CLARIFICATION AMENDMENTS

MYTH VERSUS FACT


SETTING THE RECORD STRAIGHT ON S. 790

MYTH: S. 790 sets a precedent because it would be the first time Congress has authorized that land be taken into trust for gaming purposes.

FACT: Congress not only has authorized that land be taken into trust for gaming purposes previously, it is well-established as a matter of federal Indian policy that taking land into trust for gaming purposes is appropriate in the right circumstances. For example:

- In the Omnibus Indian Advancement Act of 2000, Congress identified lands to be taken into trust for a tribe and deemed those lands to have been taken into trust prior to October 17, 1988, the date of the enactment of the Indian Gaming Regulatory Act (IGRA), expressly so that the tribe could establish gaming operations on that land.
- Congress authorized at least one agreement after passage of the IGRA that allowed a tribe to take land into restricted fee status and add it to the tribe's reservation. Restricted fee status land is not subject to the IGRA restriction on gaming on land taken into trust after 1988.⁸ Subsequently, that tribe has opened gaming operations on that land.
- Congress has authorized through IGRA an administrative process whereby Interior can take land into trust specifically for gaming purposes, which Interior has done on a number of occasions.
- Moreover, S. 790 does NOT direct Interior to take the land into trust, it merely authorizes Interior to do so; the land must still go through Interior's rigorous discretionary process.

⁸ See Seneca Nation Settlement Act of 1990, Section 8(c).



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- How can it be a bad precedent to allow a tribe to do what virtually every other tribe has the right to do and which was promised to the Catawba, but out of which they have been effectively "cheated" (see discussion below)?

MYTH: The project encroaches on the Eastern Band of Cherokee's aboriginal territory.

FACT: The definitive Indian Claims Commission findings conclusively show that the site is NOT within the Eastern Band's aboriginal territory. The Eastern Band joined the Cherokee Nation's successful compensation claim for loss of aboriginal lands before the Indian Claims Commission. As part of the settlement process, a rigorous judicial review was conducted to determine the aboriginal lands of the Cherokee Nation. The Indian Claims Commission findings (and associated map) clearly show that the Cherokee aboriginal lands do not include Cleveland County, North Carolina, where the project would be located. The Eastern Band has pointed to a land cession map prepared by Charles C. Royce as evidence that the project falls on the edge of Cherokee lands. As the Indian Claims Commission noted in its final report, the Royce maps show "cessions" but "often the cession did not match the true ownership of the land." This is because non-Indian negotiators were always asking tribal leaders to cede land far beyond the holdings of their own tribe. In contrast to the Royce maps, the Indian Claims Commission goes on to state that "This map [meaning the Indian Claims Commission's final map] is a positive expression of land determined to have been owned...."⁹ In the Claims Commission proceedings, the Cherokee, for reasons well known to the Catawba, could not prove aboriginal title to Cleveland County.

MYTH: This is a tribe-vs-tribe matter that the Federal Government should stay out of.

FACT: Just because one tribe describes this as tribe vs. tribe does not make it so. The Catawba Indian Nation is not interested in any Eastern Band assets or rights. There is no common interest, such as water rights, that the two tribes are disputing. Rather, this is just one tribe objecting for economic reasons to another tribe seeking to establish gaming on its own ancestral land three hours from the objecting tribe's nearest casino. The Catawba Indian Nation, in fact, admires the Eastern Band and wishes them continued success for their two existing casinos and multiple associated business enterprises.

⁹ U.S. Indian Claims Commission, Final Report, p. 127 at fn. 1 (September 30, 1978). A digitized version of the Indian Claims Commission's final map can be found here: <https://www.loc.gov/item/80695449/>.

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MYTH: The bill authorizes off-reservation gaming and encourages "reservation shopping".

FACT: This is NOT off-reservation gaming and it is NOT reservation shopping. Those who assert that this is off-reservation gaming or reservation shopping are willfully ignoring what those terms really mean and are playing semantic games. The question of what is off-reservation gaming has been addressed by the American Gaming Association (AGA):

AGA fully supports tribal gaming that is located on or near tribal lands that are within the historical and current territory of the tribe operating such gaming and is operated in accordance with all applicable laws.

However, locating tribal gaming facilities "off-reservation" in areas where a tribe has limited, or no, historical connections and is not in reasonable geographic proximity a tribe's existing land or population base alters the characteristics and intent of tribal government gaming.¹⁰

Under this widely accepted understanding, the Catawba's proposal is not for "off-reservation gaming." The proposed location is within the Catawba's congressionally established federal service area (which, as described below, has quasi-reservation status), less than 20 miles from the border of its original reservation in an area that was a known hunting ground of the Catawba, among other activities, as the Tribe has separately documented. This is Catawba aboriginal land, as well.¹¹ The project simply does not qualify as off-reservation gaming under existing federal law or prevailing industry standards. As for "reservation shopping," this refers to situations where tribes, generally from rural areas seek federal approval to acquire lands remotely situated from their current lands in densely populated areas, a fact pattern completely divorced from the Catawba's circumstances.

Further, S. 790 confirms the understanding of all parties to the 1993 Settlement Act that the Tribe could have land taken into trust in North Carolina. Notwithstanding the many flaws of

¹⁰ See American Gaming Association, *Advocacy: Off-Reservation Gaming (2019)*, available at <https://www.americangaming.org/policies/off-reservation-gaming/>

¹¹ The Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 recognizes this fact, stating: "In treaties with the Crown in 1760 and 1763, the Tribe ceded vast portions of its aboriginal territory in the present States of North and South Carolina [including Cleveland County] in return for guarantees of being quietly settled on a 144,000-acre reservation [the "original reservation"]." Pub. L. 103-116, at Sec. 2(a)(4)(A), formerly codified at 25 U.S.C. § 941(a)(4)(A) (omitted from the editorial reclassification of Title 25).

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the 1993 Settlement Act, the Tribe, Congress, and North Carolina leadership intended to secure certain important rights for the Tribe under the Act – including the right to take land into trust within its congressionally established service area in North Carolina. The Tribe has submitted to the Senate Committee on Indian Affairs signed statements from all the key officials at the time of the negotiation testifying to this understanding. These lands are Catawba aboriginal territory and are within 20 miles of the Tribe's original reservation established in the late 1700s and are 34 miles from the Tribe's current Reservation. S. 790 directly aligns with federal Indian policies that support trust acquisitions within a tribe's ancestral lands.

MYTH: The Tribe bargained for gaming, land acquisition, and the right for its children to go to public schools in the 1993 Settlement Act and that should be sufficient.

FACT: While the Tribe thought it had secured these rights in the 1993 Settlement Act, each one came with a condition that has had the effect of depriving the Tribe of every major benefit and right it thought it had secured in giving up its land claims and has left the Tribe in a federally enforced poverty. In words attributed to Chief Red Cloud: "They made us many promises, more than I can remember, but they never kept but one; they promised to take our land, and they took it."

For example:

- **The 1993 Settlement Act provides the Catawba with "IGRA-Like" gaming rights, and yet the Tribe has no active gaming operations!**
 - **Bingo Operations.** The Tribe's right to two bingo operations was conditioned on the Tribe paying a 10% gross receipts tax to South Carolina (to our knowledge, making the Catawba the only tribe in the nation required to pay taxes to a state), meaning that South Carolina made money even when the Tribe was losing money. After South Carolina lowered the tax rates on other bingo operations, the Tribe lost any meaningful competitive advantages and after two major failed efforts to establish viable bingo operations was left millions of dollars in debt. **Meanwhile the State made about \$12 million, covering most of its payment to the Tribe in the Settlement.** As a result, the Tribe essentially paid for its own settlement.
 - **Electronic Play Devices.** The Tribe also had the right to electronic play devices on its reservation if the State "authorized" such gaming. This seemed promising since at the time of the settlement there were video slot machines all across the state. Subsequently, the state banned those machines (so, in fairness, the tribe could not have them), but then authorized casino cruises that originate from South

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Carolina ports, have South Carolina customers, involved South Carolina businesses, and are policed and taxed by South Carolina; but when the tribe attempted to do the same on the view that this gaming was "authorized" the State said it would raid the Tribe's operations and bring charges against the tribe's leadership. The Supreme Court of South Carolina held that the state was only authorizing gaming outside of state boundaries (beyond the three mile limit) and not inside, therefore the Catawba's bargained for right to such games if the state "authorized" them for its own citizens was not triggered.

- **The 1993 Settlement Act gave the Tribe a mandatory right to a reservation of 4,200 acres, the size of the reservation it lost when the Tribe was terminated by Congress in 1959, and yet the reservation has only grown by 317 acres (to a total of 1,017 acres).** At the time of the settlement, the Tribe still had 700 acres; today it has 1,017 acres. The Act restricted where the Tribe could acquire land on a mandatory basis; as a result, the affected landowners either refused to sell or increased the selling price to unreasonable levels. The Tribe was not able to reacquire the promised land base and now, arguably, its right to do so, which was subject to a time limitation, has expired. The promised restoration of the Tribe's land base was thwarted.
- **The 1993 Settlement Act expressly addressed the right of Tribal children to go to the local public schools, but required the Tribe to pay for their attendance at the high out-of-county rate, forcing the Tribe to give up its only commercial landholdings to pay this obligation!** The Tribe's children are probably the only children in the United States who have to pay to go to public school. The Tribe could not afford to pay, fell millions of dollars in debt to the public school system, and to settle that debt just in the last two years transferred its few commercial properties to the school system. The Tribe now has effectively no viable property on which to develop its economy and business enterprises ("they promised to take our land, and they took it").

MYTH: Congress and the Tribe should have anticipated all of this in 1993 and Congress should not correct the inequities in the 1993 Settlement Act that have left the Tribe trapped in poverty with no economic development.

FACT: Congress has a trust obligation and should make the necessary amendments to assure that the Catawba's enjoy the benefits and rights they were promised – benefits and rights which are consistent with what virtually every other tribe in the United States enjoys. Enacting S. 790 would effectively redress all of the harm caused by the 1993 Settlement Act and fulfill its original intent of restoring certain sovereign and economic rights to the Tribe.

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MYTH: The bill establishes harmful precedent for tribes to act outside of IGRA.

FACT: S. 790 addresses only the anomalous situation of the Catawba Indian Nation and *does away with bad precedent that would otherwise harm tribal interests.* The 1993 Settlement Act is widely regarded as one of the worst land claim settlements for a Tribe in modern federal Indian policy. The Act was so troubling that the Senate Committee on Indian Affairs took pains to emphasize:

Therefore, beyond furtherance of the general federal policies of encouraging consensual settlements, fostering Indian self-determination, and restoring terminated Indian tribes, the Catawba Land Claim Settlement Act has no general Indian policy implications. The Committee expressly intends that it not serve as precedent or a model for any other settlement and that it shall neither set forth nor impact in any way federal Indian policy.¹²

Clarifying an anomalous act does not create precedent, other than that the United States should do right by tribes. If anything, S. 790 affirms the intent of the 1993 Settlement Act, which while providing for the relinquishment of the Tribe's land claims in North and South Carolina, also promised to restore the trust responsibility and ensure that the Tribe had an opportunity to prosper – which has not occurred.

MYTH: The project will not include input from state, local, and tribal governments.

FACT: The Tribe has engaged and continues to engage in extensive project outreach at all levels of government. Before advancing on this initiative to take land into trust in Kings Mountain, Cleveland County, the Tribe approached both the Kings Mountain and Cleveland County leadership, who welcomed the Tribe's proposal with open arms. Notably, the Tribe and Cleveland County have reached a detailed inter-governmental agreement to address public safety, taxation, jurisdiction, and other issues associated with the establishment of a casino/resort operation at the proposed location. Numerous letters of support from local and county officials and the governments of state-recognized tribes have been received. The Tribe has repeatedly reached out to Eastern Band of Cherokee leadership to discuss the project and potential partnership opportunities, only to be consistently rebuffed.

¹² Senate Report 103-124 at 27 (August 5, 1993) (to accompany the 1993 Settlement Act).



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MYTH: The service area was only for health care purposes and so should be given no broader significance.


FACT: Congress EXPRESSLY provided that the Service Area was for all purposes and was to be treated with a quasi-reservation status. The 1993 Settlement Act treats the Tribe's entire federal service area, including the location that the Tribe now proposes to have taken into trust, for certain purposes as "on or near the reservation", specifically stating at § 4(b) that "[f]or the purpose of eligibility for Federal services made available to members of federally recognized Indian tribes because of their status as Indian tribal members, Members of the Tribe in the Tribe's service area shall be deemed to be residing on or near a reservation." In the exact same paragraph, the Catawba Federal Settlement Act states that "the Tribe and the Members shall be eligible for all benefits and services [not just health services as some allege] furnished to federally recognized Indian tribes and their members because of their status as Indians." (emphasis added). This same paragraph in the Catawba Federal Settlement Act reinforces that: "the Tribe shall be eligible to the special services performed by the United States for tribes because of their status as Indian tribes." The taking of land into trust for tribes and their members is one of the most important services offered by the Department of the Interior (hence, the BIA Office of Trust Services, which handles tribal trust land issues).

MYTH: Gaming conducted at the site would be unregulated.

FACT: S. 790 would apply the Indian Gaming Regulatory Act's strict regulatory requirements to all gaming-related activities conducted at the site. This will bring Catawba gaming into the center of federal Indian gaming policy by addressing an ambiguity in the 1993 Settlement Act, which provides that the Tribe is not subject to IGRA.

MYTH: The project will be carried out by unscrupulous developers.

FACT: The project's principal partner is Delaware North, an award-winning gaming operator and hospitality management company with over 100 years of experience, 55,000 employees, \$3.2 billion in annual revenues, and operations on four continents. The Tribe is committed to working with industry leaders to provide the highest quality services and internal controls to its economic and gaming activities conducted on the Kings Mountain site. S. 790



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guarantees that only those individuals and entities that can meet or exceed IGRA standards will be involved with the Tribe's gaming operations. The Tribe's strong support for the application of IGRA under S. 790 is proof positive that the Tribe will not tolerate suspect parties in the management of its gaming operations.



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