

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

March 29, 2000

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

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

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

History of Mississippi Band of Choctaw Indians Land Acquisitions

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

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

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

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

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

U.S. v. John, *supra* finally and favorably resolved almost a decade of litigation the 1970s over the Tribe’s legal status and the Indian Country status of our lands [U.S. v. State Tax Comm’n of the State of Mississippi, 505 F.2d 633 (5th Cir. 1974), *rehearing denied*, 535 F. 2d 300, *aff’d on rehearing en banc*, 541 F. 2d 469 (1976); Tubby v. State, 327 So. 2d. 272 (Miss. 1976); John v. State, 347 So. 2d 959 (Miss. 1977); United States v. John, 560 F. 2d 1202 (5th Cir. 1977), *reversed*, 437 U.S. 634 (1978)].

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

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

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

All of our trust lands have the same legal and jurisdictional status as "Indian Country" under the controlling statutes and U.S. Supreme Court rulings. 18 U.S.C. Sec. 1151, construed in, State of Alaska v. Native Village of Venetie, 522 U.S. 520 (1998); Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Tribe of Okla., 498 U.S. 505 (1991); United States v. John, *supra*.

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

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

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

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

Choctaw Economic Development and Tribal Governmental Services

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

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

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

Attachment 1.

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

members through the construction of much needed housing, health service facilities and the replacement of dilapidate schools.

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

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

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

Attachment 2.

Enactment of the legislation will eliminate the current backlog and enable the Tribe to move forward with its development strategy.

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

Attachment 3.

The Tribe believes that the primary reason for this complete failure of the BIA's fee to trust process is its lack of resources. Nowhere is this funding shortfall more noticeable than in the funding of BIA realty offices. Recently, officials in the Eastern Regional Office have straightforwardly informed me and my staff that a heavy realty workload and backlog of trust applications combined with understaffing and the competing interests of the other 25 tribes the office serves makes the swift processing of our fee-to-trust applications (those that are backlogged and future applications) impossible. Due to this situation, the Tribe's only alternative was to turn to the Congress for assistance. S. 1967 will solve this problem of a backlog that, left unaddressed, will never be eliminated by the BIA.

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

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

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

Environmental Status of Choctaw Fee Lands to be Taken into Trust

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

Indian Gaming Regulatory Act

Section 1(3) and Section 1(3)(b) of the legislation ensures that the application of or the requirements of the Indian Gaming Regulatory Act (IGRA) are strictly adhered and that nothing in the Act shall be construed to relieve or alter the IGRA for any lands held by or for the Mississippi Band of Choctaw Indians.

Conclusion

In summary, the passage of S. 1967 is of vital importance to the future of the Mississippi Band of Choctaw Indians. The bill's provisions address key issues that currently obstruct economic development for the Tribe and places into trust lands that are critical for housing, health

facilities and schools. The measure also eliminates the backlog of applications that have been languishing at the Bureau for two decades and clarifies the status of the Tribe's lands. Enactment of the legislation will enable the Tribe to continue its current pace of economic development, to the joint benefit of tribal members and non-tribal residents of the State of Mississippi.

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