Muscogee (CREEK) Nation

Executive Office

May 14, 2015

Representative Don Young, Chairman
Representative Amata Coleman Radewagen, Vice-Chairman
Representative Dr. Paul Ruiz, Ranking Member
U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Indian, Insular, and Alaska Native Affairs

Re: Testimony on *"Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act of 1934"*

Dear Chairman Young, Vice-Chair Radewagen, Dr. Ruiz and Esteemed Members of the Subcommittee:

It is my pleasure to come before you this afternoon to offer testimony on "*Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act of 1934.*" First of all, thank you to the Subcommittee for holding a hearing on this extremely important topic of trust land acquisition, and for your ongoing work to address the ramifications of the US Supreme Court's decision in the *Carcieri* case. As Principal Chief, I represent 78,670 citizens of the Muscogee (Creek) Nation. Our Nation is ranked the fourth largest federally recognized Indian tribe in the United States. We are grateful for the wise guidance of the leaders of our ceremonial grounds, such as Mekko George Thompson of Hickory Ground, and others like him who are Mekkos. Mekko in our native language means "King" or commonly referred to as Chief.

You will no doubt hear from many other witnesses today about the necessity for Congress to legislate a fix to *Carcieri*. As many federally recognized tribes are organized under the Indian Reorganization Act of 1934 (IRA), the Muscogee (Creek) Nation generally supports a *Carcieri* fix, but believes Congress also should specifically make some special provisions related to trust land acquisition issues in the process. In short, it is our position that a *Carcieri* fix must exclude extending trust to the sacred, ceremonial and historical lands known as Hickory Ground near Wetumpka, Alabama. These lands held the tribal town of "Oce Vpofv" which holds a special deep significance to Muscogee people who are originally from Alabama.

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As is with many laws, when the IRA was passed in 1934, the legislation was not written precisely enough to anticipate future events or interpretations by agencies or courts. One such unforeseen circumstance is the recognition of "new" tribes that would seek and acquire land in different tribes' historic homelands. For treaty tribes such as the Muscogee (Creek) Nation our federal recognition is traceable back as far as the first documented explorer of North America. Other tribes petition for recognition through a process administered by the Secretary of the Interior and approved for federal recognition since 1935. The ambiguity created by what appears to be simple wording in the IRA created an opportunity for challenging the authority of the Secretary of the Interior to take land into trust for these "new" tribes of the kind that resulted in the *Carcieri* decision. Unfortunately, this is not the only weakness in federal trust land laws and policies. Others existed that allowed greedy and rapacious individuals to desecrate an inestimable part of United States, Native American and Muscogee (Creek) Nation history and heritage.

When the historic Muscogee (Creek) Nation was forcibly relocated under the Removal Act of 1830, our people and ancestors were forced to abandon many treasured places in what is now the southeastern United States. One of the most important to us was Hickory Ground Tribal Town ("Oce Vpofv") located near Wetumpka, Alabama. Hickory Ground was a ceremonial ground, a place for praying and expressing spiritual traditions; it is the last Capitol of our Nation prior to removal and is also a burial ground for many of our ancestors. Its significance was recognized by the United States in 1980, when Hickory Ground was placed on the National Register of Historic Places by the US Department of Interior's National Park Service. The criteria for placement on the National Register are the quality of significance in American history, architecture, archeology, engineering, and culture that is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
B. That are associated with the lives of significant persons in or past; or
C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
D. That have yielded or may be likely to yield, information important in history or prehistory.

Ordinarily cemeteries and graves of historical figures *will qualify* for the National Register if they fall within the following categories:

a. <u>A religious property</u> deriving primary significance from architectural or artistic distinction or historical importance; or

c. <u>A birthplace or grave of a historical figure of outstanding importance</u> if there is no appropriate site or building associated with his or her productive life; or

d. A cemetery that derives its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

Having met a number of the criteria required for placement on the National Register of Historic Places, Hickory Ground "Oce Vpofv" was placed on the Register and the site maintained by the State of Alabama for many years.

In 1984, the newly named and newly federally recognized Poarch Band of Creek Indians in Alabama applied for and received a federal grant to purchase Hickory Ground for what they said was the express purpose of "preserving it in its historic state forever." Later that year, the Secretary of the Interior through the Bureau of Indian Affairs, took the Hickory Ground site into trust for the Poarch Band under the authority of Section 5 of the IRA. In only a few short years thereafter, the Poarch Band betrayed the trust of the United States and the Muscogee (Creek) Nation and began to systematically desecrate and unearth our ancestors and the sanctity of Hickory Ground, in order to build a massive casino gambling facility on top of our sacred place. Scores of human remains and hundreds of funerary objects were removed from protected ground and carelessly tossed in plastic buckets to bake in the sun, and to this day are unaccounted for by the Poarch Band of Creek Indians. Over the course of the next few years, our sacred ceremonial grounds were physically desecrated by bulldozers and our Nation's access to them denied. The rich history the American taxpayer had paid to preserve and protect through the National Registry of Historic Places designation was razed to the ground.

Despite the repeated appeals of the Muscogee (Creek) Nation for the Poarch Band to stop their heinous actions, the Poarch ignored our concerns and lied about what they had done, were doing and intended to do to at Hickory Ground. When we asked the Department of Interior's Bureau of Indian Affairs and National Park Service to put a stop to this outrage, our requests went unacknowledged. And despite the duty of the BIA to preserve and protect our homelands under the "trust doctrine" these assaults proceeded, even though the Poarch were in violation of numerous laws and agreements. Just like the worst opponents of Indian Country have often done, the Poarch were able to find weaknesses and loopholes in current trust land policies and exploit them to the detriment of all Indian people. In the process of fixing *Carcieri*, Congress now has an opportunity to incorporate more precision into trust law, which will end these vulnerabilities and ensure what the Poarch have done will never be repeated elsewhere.

Today, a 26-story casino hotel and resort, which is the centerpiece of the Poarch Band's plans for a Class III gaming monopoly in Alabama, is built atop the once-peaceful spot where our ancestors were laid to rest. When the Poarch Band of Creeks became federally recognized, they promised to protect the historic and sacred Hickory Ground site. When the gaming opportunities came on these sacred sites, the Poarch Band of Creeks offered to build a "Memorial Garden and Interpretive Center" to honor Hickory Ground and the estimated 60 remains they had already dug up. The Muscogee (Creek) Nation of Oklahoma did not agree with this plan. We do not publicize our dances or sell our medicine. We don't invite outsiders into our traditions so that our ways become a novelty that can be sold in a gift shop. Our tradition and our ancestors are not a tourist attraction. Native people nationwide have fought to stop such desecrations by developers and museums through the passage of laws and regulations to prevent

it only to have our efforts undermined by a newly federally recognized Indian tribe. As the only federally recognized Indian tribe in Alabama, the Poarch Band has used their status and their ill-begotten lands to gain lucrative profits off the blood, death and tears of our Muscogee people. Having a very small membership, of barely 3000, the Poarch have net profits to lobby, hire, donate and buy their way into many pockets of agents, officials and representatives who are more than happy to turn a blind eye to their illegal and dirty deeds.

A key concept Congress must include in any trust land reform is recognizing the cultural sovereignty of historic tribal nations that have been removed from their original homelands. When a group such as the Poarch claims affiliation with a larger historic nation, such as the Muscogee (Creek) Nation, that larger historic nation needs to have a meaningful, joint role in the administration of any land of cultural, spiritual, or historic importance that is taken into trust for the group claiming that affiliation. Just as the federal government must provide meaningful consultation with tribes in developing programs and regulations affecting us, the *Carcieri* fix must include a mandate for tribal consultation and mutual agreement on lands and sites that hold significance to all tribal nations. This way, no new tribe would ever again be allowed to destroy the cultural heritage of the historic nation they purport to be a part of after gaining federal recognition. It would also guarantee the preservation of and access to culturally and spiritually important places to all tribes who are successors in interest to a particularly historic Nation. The inclusion of a provision like this would be of great importance to all the Native Nations in Oklahoma, who now see other groups seeking federal recognition by claiming affiliation with our historic nations, and possibly later coming into possession of lands and places east of the Mississippi that we were forced to abandon.

Additionally, should the occasion ever rise again, there should be iron-clad protections put in place on any land acquired with taxpayer-funded historic preservation grants which later enter into trust status to ensure the status of preservation in perpetuity. Due to the particularly egregious nature of what the Poarch did immorally and illegally at Hickory Ground, the Muscogee (Creek) Nation has four requests for the Subcommittee:

1. Since the Poarch's actions would not have taken place without multiple failures by the Department of the Interior through agents and representatives of National Park Service and the Bureau of Indian Affairs to do their duty to protect and preserve our historical and sacred lands, we ask that you conduct oversight over their lack of actions in the Hickory Ground matter.

2. Since the Poarch should not be financially rewarded for taking taxpayer grant money under false pretenses, we request that Congress bar the Secretary of Interior from approving any Class III gaming compact for the Wetumpka, Alabama trust parcel.

3. Since the Poarch's acquisition of the Wetumpka trust lands was done in a fraudulent manner, and is likely illegal under the *Carcieri* decision, we request that Congress specifically exclude protecting or affirming the trust land status of that parcel in any *Carcieri* fix legislation.

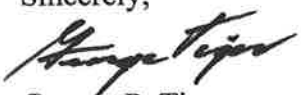
4. Finally, we ask you to exclude the Poarch from participating in future hearings and public proceedings on the topic of *Carcieri*. Their reprehensible actions at Hickory Ground allow tribal opponents to destroy the credibility of tribes as responsible custodians of trust lands, and thus undermine the efforts of Congress and tribal nations on this issue.

We all have had loved ones we have had to tell goodbye. One day, we too will all take the journey to join them forever, and the care of our remains will be entrusted to those who lay us down to rest in peace. Most human beings believe that the deceased should be laid to rest in peace and with respect. Once we have passed on, our remains should not be dug up, desecrated, removed, reburied, or stored in a museum or displayed in a tourist attraction, or otherwise exploited. These are shared values across all races, creeds, and cultures in the world, and we have international standards and national laws to protect against vandals, profiteers and desecrators. In America, we should strive to have our trust land policies reflect these basic shared values, and to punish accordingly those who offend those values.

Let us turn for just a few minutes to the issue of the "trust doctrine" and the fiduciary duty of the US to American Indians. As stated previously, there are literally hundreds of tribes organized under the IRA whose lands in trust are impacted under *Carcieri* and each are unique to their own location, culture, traditions, and government. As you know, our native people are tied to the land and lands in trust benefit Indians in many ways and are a means of providing not only economic opportunity but also of security and self-determination. Congress has repeatedly emphasized a commitment to these stated goals of which land into trust is a key component of success to tribes. Balancing the need to promote the tribes' economic development efforts against any state's interest in taxation has been decided many times by the US Supreme Court in favor of the tribes. This sudden departure from precedent has thrown all long range plans of these newer tribes into question and their uneasiness of the possibility of losing their land base is real and scary. Indian Country in general feels the impact of that unfortunate decision as it has ripple effects in some way to us all be it through collaboration, partnerships, or joint projects. For that reason, the Muscogee (Creek) Nation supports a *Carcieri* fix with the previous stated caveats concerning the Poarch Band.

Again, thank you for the opportunity to testify today. I look forward to the Subcommittee and Congress acting not only to fix the *Carcieri* decision, but to also strengthen our trust land policies in ways that recognize and preserve the cultural sovereignty of historic Indian nations and prevent tragedies like what happened at Hickory Ground from ever occurring again. For more information on Hickory Ground ("Oce Vpofv") visit the website dedicated to this issue at hickory-ground.com. The Muscogee (Creek) Nation and I look forward to continuing to work with you on this very important topic and contributing towards achieving that goal in any way we can.

Sincerely,



George P. Tiger
Principal Chief
Muscogee (Creek) Nation

HOUSE SUBCOMMITEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
Inadequate Standards for Trust Land Acquisition in the Indian Reorganization Act of 1934
May 14, 2015, 2:00pm at 1334 Longworth House Office Building

- **OUR POSITION: *Carcieri* Fix Needs an Exception for Hickory Ground.** The Muscogee Creek Nation does not oppose legislation addressing the *Carcieri* decision, ***but*** any *Carcieri* fix needs to carve out an exception for Hickory Ground.

- **Hickory Ground is:** a historic ceremonial ground of the Muscogee people located near Wetumpka, Alabama. Hickory Ground is a *sacred* place where our spiritual traditions were carried out since time immemorial.
  - Hickory Ground is listed on the National Register of Historic Places.
  - It is a *burial ground* for our ancestors and the *last Capitol* of the Creek Nation prior to removal.

- **The Poarch Band of Creek Indians Desecrated Hickory Ground.** In 1984, the Poarch Band, a newly recognized tribe, acquired a federal grant to purchase Hickory Ground for historic preservation:
  - Hickory Ground was acquired under false pretenses. In fact, shortly after the land was acquired, the Poarch began to *desecrate and excavate* the human remains of approximately 57 Muscogee Creek ancestors and sacred funerary objects.
  - Our ancestors were excavated from Hickory Ground so that the Poarch Band could construct a 26-story casino hotel and resort on top of our sacred ceremonial and burial grounds. To date, many of the human remains of our ancestors and the sacred funerary objects that were excavated for casino construction are unaccounted for.

- **Hickory Ground is "*Carcieri* Land".** Hickory Ground is "*Carcieri* land" because the Poarch Band was not recognized in 1934 when the Indian Reorganization Act was passed.
  - It is our position that under the Supreme Court's decision in *Carcieri*, Hickory Ground was unlawfully taken into trust for the Poarch Band by the Department of Interior.
  - Therefore, we do not believe that the Poarch Band has the right to conduct gaming on the ceremonial ground where our ancestors were excavated.
  - The Poarch Band cannot exercise jurisdiction over Hickory Ground because the acquisition of Hickory Ground into trust was illegal according to the U.S. Supreme Court.

- ***Carcieri* Fix Legislation Must Include an Exception for Hickory Ground.** A *Carcieri* fix without an exception for Hickory Ground will effectively condone the desecration of our ancestors by securing the legal rights of the Poarch Band to conduct gaming on the graves of our ancestors without any accountability.
  - We support legislation to overturn the *Carcieri* decision provided that the legislation includes language specifically excluding application of the law to Hickory Ground.

- **Our Requests to the Subcommittee.** Due to the egregious nature of the desecration of Hickory Ground, we respectfully request that the Subcommittee accommodate the following requests:
  1) Conduct oversight over the actions of the Poarch Band, the BIA and other federal agencies responsible for allowing the desecration of Hickory Ground;
  2) Bar the U.S. Secretary of the Interior from approving any gaming compact with the Poarch Band to conduct gaming at Hickory Ground; and
  3) Carve out an exception in any *Carcieri* fix legislation for Hickory Ground.