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July 25, 2005

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Hon. John McCain
Chairman, Senate Indian Affairs Committee
836 Hart SOB
Washington, DC 20510

Dear Chairman McCain:

On behalf of the Jena Band of Choctaw Indians I am enclosing the testimony of Chief Christine Norris for the Senate Indian Affairs Committee's Oversight Hearing on IGRA Exceptions and Off-Reservation Gaming, scheduled for July 27, 2005.

Please do not hesitate to contact Chief Norris at (318) 992-8243 or me at (202) 457-6148 if you have any questions.

Sincerely,

V. Heather Sibbison

Enclosure

cc: The Hon. Christine Norris

Jena Band of Choctaw Indians

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TESTIMONY OF

THE HONORABLE CHRISTINE NORRIS, CHIEF
THE JENA BAND OF CHOCTAW INDIANS

BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
JULY 27, 2005

OVERSIGHT HEARING ON
IGRA SECTION 20 EXCEPTIONS AND OFF-RESERVATION GAMING

OPENING STATEMENT

Mr. Chairman and members of the Committee, thank you for providing me with the opportunity to testify this morning on behalf of the Jena Band of Choctaw Indians. Our story is that of a poor tribe playing by the rules and trying to do the right thing while politicians and various established gaming interests have distorted our motives and sought to influence public opinion through the use of shell interest groups and now-discredited lobbyists. Our story is one of established gaming tribes and non-Indian gaming interests spending millions of dollars to protect their monopolies, doing everything in their power to prevent us from opening a Jena Band facility in order to protect their profits. Our story is one that highlights all that is right and everything that is wrong with Indian gaming, the fee-to-trust process, and the Section 20 exceptions.

I am here today to tell you about our experience as a newly recognized landless tribe trying to acquire a land base for our people. The Jena Band was acknowledged through Interior's Federal Acknowledgement Process ten years ago. For eight of those ten years we were entirely landless. Still today, none of our lands have been proclaimed by the Department of the Interior to be our initial reservation, so that *ten years after recognition we still do not have land on which we can develop a gaming facility.* As a result, we have no access to the economic development engine enjoyed by the other three federally recognized tribes in our own state, and no access to the economic development we so desperately need to provide employment opportunities and crucial health, educational and governmental and social services for our members.

Our efforts to obtain land on which to develop a gaming facility have been characterized by some, including elected public officials from our own state, as "forum shopping" or "reservation shopping" -- terms that radiate from the Abramoff scandal. Unable to change the true facts and history of our case, our opponents have used these terms to discredit our legitimate efforts to establish a gaming facility. Mr. Chairman, members of the committee, we are one of the tribes most directly victimized by Mr. Jack Abramoff. Earlier this year, the Washington Post reported:

> Jack Abramoff, one of Washington's most prominent Republican lobbyists, tapped into the gambling riches of a rival tribe to orchestrate a far-reaching campaign against the Jena Band of Choctaws -- calling on senior U.S. senators and congressmen, the deputy secretary of the interior and evangelical leaders James Dobson and Ralph Reed.

Susan Schmidt, *Casino Bid Prompted High-Stakes Lobbying*, Washington Post, March 13, 2005 (*See* Attachment 1).

It is our hope that any actions taken by this Committee to amend Section 20 of the Indian Gaming Regulatory Act (IGRA) will take into account the very real and very desperate needs of tribes like ours -- tribes that have survived the extremely rigorous Federal Acknowledgement Process only to find themselves continuing after federal recognition to be landless, poor, and denied access to the economic development opportunity allowed to almost every other tribe in the country.

NEWLY RECOGNIZED TRIBES AND TRUST LAND ACQUISITION

Tribes need their own lands on which to build housing, health clinics, schools and facilities from which various governmental services can be operated. Tribes need land on which to conduct economic activities so that tribal governments can generate the revenue they need to build and run those clinics, schools and governmental facilities. Tribes need land on which to build tribal businesses that provide employment and training opportunities to tribal members. Finally, tribes need land deemed to have "reservation" status in order for tribes to be able to participate in a wide range of federal programs which are tied to services provided "on or near a reservation."[1]

Unfortunately, there is no mechanism in the Federal Acknowledgment Process that provides land or a reservation for tribes newly recognized under that process. As a result, a newly recognized FAP tribe, like the Jena Band, must find the financial means to obtain land on its own, and it must find the financial means to fund the process of applying to have that land taken into trust through the Department of the Interior's fee-to-trust process. Ironically, because the newly recognized FAP tribe has no reservation, its fee-to-trust application, by definition, is reviewed by Interior under the most onerous portions of Interior's fee-to-trust regulations, those governing "off-reservation" acquisitions. This increases the costs of the application process and significantly increases the amount of weight given to any concerns expressed by the local community about the tribe's fee-to-trust application.

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[1] Examples include federal programs and services which are tied to being "on or near a reservation" are listed in the document provided at Attachment 2.

Further, except in the very rare cases in which the newly recognized FAP tribe benefited from a state-held reservation prior to recognition, in almost all circumstances the FAP tribe is confronted with the *daunting* task of having to try to carve out a reservation land base from within a local non-Indian political subdivision. As you can imagine, cities and counties in which newly recognized FAP tribes live rarely embrace the idea of losing the jurisdiction and the property tax revenue that results when land is acquired in trust for the newly recognized tribe.

Adding to the inherent difficulties of the FAP tribe's relationship with local governments is the almost ubiquitous dynamic in which FAP tribes find that either they live in a community which has no gaming because that community is morally opposed to such activity, or they live in a community that has embraced gaming as evidenced by the existence of other Indian or non-Indian gaming facilities. In either case, the FAP tribe finds itself in a no-win situation. The morally opposed community will fight the acquisition for substantive reasons. In the community in which gaming has been accepted, well-heeled gaming interests will spare no expense to kill potential competition.

In addition, because newly recognized FAP tribes are poor tribes *desperate* to generate revenue, FAP tribes understandably focus their first land acquisition efforts on lands which would be suitable for development of a gaming facility. Under Interior's current approach, this means that the newly recognized FAP tribe must also ask the Secretary to proclaim new land taken into trust for it as the tribe's reservation (pursuant to the authority granted the Secretary in Section 7 of the Indian Reorganization Act) so that the lands will be deemed the tribe's "*initial reservation*" pursuant to Section 20(b)(1)(B)(ii). Hence the tribe must also submit an application for a reservation proclamation. That application is submitted to an office in the Bureau of Indian Affairs which is entirely separate from the office that reviews our fee-to-trust application. Most painful, in the case of the Jena Band the Bureau took the position that first the land had to be taken into trust, and only then would the Department consider the Jena Band's initial reservation request. Hence the reason why, even though the Jena Band now has trust land, and even though we had asked that that land be proclaimed to be our reservation concurrent with taking it into trust, we still have no reservation proclamation and are still unable to develop a gaming facility on trust land within our service area.

Finally, the newly recognized FAP tribe must submit to and pay for the Department's compliance with the National Environmental Policy Act. We note that the Department of the Interior recently amended its Section 20 guidance to make clear that in many situations where land acquisition involves gaming, it will automatically require the preparation of an Environmental Impact Study (rather than an Environmental Assessment) despite the fact that, to the best of our knowledge, every Environmental Assessment prepared in connection with gaming fee-to-trust acquisitions has ultimately been upheld by the federal courts.[2] An Environmental Impact Statement routinely costs hundreds of thousands, sometimes more than a million, dollars to prepare.

Respected members of the Committee, as you can see, the process to establish a land base for a tribe recognized through the administrative process is hardly any faster or less costly than the process to achieve federal recognition. Ten years after achieving federal recognition the Jena Band

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[2] "*See City of Roseville v Norton*, 219, F.Supp.2d 130 (D.D.C. 2002), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003); *El Dorado County v Norton*, CV. S-02-1818 GEB DAD (E.D. Cal. Jan. 10, 2005); *TOMAC v Norton*, No. 01-0398 (D.D.C. Mar. 24, 2005)."

still does not have a reservation proclamation that would allow the Tribe to game under the exception. This is a long, hard road to achieving parity with other tribes who were lucky enough to be recognized in 1988.

THE JENA BAND'S HISTORY

From 1786 through 1830, the Choctaw Nation ceded approximately 23.4 million acres of land to the United States. These cessions, resulting in the infamous Trail of Tears, inflicted an immeasurable human toll on Choctaw people. During this time period, most Choctaw were removed to Oklahoma. Small groups, however, refused to be removed to Oklahoma and so remained in Mississippi and Louisiana.[3] Our ancestors eventually settled near the small town of Jena, Louisiana.

The Senate Committee on Indian Affairs summarized our history in its 1993 Report concerning proposed legislation that would have conferred federal recognition on us. This Committee found:

> The Jena Band of Choctaw Indians lives in and around Jena, Louisiana, just to the northeast of the center of the State. The Band has about 150 members, about 60 percent of whom are from half to full blood Choctaw. Although they were not statutorily terminated as other tribes which have been recently restored, the Jena have a history of being treated as an Indian entity by the Federal Government.
>
> Identified as a group of full bloods, the Jena Band of Choctaw Indians were authorized to take allotments in Oklahoma under the General Allotment or Dawes Act. Around the turn of the century the Jena Band of Choctaw Indians was requested to appear and give testimony before the Dawes Commission in Muskogee, Oklahoma. Having to work their way to Oklahoma to offset expenses, the Band walked to Oklahoma over the course of nine months only to find that they were allowed to apply for, but not yet receive, such allotments. They then walked back to Louisiana over the course of several more months. Upon returning home to Louisiana, they were notified that they were identified as full-blood Choctaw entitled to land and services from the United States. The notification stated that the Band could return to Oklahoma within four and a half months to finally accept allotments. Tired, penniless, and mistrusting, and facing an impossible time-frame, the Jena found themselves not up to a second walk to Oklahoma to claim their allotments, but remained in Louisiana where they still reside.

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[3] Historical documentation, much of which was published well before the passage of IGRA, confirms that historical Choctaw presence throughout what is modern-day Louisiana. The Tribe provided this information to members of the Louisiana congressional delegation a few years ago and would be happy to provide the information to the Committee as well.

> In 1938, the Assistant Commissioner of the Bureau of Indian Affairs authorized the relocation of the Band to reservation lands in Mississippi where the Jena would once again be eligible for services. The Jena Band of Choctaw Indians indicated its willingness to relocate, but the United States did not follow through with the relocation. Once again the Jena missed their opportunity to enjoy Federal benefits because of their status as an Indian tribe.
>
> The group has been the beneficiary of Federal funds for Indians through various programs. The BIA funded an all-Indian contract school in the community of Jena, Louisiana, between 1934 and 1938. The school was closed in anticipation of the tribe's promised relocation to Mississippi in 1938, which never occurred.
>
> * * *
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> From the evidence previously submitted to this Committee at a hearing on March 28, 1990, in the 101st Congress and extensive documentary evidence subsequently furnished this Committee relating to services provided to the Jena Choctaws by the Bureau of Indian Affairs in the years following enactment of the Indian Reorganization Act of 1934, and the offer by the Bureau to purchase tribal lands for the Jena Choctaws in the State of Mississippi, the Committee has concluded that recognition had previously been extended to the Jena Band of Choctaw by the Department of the Interior.
>
> Accordingly, the Committee strongly supports prompt confirmation of the government-to-government relationship of the Jena Band of Choctaw Indians of Louisiana and the United States. In the view of the Committee, acknowledgment of the trust responsibility of the United States and restoration of the Federal relationship has been delayed far too long and further delay would be unconscionable.

S. Rep. No. 103-116, at 1-3 (1993). Although Congress did not enact legislation that would have conferred federal recognition, two years later the Department of the Interior administratively confirmed our federal status through the Federal Acknowledgment Process.

THE JENA BAND'S EFFORTS TO ESTABLISH A RESERVATION, AND THE SURREAL ORDEAL THAT HAS FOLLOWED

Shortly after recognition, the Jena Band worked to identify lands within our three-parish service area to serve as a reservation from which we could provide governmental, health and human

services to our people. We also decided to pursue the development of a gaming facility to generate revenues to provide these services, just as so many other tribes have done. We first looked within the three-parishes (Louisiana's version of counties) which BIA had designated as our service area. However, those three-parishes are located in a very conservative, very religious part of our state. All three of these parishes, through a statewide referendum in 1996, flatly opposed video poker gaming, Indian or non-Indian. (*See* Attachment 3.) For this reason, the Governor insisted, and we agreed, that we should make every effort to find a gaming site outside of our three-parish service area in a community desirous of hosting such a facility.

And this, good Senators, is how our ordeal began.

1. Governor Foster Insisted That We Locate Our Gaming Facility Outside Of Our Service Area.

From our earliest discussions with former governor, M.J. "Mike" Foster, he flatly refused to negotiate a tribal-state gaming compact for any facility located within our three-parish service area. He further threatened that he would actively oppose our efforts to acquire trust lands for non-gaming purposes within our service area if we sought to locate a gaming facility there. Governor Foster took this position despite the fact that all three of the other federally recognized tribes in Louisiana operate gaming facilities pursuant to such compacts, and despite the fact that the state has licensed or legislatively approved sixteen non-Indian casinos and three racinos throughout the state.

In addition to the significant pressure exerted by Governor Foster, we were cognizant and respectful of the views of our neighbors in our three-parish service area. We well understood that they preferred that we not develop a gaming facility within their boundaries. As a result, we worked very hard to find a community outside our service area that actually *wanted* to host a gaming facility. It was for these reasons, and these reasons alone, that we embarked on a several-year effort to identify an alternative site for our gaming facility which satisfied three criteria, those being that the site had to be located: 1) not too distant from our service area; 2) within a parish that expressly supported gaming in general and our project in particular; and 3) within an area with which we could demonstrate a historical Choctaw connection.[4]

In Logansport, Louisiana we found such a site. Logansport is located in DeSoto Parish, approximately 64 miles from our service area. The Logansport area unfortunately suffers from one of the highest unemployment rates, and from some of the lowest family income averages in the State. Attempting to spur economic development, Mayor Dennis Freeman and the DeSoto Parish Police Jury (the elected governing body of DeSoto Parish) actively pursued a relationship with the Jena Band. These officials went on record, in writing, time and time again supporting the placement of the Jena Choctaw gaming facility in their community. In a letter to President Bush and Secretary Norton, Mayor Freeman expressed the Town of Logansport's wholehearted support for the Band's proposed gaming facility, and explained that the people of Logansport "are desperate for economic

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[4] I respectfully refer you to the two maps provided at Attachment 4 to my testimony. These maps are borrowed from a book written by several Indian history experts published before enactment of the Indian Gaming Regulatory Act. Fred B. Kniffen, Hiram F. Gregory & George A. Stokes, *The Historic Tribes of Louisiana* (1987). These maps demonstrate the Choctaw connection to our service area and Logansport, Louisiana -- the location near our service area that we ultimately selected for our gaming facility. We have also provided thousands of pages of documentation to the Department of the Interior documenting our historical connection to the Logansport area of the State.

development, desperate for investment dollars and desperate for jobs." March 12, 2003 letter from Mayor Dennis Freeman to President Bush and Secretary Norton.

We applied to the Department of the Interior asking that the Logansport land be taken into trust. At the same time we also applied for trust status for several non-gaming parcels located in our service area. (These parcels included lands for our tribal cemetery, government buildings, housing, and general economic development.) We concurrently asked the Department to proclaim the Logansport parcel and our service area lands to be our reservation. As part of our request, we carefully explained our problem with the Governor, our efforts to work with the local communities in our service area and at Logansport, and our historical connection to the Logansport area. However, the Department declined to take Logansport into trust as part of our initial reservation. As I mentioned earlier, the service area parcels were taken into trust but we have not yet received a reservation proclamation for them.

We then submitted thousands of pages of information documenting the historical Choctaw connection to the land near Logansport, and documenting our legal case for a determination that we are a "restored" tribe and that the Logansport parcel constituted "restored lands" within the meaning of Section 20(b)(1)(B)(ii) of the Indian Gaming Regulatory Act. Given this Committee's pronouncement in its 1993 Committee Report about the Jena Band's restored tribal status,[5] this request seemed more than reasonable. Nevertheless, the Department declined to act on our request to acquire the Logansport land in trust based on a restored lands determination.

2. Interior Suggests That We Seek a Two-Part Determination Under Section 20(b)(1)(A).

Finally, the Department suggested it would be willing to review our Logansport request under the Two-Part Determination criteria embodied in Section 20(b)(1)(A). Once again, we changed gears and agreed to have the Department review our application under significantly more onerous standards. The Two-Part Determination provision requires Interior to make a factual determination that acquiring trust title to the property for gaming is first, "in the best interest of the tribe," and second, "not detrimental to the surrounding community." The burden of collection and submission of the factual documentation necessary to support such a determination falls on the Tribe. It is enormously time consuming and expensive. As you can imagine, the burden of such temporal and financial costs weighs very heavily on landless tribes.

While our "Two-Part Determination" application was pending before Interior, Governor Foster repeatedly expressed his support to the Jena Band and to the Department for our Logansport application. Based in no small part on the Governor's support, in December 2003, Interior issued a positive Two-Part Determination. Interior sent its determination to Governor Foster and requested his concurrence. To our great dismay, disappointment, and surprise, Governor Foster left office a few weeks later without acting on Interior's request.

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[5] As mentioned earlier in this testimony, the Senate Indian Affairs Committee found that "In the view of the Committee, acknowledgment of the trust responsibility of the United States and restoration of the Tribal relationship has been delayed for too long and further delay would be unconscionable." S. Rep. No. 103-116, at 3 (1993).

3. Governor Blanco Vows To Oppose Any Casino For the Jena Band.

Shortly after Governor Kathleen Blanco took office, I asked to meet with her to discuss the Jena Band's Logansport application, and I requested that she negotiate a gaming compact with the tribe. For many, many months we received no response whatsoever. It was not until a full nine months later that Governor Blanco agreed to meet with the Tribe. When we did meet, we discussed the background of the Logansport application, the state's role in how we eventually selected the Logansport site, and the Tribe's willingness, within reason, to meet the demands of the State even if that meant entering into a compact on less favorable terms than what the State has agreed to with other gaming tribes in Louisiana. Six months after our initial meeting, and fifteen months after our initial request, Governor Blanco callously responded to our good faith efforts by stating:

> [I] want to make it clear that I simply cannot support the establishment of another gambling casino. And to this end I have asked Attorney General Charles C. Foti, Jr. to research all legal avenues available to the state to oppose a casino. I must be up-front with you and tell you that this means I feel the duty to do all that I can to oppose the establishment of any new casino.

Letter from Governor Blanco to Chief Norris, April 12, 2005. (A copy of this letter is attached at Attachment 5.) Needless to say, Governor Blanco did not concur in Interior's Two-Part Determination.

Today, my Tribe is left with no alternative but to try to develop a gaming facility within our three-parish service area. We do this with heavy heart. We looked forward to working with a community desirous of our presence -- a community with which we had worked closely for several years to develop a win-win partnership for all of our people, Indian and non-Indian. Instead, we are forced to try to develop a facility within our service area, in a community that opposes gaming there. Further, we have been forced to file suit against the Governor for her failure to negotiate a compact in good faith as required by IGRA.

SENATOR VITTER'S OPPOSITION TO THE JENA BAND

Over the last few years, Senator Vitter has been a vocal opponent of our efforts to establish a gaming facility. News articles report that Senator Vitter "opposes the Jena Band's plans to open gaming operations anywhere in the state[.]" Ana Radelat, *Vitter Bill Would Thwart Jena Band's Attempts at Casino*, Shreveport Times, June 17, 2005. Among other things, Senator Vitter, when he was still a Congressman in the last Congress, caused a rider to be added to the Report of Interior's Appropriations bill that was designed to prevent the Jena Band from acquiring the Logansport parcel in trust. The effects have been reported by the Washington Post:

> "Working with Abramoff legal team, [Vitter] said, his staff drafted language that he placed in an Appropriations conference report that urged the Interior Department to prevent the Jenas from establishing a casino on lands outside their historic tribal area."

Susan Schmidt, *Casino Bid Prompted High-Stakes Lobbying: Probe Scrutinizes Efforts Against Tribe*, Washington Post, March 13, 2005. *See* Attachment 1.

In March of this year, Senator Vitter threatened the Governor, warning her not to sign *any* compact with the Jena Band, whether for Logansport or service area lands:

> "If you sign a compact with the Jena Band, I will join with others in vigorously opposing it at the U.S. Department of the Interior, which either must approve or reject it."

Senator Vitter further urged Governor Blanco *not* to negotiate with the Tribe in good faith pursuant to IGRA. Senator Vitter counseled the Governor:

> "Fourth, and finally, there is absolutely nothing in federal or other law which requires you to sign a compact with the Jena Band. This has been made crystal clear by the United States Supreme Court in Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996)."

Letter from Senator David Vitter to Governor Kathleen Babineaux Blanco, March 21, 2005 (*see* Attachment 6).

Finally, in June of this year Senator Vitter introduced legislation designed to ensure that we, and other tribes similarly situated, will never have the opportunity to engage in one of the few economic endeavors that has worked in Indian country. S. 1260, innocuously titled the "Common Sense Indian Gambling Reform Act," appears to be designed generally to discourage land acquisition for newly recognized tribes in general, and to squash the Jena Band in particular.

1. Senator Vitter's Proposal Protects Established Indian and Non-Indian Casino Interests At The Expense Of Administratively Acknowledged Tribes.

The purpose of IGRA's "initial reservation" exception is to ensure that tribes recognized through the Federal Acknowledgment Process are put on a level playing field with tribes that already had federal recognition when IGRA was passed in 1988. Senator Vitter's bill eliminates the initial reservation exception entirely, and in its place requires landless, newly recognized FAP tribes to satisfy a version of the Two-Part Determination exception that is even more onerous than the current Two-Part Determination exception. Section 2 of S. 1260 provides, in relevant part, that gaming may occur on lands acquired in trust after 1988 only if:

> the Secretary, after consultation with the Indian tribe and officials of all State, local, and tribal governments that have jurisdiction over land located within 60 miles of such Indian lands, determines that a gaming establishment on that land –
>
> (i) would be in the best interest of the Indian tribe and its members; and
>
> (ii) taking into consideration the results of a study of the economic impact of the gaming establishment, **would not have a negative economic impact, or *any* other negative effect, on *any* unit of government, business, community, or Indian tribe located within 60 miles of the land.**

(Emphasis added.) Senator Vitter's modified Two-Part Determination exception effectively requires a showing that the proposed gaming facility would have no negative effects at all on existing tribal casinos and non-Indian casinos that provide revenue to State and local governments. Senator Vitter's proposal inserts what clearly is intended to be an insurmountable hurdle into what is already a daunting process.[6]

2. Senator Vitter's Proposal Misuses Environmental Protection Laws.

In addition to requiring FAP tribes to submit to a significantly more difficult Two-Part Determination process, Senator Vitter would draw a bright line rule *always* requiring preparation of an Environmental Impact Statement. Section 5 of Senator Vitter's bill provides:

> Before an Indian tribe uses any Indian lands for purposes of class II or class III gaming, the Indian tribe shall—
>
> i. submit to the Secretary an Environmental Impact Statement that the Secretary determines to be in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) relating to that use; and
>
> ii. obtain the consent of the Secretary with respect to the change in use of the Indian lands.

NEPA requires that Environmental Impact Statements be prepared only for major federal actions that are determined to have a significant impact on the environment. Senator Vitter's proposal would require a costly Environmental Impact Statement (EIS) regardless of whether the impact is expected to be significant or not. Such a requirement is contrary to NEPA's basic approach of preparing an Environmental Assessment to determine whether preparation of an EIS is necessary and appropriate. And since the federal courts consistently have affirmed Interior's use of Environmental Assessments to evaluate the impacts of land acquired in trust for gaming purposes,[7] we suspect that Senator Vitter's concern is less with the environment and more with erecting yet another hurdle for the Jena Band's efforts to locate its facility within its own service area.

We note that the Bureau of Indian Affairs currently requires tribes to foot the bill for the costs of any environmental analysis, whether it be an Environmental Assessment or an EIS. We understand that it is not uncommon for the preparation of an EIS to take years to complete and to cost more than one million dollars to prepare. Further, the federal government is required to

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[6] Senator Vitter's proposal includes further requirements that ensure that no newly recognized landless tribe will be able to game. For example, the bill limits land eligible for a Two-Part Determination to those lands within the state where the tribe is primarily located, and to which the tribe has a primary geographic, social and historic nexus, which is restrictively defined, or within the last recognized reservation of the tribe (within the current state).

[7] *See City of Roseville v Norton*, 219, F.Supp.2d 130 (D.D.C. 2002), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003); *El Dorado County v Norton*, CV. S-02-1818 GEB DAD (E.D. Cal. Jan. 10, 2005); *TOMAC v Norton*, No. 01-0398 (D.D.C. Mar. 24, 2005).

prepare the EIS or oversee the contractors that do so, resulting in the expenditure of significant federal resources as well.

More than anything else, what this provision in Senator Vitter's bill does is create yet another barrier to the Jena Band's efforts to develop a gaming facility. Because the Jena Band has turned its attention to developing gaming on trust land it now owns within its service area, and because an Environmental Assessment is being prepared as part of the reservation proclamation process for that parcel of trust land at an additional cost of over a quarter of a million dollars, Senator Vitter apparently figures he can slow or halt the Jena Band's plans to develop the site by now requiring that a much more time-consuming, much more expensive EIS be required before the Tribe can "change" the use of its existing trust land to gaming.

3. Senator Vitter's Proposed Legislation Attempts to Dictate What Authority Governors Have Under State Law.

Finally, Senator Vitter's proposed legislation attempts to rewrite state law for Louisiana and all other States by mandating that tribal-state gaming compacts be approved by both the Governor and the State Legislature. Senator Vitter accomplishes this by almost sleight-of-hand, by changing the definition of "State" for purposes of the compacting section of IGRA:

> (10) DEFINITION OF STATE- In this subsection, the term 'State' means the Governor of the State and the legislative body of the State.

S. 1260, Section 3. Of course, currently under IGRA every State determines under its own laws whether its Governor is vested with authority to enter into compacts under IGRA or whether state legislative approval is necessary. Every existing tribal-state compact in Louisiana was executed by the Governor without approval of the state legislature. If the state of Louisiana wishes to impose a legislative approval requirement it may take steps to do so, but that requirement should not be dictated by Washington. Rather than allowing the Jena Band to be treated equally with Louisiana's other three tribes, Senator Vitter's proposal changes the rules in the middle of the game in an attempt to erect yet another barrier to the Jena Band's efforts to develop a gaming facility. Senator Vitter is so eager to oppose the Jena Band that he is willing to sacrifice states' rights in order to do it. Surely Congress will reject his efforts to legislate at the federal level what authority Governors possess under State law.

CONCERNS ABOUT SENATOR VITTER'S OPPOSITION

Because we are Senator Vitter's constituents, his virulent opposition to our efforts is painful. More painful, however, is the knowledge that Senator Vitter made no effort to fight the State's issuance of a license for Louisiana's sixteenth non-Indian casino; similarly, he made no effort to oppose a Louisiana state house bill that would have allowed a non-Indian vendor to place slot machines at the New Orleans airport. Most disturbing, it appears that his opposition to our tribal casino may be tied to a relationship with Jack Abramoff. The press[8] has reported the following:

- Abramoff hosted a fundraiser for Senator Vitter "just two months before Vitter

[8] Copies of the news reports quoted herein are attached at Attachment 7.

inserted a provision in an Interior spending bill helping one of Abramoff's tribal clients." John Bresnahan, *Abramoff Hosted '03 Fundraiser for Vitter*, Roll Call, March 16, 2005.

- "The Coushattas, one of Abramoff's most lucrative clients, feared the Jena Choctaws' site would harm their own casino, and the tribe funneled tens of millions of dollars to Abramoff ... to help stop it.... The Coushattas provided financial backing to a Louisiana organization called the Committee Against Gambling Expansion [CAGE].... In 2002, after the Jena Choctaws had first announced their casino plans, CAGE did a mailing on behalf of Vitter, a longtime gambling opponent. Vitter later used CAGE's name in his own phone bank operation." *Id.*

- "On Feb. 19, 2002, a day after receiving the [$2,000] campaign contribution from the Coushattas [which was later returned], Vitter wrote to Interior Secretary Gale Norton outlining his opposition to the [Jena Band gaming] proposal. Vitter would write seven letters to Norton on this issue in the next year." John Bresnahan, *Members Flee Fallout From Abramoff*, Roll Call, March 1, 2005.

- "On Feb. 26, 2002, Vitter met with representatives from the Coushatta tribe; they told him of their own concerns about the Jena Choctaws' proposal." *Id.*

- Vitter's communications director "said his boss had tried to get language into the 2003 Interior funding bill to block the Jena Choctaws' casino but failed to do so. The proposal that Vitter sent the following year to Rep. Charles Taylor (R-N.C.), chairman of the House Appropriations subcommittee on the Interior, actually went further than what Congress finally approved. Vitter's proposal, dated April 3, 2003, would have formally blocked any funds included in the Interior bill from being used in any way that would allow any Indian tribe to take land into trust for a casino. In his letter to Taylor, Vitter pointed out that Rep. Jim McCrery (R.-La.), in whose district the new Jena Choctaw casino would be built, backed his request." *Id.*

The press quotes speak for themselves.

AMENDMENTS TO THE INITIAL RESERVATION EXCEPTION THAT SHOULD BE MADE

It is our hope that the United States will help -- not hinder -- newly recognized landless FAP tribes. We have been neglected, unfunded, misused -- even abused -- for too long. Not only should Congress refuse to subject landless FAP tribes to *even more* onerous requirements than those that are already in place, but we respectfully suggest that Congress should consider a few small amendments to the initial reservation exception to make it more fair and efficient.

Our first request is that Congress impose hard deadlines on the Department of the Interior for taking land into trust for landless tribes. No tribe in the United States is more needy, more worthy of the Department's focus and prioritization than a landless tribe which has survived decades in the Federal Acknowledgement Process. The length of the current fee-to-trust process, which can take many many years to complete, unduly burdens the very tribes that can least afford the delay. We believe, it would make most sense if the Department would automatically designate a newly

recognized tribe's service area concurrently with providing federal recognition through FAP (currently tribes must apply for their service area designation as yet a separate process governed by its own set of regulations), and then be required to take some portion of land into trust for the newly recognized tribe in the tribe's service area within a time certain. Congressional direction requiring early designation of service area and strict time deadlines for initial land acquisition would also go a long way to dampening the amount of political intrigue that is fostered by letting fee-to-trust and reservation proclamation decisions linger for extended periods.

Our second, related request is that Congress amend the Section 20(b)(1)(B)(ii) initial reservation exception to clarify that the first parcel or parcels taken into trust by the Secretary shall be automatically deemed the newly recognized FAP tribe's initial reservation. This would spare tribes like ours the expense and frustration of being made to jump through yet another hoop – another hoop which serves no purpose other than to further delay the day when we are put on a level playing field with other tribes.

CONCLUSION

Perhaps we were naive, but when we first considered Indian gaming as a vehicle for economic development, we had no concept of the degree to which our efforts would become the focus of virulent, outrageously funded attacks from non-Indian casino operations owned by out-of-state interests and from other tribes. The opposition of well-heeled, well-established gaming concerns can make it incredibly difficult for newly-recognized tribes to participate in the economic benefits which have been made available to almost every other tribe in the United States. I submit that the political dynamics of FAP tribes' fee-to-trust request are characterized by a struggle between the haves and the have-nots.

It is my hope that the story of the long and difficult road upon which my Tribe has been made to travel will inform the current public policy debate on "reservation shopping." It is my hope that Congress will reject the efforts of established gaming interests, Indian and non-Indian alike, to insist on amendments to Section 20 that serve no purpose but to protect the profits of existing casino operators. It is my hope that instead, Congress will lend a hand to those who most desperately need it.

The Jena Band of Choctaw has played by every rule. We have worked tirelessly to accommodate every interest. We are exhausted, still poor, and still without a reservation. Good Senators its unclear to us of after these many years what "playing by the rules has done for us."

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