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ADVANCING ECONOMIC SUCCESS IN INDIAN COUNTRY

FIELD HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MAY 27, 2015

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ADVANCING ECONOMIC SUCCESS IN INDIAN COUNTRY

WEDNESDAY, MAY 27, 2015

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Anadarko, OK

The Committee met, pursuant to notice, at 4:30 p.m. in the Anadarko High School auditorium, Hon. James Lankford, presiding.

STATEMENT OF HON. JAMES LANKFORD, U.S. SENATOR FROM OKLAHOMA

Senator LANKFORD. Good evening, everyone. I'd like to call to order this field hearing of this Senate Indian of Affairs Committee. Today we will receive advancing economics success in the Indian Country. I'm very honored everyone is here. I'll give a more formal introduction and preparation. But to begin this evening Riverside School's color guard will now present the colors.

Please rise.

[Ceremonial opening with the color guard.]

Senator LANKFORD. Thank you. You may be seated. Thank you to the Riverside School for taking the time to be here with us today for the color guard. I appreciate you being here. Let's give them a clap here.

[Applause.]

Senator LANKFORD. Before we begin the hearing and this testimony, I want to thank some of our hosts, Anadarko High School, for allowing us to use the auditorium. Superintendent Hackney, are you here, I saw you here earlier. I want to make sure that—there she is right there in the back; and then Principal Sparks as well, thank you for doing this. You're trying to get everyone out of this building as summer time begins and we're still bringing people in, so I appreciate you here and for opening up this facility.

Also, thanks to the city of Anadarko for hosting us today. It's been a great visit today. Got a chance to visit with Mayor Eastwood, City Manager Corn, so many different Tribal Leaders today through the entire area—thank you for what you have done to make this day run smoothly.

And finally, I'd like to thank the staff of the Committee on Indian Affairs for all the work that they have done. Many of them are sitting behind me today and they work with the Senate Committee. They are from all over the country, and it is important to be able to be a part of this.

We have quite a few Trial Leaders that are also here today that have been apart of this.

If you're a Tribal Chief, Chairman, Governor, or President, or other leader—from the Tribal elective leader from the tribes, would you please stand right now so we can recognize you and thank you for being here.

[Applause.]

Senator LANKFORD. Thank you very much. Thank you for being here.

A couple of weeks ago I sent a letter to Tribal Leaders in Oklahoma asking them to submit for the record, testimony on economic success they've achieved and roadblocks they're facing to further success.

Thank you to those of you that have submitted. We have received several of those, and thank you for that. Others that would like to still submit those for the record, it is not too late. I'm going to hold the official record open for the next two weeks. Any tribe that would like to specifically list some of their insights for the congressional record, I will leave the record open for the next two weeks on that as well.

Also, I'd like to thank Secretary Chris Benge. As I understand, Secretary Benge is also here, right there. Thank you for being here as well, representing the state of Oklahoma. So I appreciate you being here, Secretary Benge, as well.

There's still a lot of work to be done to ensure Native American children grow up with the same opportunities as every American child. Still a lot of uncertainty; the real definition of sovereignty. And the best way for tribal government is to both serve their citizens and the members and also be good neighbors to the communities and states around them. There's also a lot of work that's happening that's positive things among our tribes and communities, especially here in Oklahoma. Our tribes are a model for tribes around the country on economic development, education, health care, and countless other areas. Tribes in Oklahoma, led by many of the people that are here today, contributed over 10 billion dollars to the State economy. Many tribes in rural areas, the tribe is often the largest employer, making very important contributions to communities all over our state.

Economic development is not the solution to every problem in Indian Country today. However, tribal governments and individual Native Americans who find economic success are more likely to achieve the necessary stability and strength that enables them to deal with other issues they face.

The tribes who achieve true sovereignty and prosperity will be those who focus on the importance of the family, caring for their neighbors, remaining to the true core values that make up every Native American community.

Today's conversation with these five witnesses will help shine a light on how Oklahoma tribes and individual business owners have achieved economic success. We'll get into the barriers that have been overcome and still must be overcome in the days ahead to achieve sustainable economic stability. We'll also hear how banks can help tribes and Native American businesses leverage money to build in the development they've already achieved. From an educa-

tor, we'll hear how schools can help ensure the next generation of Native Americans are ready to continue the work done by today's leaders.

From the SBA, we'll hear how Federal programs can be used as a starting point for economic growth and so many other areas. I'm very pleased to be able to have this conversation.

Now, this is a unique hearing. If any of you have been to an economic development hearing or, specifically, a hearing in Washington, D.C.—what's interesting about a hearing like this is everything goes on the congressional record. I have a wonderful person sitting right behind me that types in every word that we say to put it on the actual record, as well as there's a recording of this. This is very similar to any hearing that we would have in Washington, D.C. The difference is individuals are able to engage here in Oklahoma. So all of this will go into the official congressional record for the United States Senate—all of the testimony. So no pressure, but everything you say is being recorded and going into the official record.

It's also extremely important that we receive testimony from different tribes. The individuals that are on the dais here today represent individuals or businesses or the SBA, to be able to talk about economic development in Indian Country. But we've also asked Tribal Leaders to send in documents to represent individual tribes with different ideas. If you would also like to contribute something to the official record and you have something to submit around this topic, feel free to also submit that and you can send that to my office in the next two weeks and we'll hold the record open for the next two weeks, to be able to submit those to get in on the record. So that makes this a unique conversation as we walk through this.

The format of this is I'll introduce our five witnesses. Each of them will have about five minutes to be able to actually contribute orally. They've already submitted also a written statement to go in the permanent record and then I'm going to field questions back and forth with you as well, and that will be part of the record as well.

So, let me introduce our witnesses. It is a custom of our committee to swear them in, I'll do that at the end of all our introductions.

Sean Kouplen is the President and CEO of Oklahoma based Region Bank. He's led a group of investors in purchasing the bank in 2008, and under his leadership the bank has tripled in size. He's been long active with program support in community and economic development. He's also Chairman of the Board for OneFire Holdings, the business arm in the Muscogee Creek Nation. A graduate of Oklahoma State University. He's been married to his wife, Angela, for 15 years and has three children. Thanks for being here, Sean.

Mr. KOUPLEN. Thank you.

Senator LANKFORD. Frank Narcomey is the founder and President of Southwind Construction Services LLC, a small, general construction firm, specializing in private sector and government design-build type projects. Frank is an Oklahoma native, half Seminole/Creek and a member of the Seminole Nation of Oklahoma, a

graduate of Oklahoma State University. He founded Southwind in 1991 and has been very active in his community. Southwind is a graduate of the SBA's AA Program and since graduation has assisted other companies as they were to successfully complete the program. He's been married to his wife, Cindy for many years and has two grown children.

Dottie Overal is the U.S. Small Business Administration Oklahoma District Director; a Native of Philadelphia. She has served in management positions in the SBA throughout the country. She was appointed as a district director for Oklahoma in 2000, in this capacity, she and her staff of 12 provide access to capital, counseling, contracts—or assistance after natural disaster to the 77 counties in Oklahoma. Her office also administers the SBA's 8(a) Business Development Program in Oklahoma.

Dennis Ruttman began his career as a business owner with his father in Woodward, Oklahoma and operated it for nearly 20 years. He joined the Oklahoma Department of Career Tech in 1989 as the Skill Center Instructor and later became an administrator. In 2004, he became Business and Industry Services Director at Pioneer Technology Center in Ponca City and was heavily involved in the business recruitment and retention efforts of the Ponca City Development Authority. He returned to the Oklahoma Department of Career Tech as the Associate State Director in 2008 before accepting his current position as the Superintendent/CEO of Caddo Kiowa Technology Center. Thanks for being here.

Lieutenant Colonel Clark Southard is the Executive Director of the Wichita Valley Regional Partnership, a regional economic development consortium based out of Fort Cobb, Oklahoma. He also serves as Chairman of the Oklahoma Southwest Alliance, a 20-county economic development organization in Southwest Oklahoma and Vice-Chairman of the Delaware Nation Economic Development Authority. He served in the United States Army for 29 years before retiring in 2003.

Thanks for your service in that.

He returned to his native Oklahoma in 2008 to assist with economic development activities in Southwest Oklahoma, where he now resides.

I want to also recognize Pamela, who is not here with us. We had one other witness that was planning to join us today. Pamela could not be here because she is actually taking cancer treatments—actually today and was not going to be able to join us, but that she had been invited originally for that. And if you all don't mind, she's in the thick of treatments—if you all don't mind, I'd like to pray for her for just a moment and then we'll swear our witnesses in.

Father, thanks for allowing us to have this conversation. I do pray for Pamela, as she deals with very difficult days. I know she would much rather be here. I pray you sustain her and her family and carry her through the very difficult treatments ahead. Give her strength and health in her body in the days ahead. Help us in this conversation today, in your name I pray, Amen.

[Response.]

Senator LANKFORD. It is the custom of the senate committees to swear in witnesses before we begin testimony, so if you would all please rise.

[Witnesses rise.]

Senator LANKFORD. Raise your right hand. Do you solemnly swear or affirm the testimony that you're about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

All WITNESSES. I do.

Senator LANKFORD. Let the record reflect that all the witnesses answered in the affirmative. You may be seated.

Mr. Kouplen, no pressure, but you are first up, and we'll be glad to be able to receive your testimony right now.

STATEMENT OF SEAN KOUPLEN, CHAIRMAN/CEO, REGENT BANK; CHAIRMAN OF THE BOARD, ONEFIRE HOLDING COMPANY

Mr. KOUPLEN. Thank you. Thank you, Mr. Senator, and the fact that we are witnesses—we just were sworn in and every word we're saying is on the record makes me a little nervous, I don't mind telling you.

It's very good to be with all of you. As the Senator mentioned, my name is Sean Kouplen. I am a banker by trade, I also invest in a number of small businesses and am a member of the Creek Nation, serving as Chairman of the their Onefire Holding Company.

This is a topic that is very dear—near and dear to my heart, both, because of where I live, because of my family, and because of the industry that I serve in. And so, my comments, which I will just summarize for the audience and for the record really deal with kind of a number of areas where I believe we could do better, as it pertains to economic development in Indian Country.

First and foremost, when you think about the keys to investment and the keys to attracting investment and being able to open up and grow businesses, you really have to think about what we call in banking, are the five C's of credit. You look at the individual's cash flow or their history of being able to produce cash flow. You look at the individual's credit, their past ability to meet their obligations, their character or their reputation within the community, their capacity, their ability to recover. Small business is, as Dottie knows, is very difficult and you go through many ups and downs. And, you know, the ability to kind of recover from those either via liquidity or net worth.

And then, finally, collateral, in the event that the bank has made the loan and things don't work out. We can't afford to make very many bad loans or we're—we go under. So, when you think from an investor perspective, it's very similar, you're looking for the lowest risk, highest return investment that you can find.

So as it relates to how do we achieve those things in Indian Country and for our Native American population. So my thoughts would be—first and foremost is, I have studied to prepare for this. There are many great programs available. I think first and foremost is training and outreach. I know in my industry, in banking, I think there are a number of programs that I have learned about in the last 48 hours that I didn't know existed. And I think much of that is because both our SBA and Bureau of Indian Affairs—BIA offices are scantily funded, if you will. They just don't have the peo-

ple necessary to get out in the communities and provide training and outreach to those of us that are in the communities.

I thought about ways to enhance economic investment for Native Americans. First of all, I would expand government guaranteed programs. For those that are not familiar, when a bank makes a loan, many times there is a weakness within the loan that is difficult to mitigate. Maybe they don't have enough collateral or they don't have the equity—the down payment needed or they don't have quite as much experience as you would like to see, but you want to make that loan. One of the ways we were able to make it is primarily through government guaranteed programs, through the Small Business Administration or Bureau of Indian Affairs. Well, just take the BIA—Dottie will talk about the SBA—but just take the BIA for example, they have about $100,000,000 available to them in guarantees. That is—that's basically been used up this year. There are projects waiting to be funded that are not going to get funded because there's not enough allocated to them. And, you know, they're in essence, kind of a one-man show or one-woman show here in Oklahoma. So, first and foremost, would be expanding. I would recommend expanding that—the allocation to the BIA.

Second of all, further development of Buy Indian programs. I think that we've done a great job through Artero (phonetic) programs within the tribes, of expanding Indian employment. I don't think we have done as good a job of promoting that our government contractors and other organizations buy Indian—that they buy products from Indian-owned companies.

And finally, I would really look at—from a guarantee perspective, I would look at the model that the Section 184 Housing Program has proven. We have done 11,336 Section 184 home loans in Oklahoma, to date. This was shocking to me. That's as much as the entire country all put together. That's a 100 percent guaranteed program that allows individuals—Native Americans, that otherwise probably couldn't get approved for a home, to get a bank loan. I think it's a fantastic model for what we could do for Native American businesses if we were really committed to doing that.

Next, how do we enhance the flow of capital into Indian Country. I believe the EB–5 Program—this is a foreign investment program, I can expand more on later if you wish—should be made permanent. I believe we are creating a regional center through Onefire and the Creek Nation and our goal is to bring foreign investment into the Creek Nation's borders, but this program is always a little concerning. Is it going to be continued? Is it going to, you know—is political pressure going to make it go away? I think it needs to be made much more permanent.

I think tax incentives are critical. You know, the accelerated depreciation in Tulsa, it is absolutely critical. It lowers the tax burden on our business owners.

New market tax credits to encourage people to invest in poor areas of the state, I think are absolutely critical.

And then, finally, how do we get more Native Americans employed in great jobs? And so I would offer—definitely need to renew the Indian Employment Tax Credit. I would say that $20,000 doesn't buy you a whole lot these days, as wages have gone up. I would propose that the amount for that tax credit should go up

from $20,000, to $30,000 or $40,000. And then I'm very intrigued, I just learned about this Tribal Labor Sovereignty Act of 2015, where when you look at state and Federal governments, they determine their own labor standards, but tribes do not. Well, they're sovereign governments as well and should be treated, in my opinion, the same way as our Federal and state governments. So, those would be my thoughts, Mr. Senator.

The prepared statement of Mr. Kouplen follows:]

PREPARED STATEMENT OF SEAN KOUPLEN, CHAIRMAN/CEO, REGENT BANK; CHAIRMAN OF THE BOARD, ONEFIRE HOLDING COMPANY

Keys to Economic Advancement for Native Americans

1. Keys to investing:
   a. 5 C's of credit: cashflow, credit, character, capacity, collateral
   b. Low risk, high return
2. More training and outreach of existing programs
3. Ways to enhance economic investment for Native Americans
   a. Lower investment risk through government guarantee programs like BIA
      i. Slow, minimal resources
      ii. Section 184 program for homes- 11,336 loans to date!
   b. More resources for BIA
      i. Higher guarantee percentage
      ii. Clearer ground rules
      iii. Lower equity requirement
      iv. Grant program for new businesses?
   c. Further development of Buy Indian programs
      i. Disadvantaged business rules with government contractors
4. Increase the flow of capital into Indian Country
   a. Make EB–5 permanent—great source of foreign investment
   b. Tax incentives for investing in Indian Country—very poor areas of the Creek Nation need investment badly
   c. Accelerated depreciation—continue; saves millions of dollars
   d. New market tax credits—The NMTC Program provides tax credit incentives to investors for equity investments in certified Community Development Entities, which invest in low-income communities. The credit equals 39 percent of the investment paid out (5 percent in each of the first three years, then 6 percent in the final four years, for a total of 39 percent) over seven years (more accurately, six years and one day of the seventh year)
   e. Expand Buy Indian Act by adding transparency and accountability, and expand it to all Federal programs that work with Indian communities
5. Ways to improve Native American employment
   a. Renew the Indian employment tax credit
      i. $20,000 is too low—increase it to $30–40,000
   b. Tribal labor sovereignty act of 2015—treat tribes as a sovereign government and let them set their own labor standards

Senator LANKFORD. That's good. Thanks, Mr. Kouplen.

Mr. Narcomey.

STATEMENT OF FRANK NARCOMEY, PRESIDENT, SOUTHWIND CONSTRUCTION SERVICES, LLC

Mr. NARCOMEY. Thank you, Senator.

My name is Frank Narcomey, I own Southwind Construction Services LLC, Edmond. And what I'd like to share today is—you know, as far as success, that's a little bit hard for me to, you know,

tell you that, you know, I'm successful. And because there's been too many people—too many things in my life, that if it wasn't for the SBA, if it wasn't for a mentor, if it wasn't for someone, you know, giving me the courage to start a business, you know, I wouldn't be here. So I'm really appreciative that I had the opportunity and—you know, a lot of people struggle. A lot of individuals struggle. A lot of Native Americans, you know, I see them struggle and, you know, how do you start?

And my story is basically one that to me is almost a miracle that—I was listening, Sean, to you and I sat on the front porch, I had two young boys in diapers and I wanted to start a business. I was working for a good company but I was just at a dead-end spot. I was making, you know, $30,000 in 1983/1984, and my wife was working and, you know, I was 58 years old at this time and I made out this long drawn out plan of where I might be financially or where we would be financially at this time. And, you know, I had everything budgeted and it was really tough. It was tough. Our vehicles were going to have to last about 18 years, you know, and fortunately, that didn't have to happen.

But, what I did was—I had a friend and he knew that I had some management ability, but I had no capital. Cindy and I took $500 out of our checking account. We opened up a Post Office Box and I got a computer, and I bunked the two boys together in one bedroom and I took one bedroom and opened up a telephone line and just moonlighted. And I had been around the Oklahoma City area for, at that time, for about nine years, so I had made a lot of good contacts with subcontractors, suppliers, other GC's, et cetera. And this friend of mine in the insurance business, he knew I didn't have any money but he told me, just go out and get as many references that you can.

So that's what I did, and in the process of asking people and letting people know that, hey, I'm going to start a business, somebody told me about somebody and then that person got me hooked up with another person. And next thing you know, I'm studying the SBA rules, and back in the old days, it was the SDB Set-Aside—Small Disadvantage Business Set-Aside, where you actually self certify, so you're not 8(a) certified, you're self certified. And we went after some contracts on some military bases and this joint venture that we put together that chased some of these SDB Set-Asides—I found someone that, you know, believed in me enough, that I knew long enough, that he provided the capital. I found another contractor that had the technical ability to write proposals, and then, basically, I was the management person on the ground.

And I had never, ever, seen a military base in my life and we bid a contract. I started Southwind in October of 1991. In August of 1992, that's when we got our first contract and we put together this proposal for a construction contract in Davis-Monthan Air Force Base, Tucson, Arizona. And I had never seen an Air Force base—I mean, I still to this day, am not sure exactly what all the stripes mean, but it's just "yes, sir". And we got that contract and this contract—I got a call from the contracting officer at my house, Mr. Narcomey, we have selected you; however, you have been protested and I need you to get through this protest. But, you know, I was still working for a company and I had to spend time defend-

ing this protest and the money man behind me said, hey, I'll just front you some living expenses, but you got to win this protest. And this was probably the only protest I've been through without an attorney, but I did it all by myself and got this.

And it was a $20,000,000 contract at Davis-Monthan Air Force Base and it was unbelievable. And I was scared to death and this contracting officer, Imogene Britz—I basically told her who I was, and I told her, Imogene, I belong here. And I may not know exactly what I'm doing but if you'll help me, I'll be the best contractor you've ever had. And a couple of years later, she nominated us for small business contractor of—you know, small business contractor of the year, nationwide. We didn't get it. But she and I and Cindy had an opportunity to go to Washington, D.C., but she told me she had never nominated somebody before.

But I think the success that I've had is just—I've had to go to Dottie. I've known Dottie for a long time. I've had to go to her people and I've had to, you know, ask for help. I've had to—if it wasn't for my government counterparts—contracting officers and tell them, you know, I'm afraid, I'm scared, I'm—hey, I've got an issue that I need help on. There has just been—everybody has been willing to help me and I think there's so many folks like that on the government side that—individuals like me that are afraid to start, it can happen, you know. It can happen.

And when we graduated from the 8(a) Program in 2007, again, I'm scared. You know, what are we going to do? I've put a lot of the eggs in that basket.

Well, fortunately, there has been small business set-asides that are small business. They may not necessarily be 8(a), but they're for small business entities. So we have been able to stay afloat, if you will, in the small business sector and we've grown enough that we've done some good projects for larger private companies like Halliburton. But, I'm conservative and so I try to stay, you know, within a realm of what we can definitely take care of and manage well.

My mentors have always told me, you can have too much, and that would be worst than not having enough.

So, at the moment we're struggling—the crystal ball is, I can't get the government off high center on some—you know, getting through some designs or there's some issues, but I know it'll come. And I'm just glad to participate and that's why I feel my destiny is to give back to someone that I met that I can probably help and guide, direct, mentor, and give them a start. Thank you.

The prepared statement of Mr. Narcomey follows:]

PREPARED STATEMENT OF FRANK NARCOMEY, PRESIDENT, SOUTHWIND CONSTRUCTION SERVICES, LLC

Southwind Construction Company, Inc.—an SBA Section 8(a) Success Story

This is the story of how the Small Business Administration and the 8(a) program changed my life and allowed me to change the lives of others.

Early Years

My father, "Redman", was full blood and a Golden Gloves boxer. My white mother was the daughter of a strict Methodist preacher. Born premature at Pawnee Indian Hospital, I began life in 1957 as the first born of two 19 year old "kids" from completely different backgrounds. One perhaps, soothing the effects of the "Trail of Tears" with alcohol and the other, preaching the "word" while quietly condemning

the marriage to an "Indian". Alcohol and its complete obliteration of anything worthwhile eventually ended the marriage. When I was 13 years old, my father pronounced me "man of the house" and gave me the authority and responsibility of taking care of my mother and two younger brothers. This would later cause me enormous emotional problems.

Hard Times

We never had any money to start with and that certainly was the case after the divorce. As the oldest of three boys ("and man of the house"), I helped my mother make ends meet by doing odd jobs after school and on weekends. I felt shame in having to survive on food stamps and hide from my friends that I was the janitor at the local theater hangout. Although I was unaware of it at the time, being both an adolescent and surrogate "man of the house" created emotional conflict. Anger, knocking holes in walls, and fighting became my primary means of dealing with these emotions and in particular, when it came to my mother and brothers. Fortunately, sports and compassionate coaches helped motivate me from straying too far off course. I graduated from Edmond Memorial High School in 1975.

Hope For A Better Life

My hope was that a college education would provide me the means of getting out of poverty. The downside: no money, no car. The upside: I could qualify for a low income BEOG grant, BIA grant, and low interest student loan; I could work part-time and of course "bum" a ride for a while. Since I had become quite "technically" proficient in repairing holes in drywall, it's not surprising that I chose to pursue a degree in Construction Management. With the "Seminole" will to survive, I never lost sight of my hope and eventually graduated from Oklahoma State University in 1980 with a Bachelor of Science in Engineering Technology, Construction Management degree.

Starting A Career

Upon graduation I began work with a large construction firm, J.W. Bateson Company in Dallas, Texas. I worked in the Dallas estimating department for about a year and a half and was subsequently assigned to the OKC VA Hospital project, a $33 million three year project in Oklahoma City. After completion of the VA project, I decided to stay in Oklahoma and found work with a small construction firm, Timberlake Construction Company, in Oklahoma City, Oklahoma.

Alcoholism

Obvious (to others anyway) signs of a drinking problem were meshed throughout my college days and early working career. Blackouts were common. I thought first-hand knowledge of seeing Redman drink himself to death would surely be enough to save me from this insidious disease. I was wrong. Without my knowledge or consent, somewhere along the way I had succumbed to alcoholism . . . terror, bewilderment, frustration, despair. With the help of a mentor and the Power of a "Spirit of the Universe", my journey of sobriety and the unravelling of deep emotional wounds began in August of 1987. Sobriety brought healing and courage. With courage, the faint idea of starting a business would eventually became a reality.

Southwind Construction Company, Inc.

As its sole owner and shareholder, I incorporated Southwind in October of 1991. Still employed with Timberlake, I made a bedroom of our small house into an office and worked late nights, early mornings, and weekends reading the SBA's regulations concerning SDB (Small and Disadvantaged Business) programs, making contacts, etc. "Good ideas" can only go so far. Without capital or experience, most of my efforts were dead ends. Eventually however, I did find the right people willing to help and, with the help of the SBA, formulated a Joint Venture to provide the capital, bonding and experience necessary to complement my management abilities. The Joint Venture successfully completed several multi-year IDIQ JOC and SABER type contracts, which provided Southwind the foundation it needed to take the next step—the SBA's Section 8(a) program.

The 8(A) Program

I believe Southwind to be the perfect candidate for which the 8(a) program was designed. Definitely a "disadvantaged individual" (half-breed, alcoholic) with a potential for success . . . but lacking the resources and contracts necessary to foster growth. Southwind entered the program in May 1997 and graduated in May 2006. During this time period, Southwind's annual revenues increased from an average of $2.5 million a year to a sustained average of $25 million a year. Our employee numbers went from five to thirty five. The 8(a) program fostered not only business

growth but my own personal growth as well. I learned from my SBA and Government counterparts that success isn't necessarily measured by revenues; but rather accountability, honesty, integrity, mutual respect and performance of the work. I'm forever grateful to have participated in SBA's 8(a) Business Development Program. It allowed me opportunities I never dreamed possible.

Southwind Construction Services, LLC.

Prior to graduating the 8(a) program, my SBA and Government counterparts, as well as fellow business associates, encouraged me to create a "continuation" plan. Obviously, without the 8(a) program, we would now be in a competitive market environment on a full-time basis. And from a personal standpoint, 15 years as the sole owner and decision maker was starting to wear on me. These and other factors led to the creation of Southwind Construction Services, LLC in May of 2007. As Managing Member and majority owner of Southwind Construction Services LLC, I was able to: utilize past performance experience; reward two key employees an ownership stake for their dedication and loyalty; and provide better management oversight and decisionmaking. Last but not least, it has allowed me the opportunity to give back to the 8(a) program by working with struggling or up and coming 8(a) firms that might need a helping hand. To date, Southwind Construction Services maintains annual revenues of $25 million, employs thirty five people, and has helped a number of both individual and tribally owned 8(a) companies develop their businesses.

Senator LANKFORD. Okay. Thanks, Mr. Narcomey.

Mr. Ruttman.

STATEMENT OF DENNIS RUTTMAN, CEO/SUPERINTENDENT, CADDO KIOWA TECHNOLOGY CENTER

Mr. RUTTMAN. Thank you, Senator. Glad to be here today.

In a sense, I represent 29 technology centers here in Oklahoma, because what we do, we do statewide. Our district represents 1,954 square miles of Southwest Oklahoma. It was founded in 1968 and the goal then was the same goal we have now, to help our students in our area of the state prosper.

About three years ago, my Board one night gave us permission to start an economic development regional partnership and Mr. Southard will certainly address that a lot more for us. At the time, the question was why are we doing that?

Well, first off, we have partners and Clark will talk about those as well. But the fact is you kind of have to take charge of your own destiny once in a while and I have a totally self-serving motivation. If we grow our economy in Southwest Oklahoma that means my school's budget grows. Well, we like that. It helps us do more things and provide more services. The fact of the matter is our economy is doing better all the time. We're very pleased with a lot of things that go on, but we have to have good quality jobs.

And along time ago, companies used to decide where they were going to build a facility at and people would move to go to that facility. Workforce has become such a huge issue for companies now, that they move where the workforce is. We feel like Caddo County, in this region, we have some really, really good students that our ascending schools have trained and send us. They send us very educated kids. And companies look at that, what do you have for a workforce? What's actually available?

If you live in Western Oklahoma, at least until the last six months, workforce is a pretty big deal. They had trouble hiring people and the money just kept going up. So, we continue to look at ways to create more jobs.

I'm going to real quickly run through some of the services we provide. And I know this is in the record but I think it's important to understand that along with economic development, we have a business development center. Shaun Frye (phonetic) is here, she heads that up for us. And we help people do a lot of things. There's an incubator in there. We actually have three tribal-owned businesses in there right now. We also house the regional economic development partnership in there as well.

Business incubator sounds like a pretty silly way of—my grandkids have asked me, well, what are they hatching there? Well, we're hatching businesses. Folks have a dream, they have an idea. They sometimes don't have a lot of capital. They don't have a lot of expertise. We help them grow that business. We have a person that helps them write their business plans. We help them with marketing. We help them with their bookkeeping, everything they need to grow that company. And are all of them successful? No. Nationally, you guys know the rate is horrible for first, second, or third year business failures. Ours do a little better than that, so we're pretty proud of that.

We do everything from customize training. In fact, Unami, one of those companies, when they got ready to start up, they had to have not only safety training but training in how to operate very specific equipment for the product they make. We geared up and did that in a very short time. We helped them with a job fair. Our staff have done a lot of things.

And I guess the other thing I would say is we prepare students to—not only that are college bound through our pre-engineering and bio-med programs—in fact, we have a proud grandfather sitting back there of one of our pre-engineering students. They do great, but we also prepare them for the workforce. That means job interviews, resume writing, soft skills about workplace etiquette, all those things that they really need to be successful. Along with that, we add about 400 CDL drivers—truck drivers to the workforce every year down here, at an average of $35,000 to $70,000 a piece, you can do the math, for about a three week investment of time, we're adding a lot of people.

So, I'll kind of finish off by saying this, we have, gosh, about 86 percent of the students that start with us, complete. They graduate. And 89 percent of those move straight into jobs that we've helped them get or we've trained them to get. The only disconnect I see is that sometimes we send them out of there with a good job and a lot of things to do, but, frankly, sometimes they don't have the support on the other end—when they get home, when they go back to the community—to stay engaged. And we get—we help them get that job and they are gung-ho, but the week spot is sometimes we kind of let them fall off the face of the earth after they go out the door. I guess that's where I'd say I would love to see a way to have some more interaction between tribes and us. And we do have a lot of interaction with tribes right now, but maybe a way to develop that support network further. So, I'll quit there.

The prepared statement of Mr. Ruttman follows:]

PREPARED STATEMENT OF DENNIS RUTTMAN, CEO/SUPERINTENDENT, CADDO KIOWA TECHNOLOGY CENTER

Honorable Senator Lankford,

I am honored to have the opportunity to address the United States Senate Indian Affairs Committee in this field hearing session today. I am a native Oklahoman and have lived here nearly my entire life.

Experience and Credentials

I currently serve as Superintendent/CEO of Caddo Kiowa Technology Center (CKTC) in Fort Cobb, Oklahoma. CKTC was the second of 29 Vocational schools created in Oklahoma. Our district encompasses 1954 square miles here in Southwest Oklahoma and we partner with 13 sending schools within our district one of those being Riverside Indian School in Anadarko. We also work directly with 13 tribes in our area. I serve on the Washita Valley Regional Partnership board and am a past trustee of the Ponca City Development Authority board. I have led several groups over the course of my career and am a graduate of the University of Oklahoma Economic Development Institute.

Education and Workforce Development Observations

CKTC and our partner schools all strive to help our students find a path to a better life. Many of our students have difficult situations they must work around in order to find that path. Three years ago our board made the decision to help us start a regional Economic Development Partnership which Mr. Southard will address. The rationale for that was to try and create quality jobs for the great, skilled students we help produce. We are well on our way to helping that dream become reality.

At CKTC our fulltime students have training opportunities in the following areas:

Construction Technology
Heating, Ventilation and Air Conditioning
Digital Imaging and Printing Technology
Business Management and Administration
Business Financial Management
Health Careers
Licensed Practical Nursing (Adult Students Only)
Occupational Therapy Assistant (Adult Students Only)
Physical Therapist Assistant (Adult Students Only)
Culinary Arts
Early Care and Education
Cosmetology
Web and Digital Communications
Welding
Pre-Engineering (High School Students Only)
Biomedical Sciences (High School Students Only)
Collision Repair
Automotive Service Technology
Diesel Service Technology

Our Business and Industry Services division provides a number of services to our taxpayers as well.

Volunteer Firefighter Training—Volunteer Firefighter Training has been available at no cost because of a grant made available thru the Oklahoma Legislature. CKTC has 14 Volunteer Fire Departments within its district.

Healthcare Training—The health care industry is in desperate need of a qualified workforce with specifically aimed skills at enhancing and increasing the retention for workers in nursing homes and skilled nursing facilities. In the area of CNA, CMA, LPN and Home Health. CKTC has trained professionals in these areas with short term training and full time training.

Short Term Adult and Career Development Training—CKTC brings professional instructors and speakers to their businesses as well as sending employees to the campus. Some of the topic areas include specific items such as time management, professional etiquette training to specific industry training. Cooking classes have been customized for students of the Riverside Indian School, Computer training, basic website classes and photography are available and again, this type of training is not limited to the borders of the campus but can be taught in the district.

Safety Training—is requested by many Business and Industry clients to stay OSHA compliant. Safety topic training areas include but not limited to consist of basic safety, fork lift safety and operation, Fire safety, lock out tag out, OSHA train-

ing and CPR. Many of our tribes utilize this service because of the child care facilities they run.

Business and Entrepreneurial Services and Caddo Kiowa Business Development Center—BES offers confidential counseling and one on one assistance to businesses within the district. The assistance consists but is not limited to helping with business plan development, funding sources, income tax, marketing, cash flow analysis and business sales projections.

Oklahoma Bid Assistance Network (OBAN)—provides marketing and technical assistance to Oklahoma businesses interested in selling products and services to federal, state, local and tribal governments. CKTC is privileged to house on campus one OBAN coordinator which has helped numerous businesses and Native American Tribes within the district with government contracts. Specific tribes include the Delaware Nation and the Wichita Tribe of Oklahoma.

Truck Driver Training—Truck Driver Training is offered on the campus of CKTC. This short term program area is designed to train individuals to become professional truck drivers. Within this program area is the *bus driver training program* that has been beneficial to many of our partner schools including Riverside Indian School located in Anadarko Oklahoma.

Business Incubator—Caddo Kiowa Business Development Center (CKBDC) is the perfect opportunity for small multi use companies. The CKBDC Business Incubator gives entrepreneurs and start up business owners the skills and guidance they need to succeed. Some of the benefits to being a tenant in the business incubator include graduated rent, one on one coaching, access to funding sources and business and technical support services from the entire BIS staff. Currently the CKBDC Business Incubator houses four businesses or entities. The Delaware Nation Economic Development Authority, Unami Lighting Company, Create IT, and Washita Valley Regional Partnership. Three of the four business are Native American owned and operated.

Customized training—When a company is need of upgrading its workforce Caddo Kiowa Technology Center is where they turn. The technology center is capable of providing training with a short turnaround time. Many industries require specialized training that is specific to their industry and career tech is able to provide it. Flexibility is the key to meeting the needs of the client. Caddo Kiowa Technology Center has employees on staff that can do safety analysis of a business and recommend a solution to safety problems with specialized training. CKTC also offers pre-employment training for existing companies or companies moving into the area.

Job Fairs—CKTC provides job fair services to expanding and new companies needing to fill the workforce requirement. CKTC helps potential employees with resume' development, interview skills and general employability skills.

Ag Business Management—We provide expertise in best farming practices as well as the financial side of the agriculture industry.

As you can see we try to help people and companies to be successful in Southwest Oklahoma.

Observations and Recommendations

We are extremely proud of our students. That said, sometimes when students complete their studies here at CKTC they return to the same environment they left. 86 percent of our students complete their training at CKTC and 89 percent of those get jobs in the area they trained for. I believe that with stronger support after they leave us we can continue to help reverse the trend of not feeling the need to work. One recommendation would be to establish Placement/Job Retention Coordinators at the tribal level. People which could work directly with us, our students and businesses, perhaps even office at our facility to work with our tribal students and businesses in the area. It's a small step which could have a big impact. The other recommendation I would have is to work to get more push from the tribal side to encourage their members to get an education and a job so they can continue to build on the image of being a highly sought after workforce.

The definition of insanity is doing the same thing and expecting different results. We are changing the way we do things here at CKTC. Education is alive and well here in Southwest Oklahoma. I believe we are headed in the right direction and am excited to see what the future brings.

Attachment

Workforce and Education Information

Caddo County Demographics:

- District Population 34,214 according to 2010 Census

- Caddo County ranks among the poorest counties in Oklahoma (Kids Count Fact Book)
  —21 percent Poverty Rate (Office of Educational & Accountability Profiles 2013)
  —Average Household Income $48,346
- Caddo County unemployment rate is 9.9 percent of reported unemployment (Office of Educational & Accountability Profiles 2013)
- 32.4 percent Single parent families (Office of Educational & Accountability Profiles 2013)
- 13.5 percent College Graduates in county (Office of Educational & Accountability Profiles 2013)
- 72 percent Free or Reduced Lunch (Office of Educational & Accountability Profiles 2013)
- High School Graduates going to college 40.1 percent (Office of Educational & Accountability Profiles 2013)
- Public College Remediation Rate for Caddo County 43.5 percent (Office of Educational & Accountability Profiles 2013)
- High School Participation Rate in Career Tech Program (Tech Center & High School) 51.6 percent (Office of Educational & Accountability Profiles 2013)
- Caddo County dropout rate 15%
- Caddo County End of Instruction (EOI) Performance 65%
- 83 percent of full-time students received grant or scholarship from the federal or state government
  —Average amount of grant or scholarship aid from federal or state government was $2,903
- Caddo Kiowa Technology Center District Demographics
  —Caucasian 38%
  —African American 4%
  —American Indian 34%
  —Two or more races 22%
  —Female Students 57%
  —Economically Disadvantaged Full Time Secondary Students 26.6%
- Caddo Kiowa Technology Center Success Measures (Oklahoma Department of Career Tech Follow Up Data)
  —Retention & Completion 86%
  —Related Placement 89%
  —Career Readiness Certifications 97%
  —National & State Certification/Licensure 36%

Tribal Involvement:

- CKTC served 13 different tribes in 2014/2015 school year
- CKTC involves local tribes in Business Education Councils & in Job Interview Events on campus
- Bureau of Indian Affairs
  —Resource for Tuition & Books to CKTC for Tribal Members
  —Educational Stipend to Tribal Members for attending school
- Bureau of Indian Education
  —Pay for Books & Tuition or any balances not paid by other assistance
- Early Care & Education
  —Agreement with CKTC Early Care program to provide Head Start Services to 3 & 4 year old children enrolled in the program
    *The Kiowa Tribe pays for one full time employee with benefits
  —Tribal Block grant to pay for child care attendance charges

Senator LANKFORD. Okay. Thank you.

Ms. Overal.

STATEMENT OF DOTTIE OVERAL, DISTRICT DIRECTOR, OKLAHOMA DISTRICT OFFICE, U.S. SMALL BUSINESS ADMINISTRATION

Ms. OVERAL. Thank you. Good afternoon, Senator. Thank you for this opportunity and I bring you greetings from our administrator, Maria Contreras-Sweet and she sends her regards.

SBA's mission is to strengthen the nation's economy by establishing the vitality of small businesses in our country.

Underpinning all of our efforts is the notion of "inclusive entrepreneurship". That means making our programs available to all people, regardless of age, race, gender, or geographic location.

My testimony today will focus on the work, in the Oklahoma Native American community through our—with our 7(a) Lending Program, our 8(a) Business Development Program, and the HubZone Program.

The 7(a) Lending Program is the SBA's primary lending program. And as Sean so very eloquently expressed, these loans do not come directly from the SBA. They're made by a local lender and the SBA guarantees them. This allows the bank to take a greater risk and in most cases, provide a longer payback period for the small business owner. Over the past five years, SBA guaranteed over $68.8 million in loans to Oklahoma Native Americans, like Sherrie Schatz of Schatz Publishing in Blackwell, Oklahoma; and Carolyn Bahner, owner of Expanded Solutions in Oklahoma City.

The 8(a) Business Development Program is a nine-year program, established to assist eligible socially and economically disadvantaged individuals to develop and grow their businesses. Like Frank shared with you today; and like Al Alfaro, of He and I Construction in Lawton, Oklahoma; these firms were able to access government contracts. Currently, the SBA Oklahoma portfolio of 8(a) firms, there are 75 of them; 35 are tribally-owned firms and 25 are Native American-owned firms. So, a good portion of our portfolio goes to the Native community.

On another note, two-thirds of our state is now a designated HubZone. When I first arrived in Oklahoma, SBA did not recognize Indian lands as being eligible for the HubZone Program. So we fought very hard to get that designation and I'm happy to say it's been very successful. Right now, I'm working with the Oklahoma Bid Assistance Centers and the SBA Office of HubZones to create a pilot program where we'll be able to provide hands-on training to individuals who want to get into the HubZone Program. Because sometimes the online application is daunting to people. So this is an effort we're working on and hopefully we're going to roll that out, probably by August the 1st this year. We're very excited about that.

As you're aware, the Choctaw Nation received a Promise Zone designation for the 11 counties in Southeastern Oklahoma. And right now, we have two major events for the Promise Zone. One will be a Native focused 8(a) application training in McAlester, and the second will be a lender matchmaking event in Durant, where we bring lenders to the businesses. So an individual can sign up to participate in this event and meet five or six lenders in one morning and give a small pitch to them and then hopefully, one of the lenders will be interested in making them a loan. We'll also have individuals there who can provide some guidance, either before the event or after, to help them with that business plan.

Our Office of Native American Affairs is led by Chris James and he's been in that position since 2011. And for most of the people in the audience, Chris is no stranger to Oklahoma. He's been here many times. And one of the things we have coming up, in which Oklahoma will be a part of, is something called hack-a-thon. And it's a program to teach tribal youth how to employee the kinds of

business problem-solving skills that are used in places like the Silicon Valley. We're very excited about that coming to Oklahoma.

Another area that I'd like to share with you is our LINC Program, which stands for Linking Information and Networks to Access Capital. In this program, an individual can go into the Internet and post some information about what they're looking for. And all of the lenders who are signed up for this program will receive this information and they can contact the individual, but we piloted that program in the American Indian and Native American entrepreneurial groups. So that was the test market for this program. We thought it would be very successful and we just unrolled that. And I don't know, Sean, if you're participating in that, but we'll see how it works.

The Office of Innovation is currently working to recruit a small business investment company, a venture capital fund to fund businesses in Indian Country. So, I'll keep you posted on that, we don't know how that's going to go but it sounds very promising.

We at SBA are very committed to innovations that will allow us to serve and to assist the Native American business owners in Oklahoma and across America. And we thank you for the opportunity to provide this testimony and I welcome your comments and questions.

The prepared statement of Ms. Overal follows:]

PREPARED STATEMENT OF DOTTIE OVERAL, DISTRICT DIRECTOR, OKLAHOMA DISTRICT OFFICE, U.S. SMALL BUSINESS ADMINISTRATION

Good morning Senator Lankford. SBA Administrator Contreras-Sweet sends her regards and regrets that she could not attend today's hearing.

I am Dottie Overal, and I serve as District Director of the U.S. Small Business Administration's Oklahoma District Office.

As you know, SBA's mission is to strengthen the nation's economy by enabling the establishment and vitality of small businesses. Underpinning all of our efforts is the notion of "inclusive entrepreneurship." By this I mean that we work to ensure that SBA products and services are available to small business owners regardless of age, race, gender, geography or socio-economic status.

My testimony today will focus on our work in the Oklahoma Native American Community through our 7(a) lending, 8a business development, and HUBZone programs.

The 7a Loan program is the SBA's primary business loan program. These loans do not come directly from the Agency but rather from banks and other participant lenders. The SBA guaranty reduces the lender's risk. Over the past five years, SBA guaranteed over $68.8 million in loans to Oklahoma Native American firms like Sherrie Schatz of Schatz Publishing in Blackwell and Carolyn Bahner owner of Expanded Solutions in Oklahoma City.

The 8a Business Development program is a nine-year program established to assist eligible socially and economically disadvantages individuals to develop and grow their businesses. Like Al Alfaro of He and I Construction in Lawton, OK, a successful program graduate, these firms are considered small disadvantaged business concerns for the purpose of federal contracts. Currently the Oklahoma 8(a) portfolio of 75 firms consists of 35 tribally owned firms and 25 Native American owned firms. On another note, approximately ⅔ of our State is in a designated HubZone based on Indian Lands. This designation gives small businesses located in a HubZone access to federal set-aside contracts and sole source contracts, as well as a price evaluation preference. We are currently working with the Oklahoma Bid Assistance Centers, located throughout the State, to provide hands on assistance to firms wanting to get into this program.

As you are aware, Choctaw Nation has received a Promise Zone designation and SBA is currently working with tribal leadership to bring programs and focused training to the 11 county designated area. Over the next three months we hold a lender matchmaking event in Durant and a Native focused 8(a) application training in McAllister.

Our Office of Native American Affairs has been led by Chris James since 2011.

As part of the White House's Native American Generation Indigenous initiative, SBA will host a "hack-a-thon" event in California later this year with plans to extend to other regions including Oklahoma and surrounding areas. We're going to teach tribal youth how to employ the kinds of business problem-solving skills being used in places like Silicon Valley.

In addition to the hack-a-thon, the SBA held a roundtable event tailored specifically for young Native women entrepreneurs in Oklahoma this past March.

We have also issued LINC, which stands for Leveraging Information and Networks to Access Capital. LINC can expand borrowing options beyond your local bank. With LINC, a small business owner can go to sba.gov and fill out a simple online form in minutes. The form is then sent to lenders with a regional, statewide, or even national reach. Within 48 hours, the applicant is either contacted by a lender to meet or discuss their application. Or else, if no banks respond, SBA will direct the entrepreneur to a free local business adviser for loan consulting. We've rolled out LINC to our microlenders and nonprofit lenders already. American Indian and Alaskan Native entrepreneurs were the very first group we brought in to test this new technology prior to the rollout. That's because we think this online service will be especially beneficial to those who face geographic barriers in accessing capital.

Later this spring, we'll take an even bolder step toward modernization when we roll out SBA. One which is the total automation of our loan application. One of the prevailing criticisms of the SBA is that it's too cumbersome, time-consuming and expensive to apply for a loan with us. SBA One will mean the end of fax machines and paper forms in our application process. Instead relevant loan documents will auto-populate. The forms can then be filled out online using an intuitive interface—and then filed using digital signatures. It will substantially cut the time and cost of applying for SBA capital.

In terms of counseling, we're also going to be pioneering another innovation this year in Indian country. In 2015, we'll be bringing growth accelerators to reservations and tribal communities. Last year, the SBA funded 50 growth accelerators across the country. These are basically business incubators that help startups quickly launch, scale up and turn a profit. Accelerators provide a physical infrastructure where budding entrepreneurs can work and plan. They offer mentoring, networking, business-plan assistance, and possibly even access to investment capital. Our Office of Innovation is currently working to recruit an SBIC venture capital fund in Indian Country that would invest in the most promising, high-growth tribal businesses. Growth accelerators are usually found in big cities, but our idea was to export the Silicon Valley support structure to underserved communities. This year, the SBA will be funding our first growth accelerators in Native American communities nationwide. Competition winners will receive $50,000 to pay for things like rent, office equipment, wifi connections, or staff expenses. We think this can be a great new way to increase the numbers of successful startups in Native American communities.

We are committed to innovations that will allow us to serve and assist Native American-owned business in Oklahoma and across America.

Thank you for the opportunity to provide this testimony, and I welcome your comments and questions.

Senator LANKFORD. Thank you.

Colonel Southard.

STATEMENT OF CLARK SOUTHARD, LIEUTENANT COLONEL (U.S. ARMY, RET.); EXECUTIVE DIRECTOR, WASHITA VALLEY REGIONAL PARTNERSHIP; CHAIRMAN, OKLAHOMA SOUTHWEST ALLIANCE; AND VICE CHAIRMAN, DELAWARE NATION ECONOMIC DEVELOPMENT AUTHORITY

Mr. SOUTHARD. Senator Lankford, esteemed colleagues, and ladies and gentlemen, thank you for the opportunity to come here today to talk about economic development. As a economic developer, this is heaven, believe it or not. We get to talk about things that are important to what I do for a living and what we'd like to see in terms of prosperity in Oklahoma, specifically, since—I'll also be a little selfish here and Senator, I think you'll back me on that one. We'd like to see our state grow and needless to say, I'm based

out of Southwest Oklahoma and this is my territory, also as a Native Oklahoman and a Native American as well.

And what I did—we have a testimony requirement to put it on paper and it was out in the hall and I listed a bunch of definitions. And I'm not going to sit here and bore everyone with definitions on what defines economic success and things of that nature, but I've got a couple of one-liners I like to use. But they are in the testimony for the record, because there is a requirement to have an understanding of what we're talking about when we talk economic prosperity in Indian Country as a whole.

Economic success, by itself is a term, is essentially financial independence and you can take that in the business world, you can take that in the family world. If you are financially independent, you're now having economic success.

Economic development is the production of wealth and/or the growth of ones income inside of a business family organization region. And there are six principle functions or pieces to economic development as a model. And you really can't escape those in any way, shape, or form. The baseline piece of economic development is always going to be leadership development, workforce development, and community capacity and development. Those three things you can define as what makes the engine turn. Those are the operating pieces at the baseline you have to have in order to do anything; any kind of business, any kind of growth. You have to have those things in place.

An example with community capacity development, if you don't have a building to have your business in, you're behind the power curve if you want to have a business there.

Workforce is self-explanatory. Had a great opportunity just earlier today to meet with the Secretary of the Interior. One of their focuses was on youth in our area—the disadvantaged youth, specifically. And that is something, we, especially in Caddo County need to focus on very hard, is getting our kids trained and ready.

And we heard from Superintendent Hackney (phonetic), a wonderful presentation on how we struggle in rural Oklahoma to get that done. It seems like everybody is piling on, but we produce fine young Americans, there's no doubt about it. It's always in the economic development world, urban versus rural. Rural, we're always behind because we don't have the numbers of people. We don't have the resources at hand, so we struggle a little harder, but by golly, we can do it. That's the way I see it.

And then you have the production tier in economic development and that is entrepreneurial development, which the SBA and banks help start up. And we're doing that in a business incubator at Caddo/Kiowa Technology Center, where you start businesses or you grow them, as some folks talk about germinating businesses or seed planting.

The other is business retention and expansion, 85 percent of growth, economically, comes from businesses that are already in place. This is not something that I made up; this is the standard statistic you'll read, 85 percent. So you want to keep your businesses at home and if you have a business here, you want to help them grow if they want to grow. Because that's where your primary production is going to be. Then the top pinnacle item in eco-

nomic development is business and industry recruitment. And quite honestly, in Caddo County, we're not going to lure Mercedes-Benz to put up a car factory at this side of town. It's just not going to happen here in Anadarko. But you might be surprised what we can lure in.

But you have to have those other elements in place before you can go there. You have to walk before you can run. It's real straightforward and real simple. And do to the constraints on time, because I could do this all day long—again, this is my cup of tea—I've just gone straight to some recommendations, it's in my testimony. And these are Clark Southard recommendations. And clearly, when you're working with sovereign nations, they will make up their own minds as to how they proceed. But I look at it—and in fact, the statistic is, there's 566 federally recognized tribes in the United States. There's 39 in Oklahoma; there's 9 in Caddo County. And so, when you look at the different kinds of tribal structures the sovereign nations have, it makes it very complex to work with. And when you're sitting in an office like ours, where you're dealing with a regional concept of pulling everybody together, that is enormously difficult. I'll just tell you, it's hard to do. But there are certain things that I've observed through my time in this business, that are just general models. And I'm going to throw them out there for discussion if you'd like—or my opinion.

When you look at tribal businesses, for them to be successful, if it is a sovereign nation's business, you have to create in the tribal structure an economic development arm that is separate from the tribal political structure. And I'll use the example of the United States government.

Senator, no harm here. This is just the way it works.

Business is better in the lane of business. Government does a great job running government. And so you really can't expect the government to run businesses successfully, that needs to be in the hands of business.

Same thing for sovereign nations. Your tribal structure, political and elected officials, that's a great structure. It has to be there for its needs and purposes, but you need to have an isolated arm within your tribal structure for economic development, so that it is sheltered from political change and whim. Because that's the thing that you see fail first in businesses in Indian Country. There are some tribes that have done that successfully; there are many more that have not. That's observation number one. So the recommendation is create that buffer. And this one, of course, as—as a Comanche, we have—our family had an original land allotment and I know how trust land works and sovereign land works, et cetera. But trust land by itself is a dual-edge sword. That land is there to essentially avoid taxes, from a business perspective only. Of course, there's sovereign nation things and stuff that is important to tribes. But tax avoidance creates another business dilemma when you're trying to lure in other businesses or banks.

As an example, if you go to Montana or you go out to Arizona, where you have the large reservations, you don't see a lot of institutionalized corporation businesses inside of those reservation properties, because they have no legal recourse there. They cannot go to court and fight for themselves as a business; and the same

thing holds true in land that's put into trust that wasn't in trust. It was fee simple land before in this area. If you put land into trust, you're going to have a hard time getting loans from banks and luring businesses in to actually do things, because the game has changed. They're no longer—the businesses or the commercial side is no longer able to take things to court. If you have it as fee simple land, that's—everybody—just like business happens in the rest of the world, so it's a fair playing field or battlefield.

Another piece that's out there about start-up businesses—and this is one that I just—I'm always running into.

The first rule of business is to have a business plan that is solid. If you don't have a business plan in place, you're destined to fail. If you start your business without a business plan, you've gone about it the wrong way.

The second thing is to have your financials in order. And if you're—again, sometimes when you work with tribal entities, those financials are muddled up with tribal monies. Again, you go back to the lender, the lender is very confused about what you're doing, where the money sits, who's responsible for it. So they want to have that separation in place. So, business plan, financials.

And then the third item that's always there, if you're going to have something that requires a workforce, you need to make sure you have a streamline for that workforce to come to your place of business to conduct work. If you don't have that workforce in place—again, that's why Mercedes is not coming here to build cars, because we don't have any engineers here. But those three things have to be in place.

And then just a piece of advice—and this goes just across the board—whenever you're starting business or you're trying to expand your business, you want to capitalize on all the resources that are made available to you. My colleagues here—you're hitting it out of the ball park. If we could all sit down and help any one single business, I think we'd do a great job, because there's a lot of resources here. But it's amazing, sometimes folks just don't ask and so, you have to have that in place.

And then, the final bullet on that one is if you don't have those things in place, don't try to start a business. You're just going to lose money. It'll be an outward flow of cash.

And here's the one that's going to be most contentious, especially in the area of Southwest Oklahoma. When you look at the model in the state of Oklahoma, the 39 tribes, the ones that have done away with blood quantum for membership have had enormous membership growth, it's just a dynamic. Those are also those tribes that are most successful from a business model. If you're still doing blood quantum, technically, over time, you'll be anthropologically extinct over a period of 500 to 1,000 years, so you have to consider that. You have to consider that in the way your tribe is going to grow. You can still have cultural things in place, there's never been a problem with that. But that's one of the hurdles that I see—the successful tribes have done away with that.

And the other is, in the world of gaming. Gaming is speculative business. It does provide money and revenues for tribes and you certainly don't want to push that away. It's an available cash cow, if you will. However, it is not true economic development, because

it's based on speculation. People can stop gambling anytime they want. Whereas, if you make a product, you're hopeful that the demand that will be there, so people will come. But when you do have gaming, the distribution of those earnings and per cap distributions—the tribes that are successful don't do that. The tribes that have difficulties are still giving that out. Those monies are better off served to create workforce development opportunities, such as scholarships for education, building health care facilities to better serve tribal members. That way it still comes to the tribe and individuals can tap into that once they've reached a element of success themselves. And so, what I wanted to do there with my recommendation was to get them out front, because those will be the ones that I want to have come back at you. Because I realize that there's a lot of different opinions on that and mine are based on the mechanics of economic development, not personal opinion, more than anything else. That's just—this is the way the rules lie on the table. If you want to see success, you'll see those models are going in that fashion.

So, I'll stop there, Senator. Thank you for the opportunity.

The prepared statement of Mr. Southard follows:]

PREPARED STATEMENT OF CLARK SOUTHARD, LIEUTENANT COLONEL (U.S. ARMY, RET.); EXECUTIVE DIRECTOR, WASHITA VALLEY REGIONAL PARTNERSHIP; CHAIRMAN, OKLAHOMA SOUTHWEST ALLIANCE; AND VICE CHAIRMAN, DELAWARE NATION ECONOMIC DEVELOPMENT AUTHORITY

Honorable Senator Lankford,

Sir, I am honored to have the opportunity to address the United States Senate Indian Affairs Committee in this field hearing session today. I am a native Oklahoman, as well as a Native American; being both Comanche and Choctaw.

Experience and Credentials

I currently serve in the capacity as the Executive Director of the Washita Valley Regional Partnership (WVRP), which is a private/public economic development organization covering the rural area in and around Caddo County, Oklahoma. WVRP's partners are: The City of Anadarko, Caddo County Industrial Authority, Caddo Kiowa Technology Center, Caddo Electric Cooperative, Western Farmers Electric Cooperative and Public Services of Oklahoma.

I also serve, having been elected by my peers and colleagues, as the Chairman of the Oklahoma Southwest Alliance, which is a twenty county economic development consortium covering the twenty counties west of I–35 and south of I–40 in Southwest Oklahoma. We are primarily comprised of economic development professionals, mayors, city managers and other partners interested in the economic growth and prosperity of the southwest quadrant of our state.

I am a member of the Comanche Nation and am a Choctaw descendant as well. I am a graduate of the University of Oklahoma's Economic Development Institute. A member of the Oklahoma Economic Development Council, the International Economic Development Council, the Oklahoma Southwest Alliance and the Southwest Oklahoma Impact Coalition's Front Line Team. I am further honored to be the first non-Delaware to serve on the Delaware Nation's Economic Development Authority. I hold both undergraduate and post-graduate degrees and served proudly in the United States Army for twenty-nine years both in peacetime and in combat.

Accordingly, I feel well qualified to address issues regarding the economic development environs within which our proud Native American nations lie not only here in Southwest Oklahoma, but in Oklahoma and the United States as well.

Definitions

Economic Success. Defining economic success is vastly different than saying we have some tribal businesses that are still open. Native American "self-determination" is often heralded as a key ingredient in an over-arching belief that this leads towards either tribal or individual financial independence. Needless to say, tribal and individual definitions are also, vastly different. Economic success varies from a macro to the micro perspective as much as financial independence varies from

tribal to individual. A basic understanding of these precepts is important, if one is to assign a value to the claim of economic success. Accordingly, I will present both a tribal and individual level set of standards for testimonial purposes.

Tribal (Sovereign Nation) Economic Success would exist when a tribe is functioning a level beyond simple sustainment in its ability to provide for its people.

Tribal Financial Independence would exist when a tribe is functioning at a level that displays true competitiveness in a global economy and excels in its ability to provide for its people without outside (read Federal Government) funding.

Individual tribal member and/or business success does not have the requirement to provide for a people. This micro level is qualified as providing for oneself, one's family or one's business.

Individual tribal member and/or business financial independence results when there is no longer a requirement for any sort of financial assistance from the government. Financial independence is displayed when an individual earns their income solely on salary, profit or investment. The business model would display success when it is earning its income on a business profit and loss statement in an open market without tribal and/or federal monetary assistance.

Economic Development. Economic Development is the process of creating wealth through the mobilization of human, financial, capital, physical and natural resources to generate marketable goods and services. This academic definition for economic development generally applies to entities beyond the individual or individual business. In this testimony, we are referring largely to tribes or sovereign nations. However, as is the case with the federal government, tribal governments are not equipped with the skill sets to create wealth with the legislative bodies. Federal and tribal governments, that are successful models, have established internal agencies that help guide the environment to provide for a situation where wealth creation can occur. In the proper environment, in our nation, the open market, business people will either win or lose in the world of business. The open market is driven by supply and demand of goods and services.

Six principles of economic development. There are six key components of economic development that are widely accepted in the economic development community. These principle components must all be in place for there to be true economic growth and wealth creation. These principles are: Workforce Development, Leadership Development, Community Capacity Development, Business Retention and Expansion, Entrepreneurial Development and Business and Industry Recruitment. The baseline requirements for economic development are the first three; workforce, leadership and community capacity development. Without those three in place, the business development components are meaningless. The primary production tiers are business retention and expansion (which accounts for 85 percent of all business growth and development in the United States) and entrepreneurial development. The final tier, business and industry recruitment is the pinnacle of economic development. It only happens when all of the other five elements are in place and working well.

Observations and Recommendations

I. Personal observations are replete with exceptions, contrary examples and false perceptions. I do not discount that; however, my experience and observations come with the aforementioned credentials and professional acumen in the area of economic development. In the world of business, there are winners and losers. Government policies can alter the environment and amend competition to favor disadvantaged demographics; however, in the open market there will still be winners and losers.

Tribal Sovereign Nations create separate governmental constitutions and tribal structures for prosecution of the will of their inherent population. There are 39 federally recognized tribes within the State of Oklahoma, each with its own individual constitution and structure. There are 9 federally recognized tribes within Caddo County, Oklahoma and they are the Comanche, Kiowa, Apache, Wichita, Caddo, Delaware, Fort Sill Apache and the Cheyenne-Arapaho. Several of these regional tribes have suffered nearly complete collapse in their governmental structure within the last five years. Several of these regional tribes have also suffered loss (bankruptcy) of their gaming institutions and its flow of speculative dollars. At least one, is now dealing with abject corruption in its former leadership and will continue to suffer the consequences of direct interference from tribal politics in its otherwise functional economic development arm. Sadly, this kind of failure, when related to the world of business is a red flag and accordingly, there is a reticence from the external business community to have anything to do with these or any Native American tribes.

Recommendation: For tribal businesses to function and compete successfully in a global market environment, a tribal structure must be in place that buffers tribal businesses from tribal politics.

II. The "Trust" and/or "Sovereign" land dilemma. "Trust" land is a two-edged sword. The advantages of "Trust" land for some Native American enterprises is that of tax avoidance. Solely owned Native American businesses, such as gaming institutions, use this to advantage. There are certainly unique examples of other businesses flourishing on "Trust" land. However, free market (non-Native) businesses largely will not invest in nor partner with businesses on "Trust" land. They perceive, and rightly so, that they will have no legal recourse nor actual ownership in a business that is not on "Fee Simple" real estate.

Recommendation: Move "Trust" and/or "Sovereign" land out of trust to attract free market investment and partnerships. Laws that govern business in the open market still apply and legal recourse is available to both parties involved.

III. There has been a regional tendency to create businesses without first doing the business basics. The standard metric for new business start-ups is a failure rate of nearly 80 percent both nationally and internationally. It is a tough prospect to take a business from ground zero to actually being clear of red ink and showing a profit. For the record, there is also a tendency for government programs to push start up ideas and grants on tribal entities that are not set up to run and manage a business. The idea sounds good or the money looks great, but the reality is that business basics are a must.

Recommendation: Follow business basic guidelines with start-up businesses.

1. First priority is always a solid Business Plan.
2. Second priority is always to know and have your financials in order.
3. Ensure your workforce is in place before starting or investing in a business.
4. Use all available resources for entrepreneurial and business start-up efforts.
5. Do all of the above or DO NOT start.

IV. Tribal Entities which have gained real market share in the world economy and have seen actual tribal and economic growth have made two specific changes to their internal membership structure. These changes have been the paradigm shift from economic stagnation to economic success on par with modern, competitive businesses nationally and internationally. The key features of these changes have been the ability to grow demographically, which equates to strength and resources and the ability to invest in workforce development. These positive changes are:

1. Membership eligibility has been changed from "Blood Quantum" to "Legacy/Decendancy". Those tribes that have remained blood quantum oriented have stagnated and/or declining growth. Anthropologically speaking, they will eventually become numerically extinct.

2. Per Cap distribution from gaming revenues to tribal membership was stopped and those funds were invested in education and workforce development programs for tribal workforce growth and in medical/health care facilities to improve healthcare and quality of life for their tribal members.

Recommendation: I strongly urge Native American sovereign nations to enact both of these critical changes. The results are immediate and positive.

Sovereign immunity remains at the core of the divide. The Non-Native business community will simply never feel that the environment is equitable in a market place when favoritism is being exercised. Business waits for no one. Competitive businesses have learned that the easiest way to deal with sovereign immunity issues is simply to avoid them. Accordingly, economic development does not occur "naturally" in the closed market caused by sovereign immunity in regions where that exists. Always remember, "Change is inevitable, progress is optional."

Senator LANKFORD. All right. Thank you, to all five of you. I'm going to open this up to questions and I'm going to throw questions out to each of you. If any one of you wants to contribute to what someone else has said; agree, disagree, whatever it may be. This will all go on the record as well, so feel free to be able to jump in on that one.

Mr. Kouplen, let me start with you. How can tribes leverage land held in trust to gain financing from banks? This has been an on

going economic development question. Once that land is in trust there's capital there, but can't actually tap into that capital. So how can that happen?

Mr. KOUPLEN. Well, the Lieutenant Colonel said it very well. It makes you very nervous, from a—and I'm on both sides of it. I live in this very unique world where I am the lender, where we are looking at projects that we want to finance. And through my involvement with Creek Nation, I understand the benefit of putting property in trust, so I see both sides. Often, if the tribe will agree to waive sovereignty, there are legal ways to—for the bank to get comfortable making that loan. And just so everybody understands, it's really basic economics. This issue is—what you don't want to have happen is you make—all we do as banks, is buy and sell money. We buy money in the form of deposits, we sell it in the form of loans. We make a net profit of roughly one percent as an industry, so it's a very thin margin industry. So, what you can't afford to do is make——

Senator LANKFORD. So you don't own all the money in the bank?

Mr. KOUPLEN. None of the money.

Senator LANKFORD. That's what I've always heard.

Mr. KOUPLEN. That's a huge misnomer. My children think we have more money than we do and I tell them it's all other people's money. It all just goes through, so—but what you don't want to have happen is, you don't want to loan money on a project, have the borrower not be able to pay it back and then have no collateral in which to pay it back. So, I would say the best case scenario that I've seen—and I would say many banks—they just won't go there. The risk is just too great. They don't want to get embroiled in a legal controversy whether it's in tribal court or wherever—so, they'll just avoid this type of lending. Some, however, including us will, if there is a waiver of sovereignty that's very clear and understandable between both parties and we agree that if something happened, it would be adjudicated in, you know, traditional court, then you can get past it, but it's tough.

Senator LANKFORD. Colonel?

Mr. SOUTHARD. I'd like to jump on that, again, since I kind of brought it up in one spot. I spoke with two district judges in the last week, actually, about this very thing and just because you waive sovereign immunity in the contract is at the end of the day, meaningless. It can still come back to the district courts and then it'll be moved over into the BIA court system. And so, lenders know that, and your attorneys know that, and so they're going to be very reticent about moving forward with those kinds of loans or doing investments on trust land. And it's a common misconception that you can't move things that are in trust land out of trust. That's doable, just as you can do the reverse in some cases. You can get land placed into trust if you just stay out of that lane. It's like a switch, on/off. If you stay out of that lane, you're opening yourself up to opportunity. If you go into that lane, you've closed a door and you can't blame banks. I can't. I mean, we try to work as tightly as we can with our lenders in our region. But I would caution one from thinking that you can't still file the suit and end up in the BIA court system, where then, you would just lose.

Senator LANKFORD. So then how can people build capital on access and build capital over time? Because part of the challenges for economic development, if you own a business, running a business, that business is now collateral or that home is now collateral, be able to do loans against that and continue to accelerate your wealth. If it's not possible to do that—if a business or a home or whatever it may be, is still locked into that system, you can't build a growing sense of wealth. So, how can someone, whether it be a Native American or a tribe, start building that capital wealth?

Mr. KOUPLEN. Just don't put the property in trust in —

Senator LANKFORD. So, you're talking about trying to have both—some things you have in trust, some things you don't have in trust?

Mr. KOUPLEN. Right. Most of your—I've—I don't think—I've never run into—we loan to many, many Native American borrowers. And from a private business perspective, it's a non-issue. Their businesses, their land is—we've never run into it being in trust. It's only when you're loaning money to the tribe itself. And, then—and I would just say to his point, you just got to have some of both. Keep it—putting it in trust provides you great protection, tax benefits. I mean, there's lots of reasons to do it, but you probably just ought to have a mix.

Senator LANKFORD. Okay. Mr. Narcomey?

Mr. NARCOMEY. In my experience with tribes—and Lieutenant Colonel said it really well—you know, I belong to the Seminole Nation and I was on the Economic Development Committee for the Seminole Nation for four years. And the frustration that I felt was I couldn't separate the—you know, we were tasked to develop business. Well, when I started, we ended up, you know—Kelly Haney (phonetic) had nominated me for that position. Well, when we—SNDC, Seminole Nation Division of Commerce, we found that we were in—you know, fines with the National Indian Gaming Commission—that we had a bunch of these fines that we had to pay back. Well, that limited any capital whatsoever that a bank would loan. So we were hamstrung, we couldn't, you know, start a business. We had no money.

And what Lieutenant Colonel also mentioned is you've got to have some autonomy away from the tribe. It's got to be a separate entity with its own, you know, separate—you know, organization that can make decisions, because every decision that we had to make had to go in front of the General Council, well there's 14 bands, two members per band. So, anything that we wanted to get approved had to be, you know, of the approval of 28 members. Some of those members, you know, were—they're band members. They're there for a reason. Sometimes, it's—you know, it's family that gets them, you know, to be a band member. So a lot of folks—and I'm not knocking the Seminole Nation, I think it's the way with a lot of tribes—aren't business savvy enough to be able to make decisions. They just make it based on fear or some other decision. So anyway, we couldn't get anything done from an economic standpoint at all. The Seminole Nation Division of Commerce just disbanded. We're relying now on gaming and I think, you know—I think it's highly speculative. And so I just—you know, we didn't win. You know, we attempted it and then there was a—you know,

the Chief changed. There was another Chief that came in—from Chief Haney to Chief Harjo, and he just had a different philosophy also. So it, you know—I've went to a lot of—I was trying to find a business partner that was a tribe, to come to the table with me to do work with the Corps of Engineers. But what I found is they were either, you know—they either had that situation where they were, you know, too tied to the tribe and they couldn't make decisions. But bonding companies will—you know, it's like banks, bonding companies, you have to put up payment performance bond. That surety wants collateral. They want to know that there's a waiver, you know—waiver of sovereign immunity. And Seminole Nation won't do it, so that's another problem. Thank you.

Senator LANKFORD. Okay. Let me keep going. From an economic development point of view, what can tribes do to become more economically diverse? So when you're thinking about ideas here, expanding the diversity of economic development, what are some of the things out there or what ideas would you propose?

Mr. KOUPLEN. You know, I would echo a couple of comments that have been made and one that I would add. First and foremost, when you see this economic development separation work, it's really cool. I mean, we have a visionary Chief through the Creek Nation that said, hey, let's separate and create Onefire Holding Company and gave the LLC tremendous autonomy. So I would, one, echo the—I think that's first and foremost, because you have significant—in many tribes, you have significant resources coming in through gaming. And if those resources can be invested into, you know, for-profit businesses that create jobs and can bring, you know, prosperity into the nation. That's great for everybody, but what happens is the politics gets—gums it up so much and keeps that from happening, so I would mention that.

Two is, I would go back to when the country was going through our recent recessionary times, the worst of the worst, you saw the SBA step up and provide great relief in many ways. They provided 90 percent guarantees to many loan programs, which made it that much safer for banks. They lowered their fees for the borrower and for the bank and they—it was just a wonderful way to allow a bank to take appropriate risk and get dollars out the door to potential borrowers. And I would see the same thing working for Native American entrepreneurs. You know, I mean, if we really as a country wanted to make a commitment to Native American entrepreneurs, we could do that through doing that same type of program for businesses that were 51 percent or more owned by Native Americans. That would be my thoughts.

Senator LANKFORD. Okay.

Ms. Overal, Mr. Kouplen mentioned earlier, we have more programs than we can actually get out the door and let people know about. SBA has a tremendous number of programs, you highlighted several of those. How can we get the word out on more of these different opportunities that are available to tribes or individuals to be able to start business—have some of those guarantees? So what's the best way to be able to articulate some of these?

Ms. OVERAL. Well, I would say one effort that we have in my office right now—I recently was able to staff up, and so we have a great economic development team now and we're getting out and

networking with other organizations, such as the Colonel's group. And trying to work together, because there's more strength in a telephone book than a few sheets of paper. And so we're trying to work together and educate each other, so that I know what you're doing and you know what I'm doing. And maybe I can't help you with exactly what you need, but maybe you can and I can refer you. So, that's one effort that I personally have going with my staff and we're working with the Oklahoma Department of Commerce to do that also, and some other Federal agencies.

Senator LANKFORD. Okay. For you and Mr. Narcomey as well, the 8(a) program, what ways can it be improved at this point, to be able to, both, help individuals that are in it succeed——

Ms. OVERAL. Yes.

Senator LANKFORD.—but also help people graduate? As you all graduated and are a successful business——

Ms. OVERAL. Yes.

Senator LANKFORD.—that still exists. There are lots of opportunities as there are for lots of small businesses. They start, they run, then they fail at the end of it.

Ms. OVERAL. Yes.

Senator LANKFORD. It's a very difficult process to launch a business in America.

Ms. OVERAL. Yes.

Senator LANKFORD.—but many people have done it, and to be able to actually pull it off with a lot of mentors and help and other folks.

Ms. OVERAL. Yes.

Senator LANKFORD. So what are some of the keys of success of getting an 8(a) out there and then surviving on their own, past the expiration in nine years?

Ms. OVERAL. Okay. First of all, working with individuals who are interested in getting into the program—Frank, when you applied it was a paper application, I believe. Well, now it's an online application. That's much more efficient but, again, some people need a little help in getting that application. I also like the fact about what you said, Frank, about mentoring others, that's so important. I, as a Federal employee, could tell you, oh, this is a great program, you need to do this, you know, say okay. But if Frank says it, I walk that walk, I talk that talk. So that's another way of getting the program out.

SBA is working harder to do some more trainings, more focus trainings, like this one training that I have coming up in Durant. It's focused on Native Americans; tribally owned and Native American owned firms, so it's specialized training. And that will take place in—I think it's the end of June, early July. And maybe I need to do some more of that in Oklahoma.

Senator LANKFORD. How are you getting the word out to the tribes?

Ms. OVERAL. How do I get the word out? Okay. We're doing a lot more using social media. We're doing a lot more with a program called "doc gov delivery", where we can put something out to 5,000 people. These are individuals who sign up to receive information from us. And so we put it out on that and that's been very effective.

Senator LANKFORD. Okay. So individuals that are here, how would they get that information?

Ms. OVERAL. How would they get the information? They could visit the SBA website—is www.sba.gov, that will give you the national website. And you can actually hone in to just Oklahoma or any state. We now have that site in Spanish also.

Senator LANKFORD. Okay. Great.

Mr. Ruttman, let me ask you about preparation. There are unique challenges dealing with Native American students coming through the program and how are you addressing that for economic development for workforce preparation?

Mr. RUTTMAN. Well, I, again, just kind of touched on the surface of a lot of what we do at Caddo/Kiowa. One of the challenges that people have to attend school these days—Native American communities not the only one with this challenge—but child care. We have a 120 certified-size child care facility—three star. And it's not unusual to see a young person get off that bus with three children in tow—or carrying. We go infant through pre-K. So that eliminates a little bit of a roadblock there and I will say that Kiowa tribe in particular actually funds a staff member for that, but it's a pretty large facility. The students we get in, so many times have financial challenges that we can't begin to fathom, just what they're going through to come to school and so we try to work through that to help them. We even have a foundation that helps when there's just no money—that they just can't do anything. And one thing that we don't talk about just a lot, but we have a 13th, 14th year scholarship. Any student that went to school in this district, this region, up until the time they turn 21, they can still attend our school free of tuition for full time programs—the high school age ones. Everything we do is to try and prepare them to be ready to go into the workforce. And I can't stress enough, we're happy to have people come back for continuing education their entire life, but our goal is to put them in the workforce. So, again, we follow up with them; we do it one year out, we do it two years out. Sometimes as far out as five years, to make sure we're training and giving them the skills they need to be successful.

Senator LANKFORD. So you feel confident what you're training them for there actually transitions easily into the workforce—that you're preparing them, not for a job that doesn't exist, but for a job that does exist and the skills they need to do that?

Mr. RUTTMAN. Yes. Yes. We not only are pretty confident about it, but we have a lot of companies that come in our doors to find out how they can get some of those employees. I'm going to, I guess, brag a little bit on our welding instructor. He turns out more state certified welders in Fort Cobb, Oklahoma, than any technology center in the state of Oklahoma. Now, we've got 32,000 people in 1,954 square miles and we're training more state certified welders. Well, if you're going to the oil and gas industry in particular, you better have that card. He goes the extra mile to get that done. And we have students that leave there probably the bottom end, at about $40,000 and we had them leave there as high as $90,000 a year. Pretty good deal for somebody to start out, so —

Senator LANKFORD. That's great.

Mr. RUTTMAN. we're pretty confident in what we do and always—I guess I left out, we have what we call business and education councils there. They don't—that's business owners that not only come in and talk to our students to try and recruit them, but to tell us what we need to be adding to their training to make sure they're ready.

Senator LANKFORD. Okay.

All right. Mr. Southard—Colonel Southard, let me ask you a personal question on this. What does the Federal government need to do to get out of the way of tribes, where they're in the way of economic development? And I promise I won't take it personally.

Mr. SOUTHARD. Yeah, but we're recording this; right?

Senator LANKFORD. Yes, sir. We are. Actually this is a good thing to have on the record, so what I'm looking for is there are things that a tribe could do or a tribal member could do to advance, except for that. It slows it down and makes it more difficult, makes it more complicated, it adds another layer or bureaucracy to it. What can the Federal government do away with to help tribes in their economic development?

Mr. SOUTHARD. That's like a bear trap. I really don't know that I have a specific thing that you could take away today. I do believe that—and I kind of talked to this a little bit in my testimony written piece—that for years we've talked about self-determination is the objective of what things the Bureau of Indian Affairs does—the oversight committee would like to see. The reality is it's still going to be about individual effort to make economic success occur. And then, when we talk definitions, your being financially independent as a family, as a tribe, as a business, is your goal. And so, what that also implies is you are moving away from having government programs that support you in that effort, that's a real tough one. You know, there's a mentality sometimes when you have things that come to you in government programs, well, we can ride this for as long as it'll stay. I think all of us have observed over the last several decades that Federal monies are getting smaller and smaller every day. So, one day that will run out or could and if you haven't created something to stand on, on your own, then you're going to be standing there like with the musical chairs thing and there's not going to be a chair to sit down in. And so I think what's important—part of that mission said that the Federal government probably ought to have is how do you start eliminating those programs that make sense to eliminate—to wean that dependency on Federal structure.

However, at the same time, the opportunities under the 8(a) programs and so on, are enormously important to take disadvantage businesses and disadvantage people when they're truly disadvantaged, to give them an opportunity to get to work and get things done. And we've had some good success out here. I don't want to be the grim reaper, I am not. The reality is I'm all over trying to create positive economic advancement. And in the Delaware, as an example, since I do sit on their Economic Development Authority Board, we have had some real good 8(a) businesses that have gone from mentorship programs into successful, on their own programs, and are now mentoring other businesses. So, those things do hap-

pen and the advantage does run out—I believe it's ten years when you——

Ms. OVERAL. Nine years.

Mr. SOUTHARD. Nine, when you actually run out of your advantages in a 8(a) program. But at that point, they're ready to roll and there's positive growth. And that's the kind of thing you need to be shooting for as an objective and the government ought to have that as a target for probably every program that's out there like that.

Ms. OVERAL. And Senator, may I add, the 8(a) program—there is—there are no extensions. So it's not one of those programs that you can apply for an extension; 9 years, its over.

Mr. SOUTHARD. Right.

Senator LANKFORD. What have you seen, as far as the success rate in the 8(a) programs, as far as, at the end of that 9 years; by your 10, 11, 12, that business still exists?

Ms. OVERAL. Well, hopefully—this is a business development program.

Senator LANKFORD. Right.

Ms. OVERAL. We work with the clients throughout the 9 years. Hopefully, if we've done a good job, they—we've taught them how to go after those contracts themselves, without the aid of the government. So at the end of the 9th year, they should be ready to be on their own and as we're in the program—as a—as a business in the program, each year we're forcing them to have more eggs in their basket, not just waiting for us to help you get a contract.

And I think, Frank, you're a perfect example on that, of how that worked. I mean, it sounds a little tough, we're saying, hey, the mix in your basket isn't right. You've been in this program for five years, it's time for you to have more that you've gotten on your own. Be looking at some private sector contracts.

Senator LANKFORD. Right.

Mr. NARCOMEY. Senator, I can add a little bit to that. I argued with Dottie's office one time about I didn't meet—there was a time when I did not meet the specified—I think I was in my 6th or 7th year——

Ms. OVERAL. It was probably about 6th—yes, about that.

Mr. NARCOMEY.—and it was—I had to meet the 35 percent, non 8(a).

Well, I was doing some work at Tinker, Department of the Air Force. They went through the Corps of Engineers. And, you know, we were doing a good job and I think we—they liked us, you know. We were doing what we were, you know, supposed to do, on time, and we were taking care of the customer. We were rewarded with more work. Next thing I know, we were getting quite a bit of 8(a) work. Well, I'm—my 35 percent over here, it's tough, it's tough.

And so, Dottie, what I did is—my son was the center on the football team. The Edmond School Board over construction, his son was the quarterback at Edmond. So I went to him and I said if you got anything we can bid, we're going to bid it, because I want—at least I know who I'm dealing with. You know, I'm dealing with, you know, some—an individual I know. Well, we bid that school work at nothing and barely got it. And I think we might have broke even on that work, Dottie, but it kept us in the 8(a) program. And so, our growth was almost—I mean, we were almost inverted and

that's the—that was the scary part. I mean, I think we did a very, very good job taking care of the customers. We were the ones on the ground, dealing with the customers. We assisted the government in finding solutions to problems. I think that's why they liked us and then when we left the 8(a) program, it was like, Frank, how can we get to you? How can we have your services? That's how—you know, I thought, well, perhaps, you know, if I gave back what's been given to me to a tribe or to, you know, another individually owned 8(a), that would allow me to participate in the program and stay with the customers that I, you know, have been with. So that's what we've done.

But today—the issue I have today, Senator, is small business. There is so much competition for the work. There are women owned, HubZoned——

Ms. OVERAL. Service connected, disabled vets.

Mr. NARCOMEY.—service, disabled, veteran owned small businesses. And, you know, there's only so many dollars. So, what I'm fighting is, hey, I'm Native American, you know, I'm Indian, you know, I need work. You know, please don't forget me, I'm small business. That's what I'm having to go to my government counterparts and say, wait a minute, I mean, I know you've got these check marks to do, I know you got these percentages and goals; but please don't forget small business. And that's where we are right now, I feel like we're being, you know, a little left out. You know, my feelings are a little hurt because everybody else is more important. And that's where I'm having a rough time right now, is I think we do—we have probably leaned hard on, you know—more towards government contract. And I think we're—you know, we do a good job. So I don't want to ignore that, but how do I stay in it? That's that's what I'm working with right now.

Senator LANKFORD. All right. Let me give you a final question, because we're going to get close on time here to try to wrap up. But I do want to leave this out here.

Oklahoma tribes have been incredibly successful on the whole and there are many things that can be shared with other tribes. Of the 566 tribes across the nation, to say here are a couple of ideas that a tribe has done or that you have seen done, that you think that's a great idea for economic development. Many of those you've already shared during the course of this conversation. If there is a single idea or a couple of ideas that you'd be willing to share—just to make a brief comment on, to say this is one of the secrets of success that we have seen among some of the Oklahoma tribes, for the secret, either members—individual members or tribes as a whole, to economic success that you think could be shared with the entire nation. Anyone who can share in any order.

Mr. KOUPLEN. Senator, if you don't mind, let me cheat and go back, because I really want to share. You asked what the Federal government can do. Please let me just share three things.

One is small businesses look for certainty. They look for certainty. They don't like to wonder whether or not a tax credit is going to get extended or a program is going to get extended or that the budget is a year late or two years late. That's number one, so providing them with certainty so they understand the rules from year to year.

Minimizing the red tape, mostly from a regulatory perspective, is brutal. I mean, you're trying to make a living. I mean, you see the passion that Frank is talking with, I mean, he's trying to make a living. He doesn't need inspectors, you know, out creating rules to put him out of business.

And then finally, fiscal responsibility. Investors would be a whole lot more excited about investing if we knew that our government was solvent and that we could actually pay our bills and balance our own budget. So, I would just share that, unsolicited, with you.

Senator LANKFORD. Great.

Mr. KOUPLEN. As far as the number one thing that I think, I've watched the Creek Nation do, is hire great people and we visited with the Council. We always want to hire Native American, but what I have seen is when we're hiring professional positions, they said get the best—get the best talent. And so, the greater the talent within the tribe, the more successful it has become, no matter the race of that talent.

Senator LANKFORD. Okay. Other ideas?

Mr. RUTTMAN. Well, I might throw something in and it really goes out to the tribal leaders in the room. When we started our economic development operation, one of the things we charged Mr. Southard with was to try and form stronger partnerships with our tribes. We have a huge resource in the tribes in Southwest Oklahoma and he's had success with a couple of tribes. But I guess my charge to you would be—you might not think we can do you any good but I'd say if you wanted to make a call to Clark and open that door to maybe partnering on doing some things, I think that door would be open.

Clark, would you——

Mr. SOUTHARD. Absolutely. And I think I've just got a—it's some quote I picked up from somebody, somewhere along the line. Change is inevitable, but progress is optional. If you don't posture yourself for progress you're not going to have it, you're just going to change. And that change can be the same old, same old, same old, here in rural Oklahoma, unless you posture yourself correctly. So—and absolutely, we—I would look forward to further operations and activities with the Native American people out here, that's my family as well, so—not as many Comanche up in this part of the neck of the woods, but they're at the southern part of Caddo County. So, there you go.

Ms. OVERAL. I would say the tribes need to work with the youth, because that's our future, and expose them to entrepreneurship. Some tribes are doing a really good job of that right now, having entrepreneurship programs in—sometimes even in the junior high school and the high school, because that is a great option for our young folks.

Senator LANKFORD. Okay. Any last minute comments?

[No response.]

Senator LANKFORD. Thank you all for being a part of this conversation. This is a very important conversation. It's a conversation we've had in D.C. in multiple hearings. We'll have additional field hearings in other states and locations to be able to gather ideas. As we gather all these ideas and put them on the permanent record and the congressional record, it's very important as we go

forward in the days ahead, as we write legislation, work with BIA, BIE, SBA, all the different entities, to be able to determine what's the best way to be able to help our tribes.

For those of you that are tribal leaders and elected officials, thank you for being here and the way that you invest in your tribe and the leadership that you're providing to people. That is a thankless job in many ways. I understand, I've been elected as well. I understand the challenges that are there. You have spent a great deal of your time serving, so thanks for doing that.

For those of you that are here, if you have additional ideas, I know the tribal leaders that want to be able to submit things. I'll leave the record open for the next two weeks, so that we can extend the record with your comments and ideas. And we'll be glad to be able to receive those.

With that, we are adjourned.

[Whereupon, the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE CITIZEN POTAWATOMI NATION

On behalf of the Citizen Potawatomi Nation, thank you for the opportunity to submit testimony before the U.S. Senate Committee on Indian Affairs oversight hearing on "Advancing Economic Success in Indian Country." The Citizen Potawatomi Nation is the federally-recognized government of the Citizen Potawatomi people and exercises governmental jurisdiction in the 900 square mile area bound by the North Canadian River, the South Canadian River, the Pottawatomie-Seminole County boundary on the east and the Indian Meridian on the west. Government leadership consists of a three person executive committee, Tribal Chairman John "Rocky" Barrett; Vice-Chairman Linda Capps and Secretary/Treasurer D. Wayne Trousdale, and a 16 person legislature representing more than 32,000 tribal citizens.

Introduction

With nearly 40 federally recognized Tribes, Oklahoma, formerly called Indian Territory, is home to the second largest Native American population in the United States. Tribes in the U.S. have struggled for decades to make economic dreams a reality and to care for tribal people and communities. From jobs to healthcare services to education assistance, this focus on the Oklahoma community is more than just a benefit for Native Americans; it is a cornerstone to our state's successful growth in the past decade.

The foundation of this growth rests on the principle of tribal sovereignty, a right which was granted to tribes across this great country as a tool to promote economic growth. Tribal land is governed by federal law, which allows tribes to host a number of businesses and enterprises. Although many believe that tribes are wealthy because of gaming, tribal leaders recognize that tribes must diversify businesses to be successful and provide opportunities for our citizens and the communities across Oklahoma. Tribal governments should not be required to depend solely on gaming to build economic sustainability. The Federal 477 program has provided a great resource to get individuals jobs ready and has been great for economic development, however, there is much more to economic development in Indian Country.

Citizen Potawatomi Nation Economic Development

Citizen Potawatomi Nation has created many tribal enterprises in order to achieve economic sustainability. CPN owns FireLake Discount Foods, the largest tribally-owned grocery store in the United States. It also owns the largest tribally-owned national bank chain, First National Bank and Trust Co. with seven banks in the state. Other tribal enterprises include a Cultural Heritage Center, FireLake Golf Course, FireLake Ball Fields and the Grand Casino Hotel and Resort, which have become popular destinations for Oklahoma residents and out of state tourists. The Citizen Potawatomi Nation has been generous with its success. With a $558 million economic impact in 2013 and more than 2,200 employees, the tribe is the economic engine in its jurisdiction in Pottawatomie, Oklahoma and Cleveland counties.

Since 2003, Citizen Potawatomi Nation has created seven of every 10 jobs in the City of Shawnee. CPN also spends 30 cents of every tribal dollar spent in Shawnee and has brought nearly $300 million in Federal dollars to the State of Oklahoma.

According to the U.S. Census Bureau, one in every four Native Americans lives in poverty. Although the Citizen Potawatomi Nation cannot be all things to all people, the tribe goes to great lengths to help when there is a need. Since 2005, CPN has given more than $5 million to nearly 200 community organizations and community groups in the surrounding areas who serve Native and non-native alike.

On a monthly basis, the Citizen Potawatomi Nation's Health clinics see more than 1,700 patients. This includes 250 behavioral health appointments, 500 lab tests and 250 x-rays. In the last two years, the CPN dental program has doubled in size, making it the best of the best in terms of staff and dental technology. CPN has also added physical therapy and optometry services in the past year.

The CPN tribal police force acts as first responders and essential backup to our brother agencies like the Shawnee Police Department and the Pottawatomie County Sheriff's Department. Recently, CPN agreed to operate Pottawatomie County's funding-challenged 911 call center and assume all costs for not only the county but also the small towns in the county, saving those entities $250,000 a year.

The Citizen Potawatomi Nation has worked diligently to cultivate a tax base that can support its government functions. The tax collected at CPN grocery stores, bowling center, ball fields and golf course are all key components needed to achieve economic development on tribal land. CPN spends 100 percent of every tax dollar on government services such as roads, services for Native Americans and neighboring communities, education, emergency response and job creation.

It has only been 40 years since the forced assimilation of Native Americans began to be reversed with the signing of the Indian Self-Determination and Education Assistance Act. The Citizen Potawatomi Nation didn't enter into a self-governance compact with the Bureau of Indian Affairs until 1999. Tribes are still reeling from the harmful polices of the past and have only experienced success due to extraordinary resilience and ingenuity. Unfortunately, that success is sometimes seen as a threat by other government leaders, a reason some tribes and local governments around the state still struggle to coexist today.

Sub Chapter S Corporation

There is a critical need in Indian country for tribes to be given the opportunity to enter into mutually beneficial partnerships with their non-Indian neighbors for the economic development of their geographic regions. To be successful, these partnerships need to have the ability to take on corporate forms that are (a) familiar to non-Indians, and (b) easy to administer. The Subchapter S corporate form is ideal for this purpose. Non-Indians understand Subchapter S corporations and are familiar with the rules for doing business with Subchapter S corporations. Unfortunately, Indian tribes are uniquely prohibited from participating in Subchapter S corporations. The IRS will allow a city, or even General Motors, to participate in a Subchapter S corporation, but not an Indian tribe. The federal statutes authorizing the creation of Subchapter S corporations should be amended to allow for such ownership.

Congressman Frank Lucas has introduced a bill which, if enacted, will be the first step in creating a solution for this dilemma. Tribes need access to the same corporate structures as other American enterprises. In CPN's future case, the tribe will be able to make "Sub S elections" for tribal corporations to do business in Oklahoma and then domesticate them in Oklahoma under State law. The contracts these corporations enter into will be subject to the authority of Oklahoma law and the jurisdiction of Oklahoma Courts without tribal sovereign immunity defenses. CPN will gain the benefit of limiting our liability to the capital in the Sub S Corporation, and our contractual partners and bank lenders will get the benefit of redress under state law. Both parties gain by eliminating any doubt of the enforceability of a contract with a tribal corporation doing business in Oklahoma.

Leasehold Mortgages on Trust Property

Another major obstacle to on-reservation lending is the trust status of tribal lands. Lenders expect to be able to foreclose if a borrower defaults; however, because trust land cannot be sold, lenders can't foreclose on it in the event of default. Currently, if one builds a building on trust land, no attorney will issue an opinion to a bank that a leasehold mortgage can be perfected on buildings on Indian trust land. The primary reason is that the trustee, the U.S. Department of the Interior, will not assure lenders that leasehold mortgages on trust lands are enforceable.

The use of leasehold mortgages is one solution to this problem. A leasehold mortgage allows the lender to, in effect, become the tenant on the land for a specified and tribally pre-approved period of time, and to rent the land or the facility or business on the land to recover money loaned to the tribe. In this way, the lender is protected, but, at the end of the lease, the land remains in the hands of the owner.

Upon default of the mortgagor under a leasehold mortgage, the lender will initiate enforcement action as defined in the recorded leasehold Security Agreement and as certified by the Bureau of Indian Affairs. In short, the lender will commence a leasehold mortgage foreclosure in federal court or the court of jurisdiction by filing a verified complaint. Said jurisdiction shall be specified in the leasehold mortgage document and related indebtedness documents.

Borrowers and lenders shall both represent to each other and the BIA that a leasehold mortgage is collateral and not debt service, and then any lender taking over the operation of business under a leasehold mortgage shall use standard care in running the business in order to obtain a return of the money lent and a pre-

approved rate of return on the money. In this manner, the BIA can obtain a trustee's comfort level that the underlying real property shall be returned to the borrowing tribe in the same condition as when it was first encumbered, reasonable wear and tear accepted.

If the Federal Government, as trustee of Indian lands, would guarantee enforcement of leasehold mortgages on trust property for commercial ventures in the same manner as it presently does for housing, large amounts of capital could become available for economic development in Indian Country without any additional financial burden upon the Federal Government.

City of Shawnee Attempt to Collect Unwarranted Tax Revenue From CPN

With 100 percent of its tax revenue supporting the diversification of the tribal economy and job creation, the Nation has spent more than $40 million on infrastructure and public safety in the past decade. Through management of federal funds and tribal sales tax revenue, CPN slowly built up the infrastructure in the areas long-forgotten by Shawnee city hall.

The Citizen Potawatomi Nation is not only providing services to tribal governmental functions and enterprises, but also supports these same services to communities throughout its jurisdiction. Such was the case when CPN provided $625,000 for the resurfacing of the James W. Allen Bridge in Shawnee, Okla. and gave $500,000 to widen Gordon Cooper Drive from Benson Park Road to Bob Crouch Drive in Tecumseh.

This development and success finally drew attention of Shawnee's leaders. In February 2014 CPN received a letter demanding that it act as a tax collector for the City of Shawnee. The letter claimed that city sales tax revenues were down due to tribal enterprises like FireLake Discount Foods. Like many city claims, these assertions proved hollow. Independent audits of its finances show that tax revenue has increased each year since 1996, with the exception of the fiscal year 2009–2010.

On Sept. 10, CPN filed a detachment petition with the City of Shawnee for tribal land held in trust by the federal government. Shawnee City Clerk Phyllis Loftis denied the petition on the grounds that CPN was not the legal owner of the property because of its status as federal trust land.

In response, Asst. Secretary of Indian Affairs Kevin K. Washburn wrote a letter to Citizen Potawatomi Nation affirming that "Indian tribes are the beneficial owners of land held for them in trust by the United States. As such, tribes enjoy full and exclusive possession, use and enjoyment of tribal lands. Further, tribal governments exercise jurisdiction over trust lands and trusts lands are generally exempt from jurisdiction of local and state governments, except where Congress has specifically authorized jurisdiction."

On Dec. 19, 2014 a judge ruled that city commission must grant Citizen Potawatomi Nation a public hearing on its detachment request. Although no one spoke against the detachment of CPN land, the commissioners cast a 3–3 tie. Given that a majority is needed to affirm such measures, the detachment petition failed.

The past year's tension has done little for either the city or the tribe. Citizen Potawatomi Nation has attempted to play by the town's rules in order to resolve the situation. At every turn the tribe's efforts have been met with hostility. As it became clear to CPN nearly one year ago, the tribe and its interests cannot receive a fair hearing on any matter from certain elements of Shawnee's city government. In requesting formal detachment of what is legally its own land, Citizen Potawatomi Nation seeks to put an end to this senseless bickering. It is time to move on and forward, separately, for our shared communities.

State of Oklahoma Attempt to Collect Unwarranted Revenue From CPN

Citizen Potawatomi Nation collects 8.5 percent sales tax on all sales made on tribal trust land. The State of Oklahoma claims it also has the authority to tax goods and services on Native American federal trust land, including admissions to powwow, softballs games, golfing, on-trust consumables and HEARTH Act lease activity.

In order force this double taxation, the State of Oklahoma has initiated the process to revoke all sales tax permits, which are necessary for liquor licenses, from all CPN enterprises. This action would prohibit Citizen Potawatomi Nation from selling alcohol at any of its enterprises, including gaming facilities, and is in violation of the Model Gaming Compact.

The commerce clause of the U.S. Constitution implicitly states that only U.S. Congress can regulate areas of commerce with Indian Tribes. This sentiment was further supported by the HEARTH Act, which states that HEARTH businesses are only applicable to Federal law and that activities conducted under a lease of trust or restricted land that occur on the leased premises are not taxable by States or localities, regardless of who conducts the activities.

The U.S. Supreme Court also supports the right of Indian Tribes to tax by recognizing that "the power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137.

The State of Oklahoma must recognize these pre-emptions and allow Indian Tribes to self-govern and create economic opportunities on trust land.

Pottawatomie County Rural Water District 3

The Citizen Potawatomi Nation met with City officials at Shawnee City Hall on February 27, 2009 in an effort to resolve the issues preventing the Nation from obtaining the water and sewer services necessary for economic development on the Nation's trust lands. The Nation's offer to pay for the replacement of the sewer lift station was rejected.

In March 2010 the Citizen Potawatomi Nation signed a contract with an engineering firm to design a water, sewer and waste water treatment facility to serve the Tribe's federal trust lands.

In May 2012, the City of Shawnee sued Pottawatomie Rural Water District 3 and the Citizen Potawatomi Nation for providing tribal housing, buildings and enterprises on Federal trust land with water. Subsequently, the Oklahoma Department of Transportation has refused to grant RWD 3 additional water line permits for ODOT rights-of-way.

Allowing the Shawnee Municipal Authority, or any other state or municipality, to dictate who can provide water to a Native American tribe on Federal trust land would create a veto power to tribal economic development. That cannot be tolerated.

Contract Support Costs

CPN has been advocating for full funding of contract support costs for nearly two decades. To that end, the Tribe supports a mandatory appropriation for contract support costs because a mandatory appropriation would remove CSC payments from the discretionary budget. A mandatory appropriation is therefore an effective answer to the dilemma posed by locating a legally binding obligation within an appropriation structured to address discretionary service requirements. The disastrous ramifications of that approach were all too visible when in FY 2014 the Indian Health Service was compelled to redirect some $125 million from program operations, including all of the funding which Congress had intended would restore the prior year's sequester reductions. A mandatory appropriation avoids such consequences for the future, while assuring that Tribal contractors and compactors will be paid in full for services duly rendered to the United States.

The Indian Employment, Training, and Related Services Demonstration Act

The 477 Initiative has been essential for the development of effective and efficient tribal services to increase employment, training, and related social services in Indian Country. With the consolidation of funding streams, tribes have been using this initiative to reduce administrative burden and increase services to the most needy. This initiative has provided flexibility for tribes to tailor activities into a single program to meet the unique needs of their respective communities while still strictly adhering to the Government Performance Results Acts accountability standards. The 477 Initiative has to date received the highest OMB PART rating of any program in Indian Country.

The Citizen Potawatomi Nation's 477 Program has been in place since 1996. Over the past four years, CPN has served more than 6,000 participants through the 477 program. Of those who had employment as their goal, 47 percent achieved unsubsidized employment. Average gain per hour was in excess of $4.29.

The Citizen Potawatomi Nation is just one example where tribes utilize the 477 Initiative to serve the hard-to-serve population in high unemployment areas with great success. The 477 Tribes are able to move tribal members from cash assistance programs to unsubsidized employment and self-sufficiency. These successes are achieved in accordance with their approved 477 Plan and accounted for in their annual reports.

The 1992 Indian Employment, Training and Related Services Demonstration Act provides a critical foundation for our tribe in helping get our members, and members of other federally recognized tribes, trained and ready to join America's diverse workforce. Specifically, it allows tribes like the Citizen Potawatomi Nation to tailor activities into a single program that meets our specific community's needs. It also reduces administrative redundancies while keeping us in compliance with government accountability standards. Proving what an excellent program it is, the 477 Initiative received the highest OMB PART rating of any in Indian Country.

The 477 tribes across this country agree with Senator Lisa Murkowski and Senator Mark Begich in pushing Congress to amend the original law in order for the

law to reach its full potential. We ask that Congress reaffirm its intent to adhere to the original spirit of the law, and allow tribes to:

- Continue to receive funds through contracts and amendments in line with the Indian Self-Determination Act
- Not require tribes to maintain separate records
- Combine and integrate federal funds to achieve the goals set forth in the original law.
- Allocate funds directly to support economic development and create jobs.
- Expand the scope of the original project by including competitive, formula, block grant and designated funds for use by employment and training programs.
- Expand employment, training and related socials service programs currently used from other federal agencies.
- Address the timely approval of 477 Plans, regulation waivers and dispute resolution so there are clear rules when disagreements arise about the interpretation of the 477 Act.
- Insert provisions allowing a tribe to utilize their negotiated indirect cost rate, rather than applying separate administrative caps to each funding source if a tribe should so choose.

Tribal Self-Governance Legislation: Title IV Amendments

Shortly after Title IV of the Indian Self-Determination Act was enacted, the DOI's regulations failed to fully implement Congress's intent. In 2000, Title V was enacted, which created a permanent Self-Governance program within HHS, and which directly addressed many of the issues that proved to be problematic during the DOI's Title IV rulemaking process.

Today, many of the improvements and tribal authority reflected in Title V remain absent from Title IV. Title IV amendments have been the top legislative priority for the 261 Self-Governance Tribes in the DOI for more than 15 years (this was recently reaffirmed at the 2015 Self-Governance Strategy Session in Washington, DC, January 27, 2015). Therefore, we fully support S. 286, which would amend Title IV of the ISDEAA to ensure consistency and efficiency among Self-Governance.

The key issues addressed by S. 286 are as follows:

- Streamline the administrative responsibilities for Self-Governance Tribes with provisions in Title V, the IHS Self-Governance authority;
- Establish a clear "final offer" process and timelines for situations when DOI and the Tribe are unable to agree on particular terms of a compact or funding agreement, or when DOI delays approval unreasonably;
- Clarify and limit the reasons for which DOI may decline to enter a proposed agreement;
- Protect Tribes from DOI attempts to impose unauthorized terms in compacts or funding agreements;
- Provide a clear avenue of appeal and burden of proof for Tribes to challenge adverse agency decisions;
- Clarify Tribal and federal oversight roles in construction to ensure fiscal prudence and public safety;
- Leave unchanged the discretionary authority to compact non-BIA programs within DOI; and
- Make important amendments to the self-determination contracting law, such as clarifying reporting requirements, rules of interpretation, and applicability of certain Title I provisions to Title IV agreements.

Conclusion

Collectively, tribal businesses and governments are the largest employers in the State of Oklahoma, accounting for more than 50,000 jobs. Analysis by the Steven C. Agee Economic Research & Policy Institute at Oklahoma City University estimated that the total tribal impact on the state was more than $10 billion in 2012.

In addition to jobs, tribal governments help ease the burden of services on the state, providing funding for education, health and safety and contributing to nonprofit and community organizations. More than 50,000 families benefited from healthcare, meals and educational opportunities provided by CPN in 2013.

While there are genuine differences to work out in tribal-state and tribal-city relations, it is important to remember that as neighbors, we are all in this together. The work and investments of the Citizen Potawatomi Nation and other tribal gov-

ernments should not be seen as threats to those at the state capitol or city hall of any municipality in Oklahoma. For the good of our shared communities, these unique partnerships should be embraced.

PREPARED STATEMENT OF MICHAEL G. ANDERSON, EXECUTIVE DIRECTOR, NATIVE AMERICAN CONTRACTORS ASSOCIATION

Introduction

The Native American Contractors Association (NACA) is pleased to submit testimony for the hearing "Advancing Economic Success in Indian Country." This hearing fits squarely in line with the vision of NACA. NACA is a national association of businesses owned by tribes, Alaska Native Corporations (ANCs), and Native Hawaiian Organizations (NHOs) that utilize small business contracting programs to further economic development in their communities. NACA's vision is "To advance the economic self-sufficiency of America's Indigenous Peoples." Small business federal contracting programs, such as the Small Business Administration's (SBA) 8(a) Business Development Program are critical to advancing economic development in Indian Country. The Senate Committee on Indian Affairs (Committee) should continue to support, and enhance, such programs.

Background

The first rule of advancing economic development in Indian Country should be similar to that of medicine: first, do no harm. When Congress empowers Native communities with programs that work to meet the needs of those communities, those programs should be enhanced and protected. Additional programs are needed, but much can be done simply by protecting and enhancing existing programs. This includes Indian gaming and Native contracting programs.

Native contracting programs are a valuable tool for both businesses owned by individual American Indians, Native Hawaiians, or Alaska Natives, and also for businesses owned by tribes, ANCs, and NHOs. Many communities are located in remote locations and lack a commercial market to support different types of economic ventures. Federal contractors are able to "go where the work is" and thus are not constrained geographically. This may include performing contracts in places like nearby military installations. It can also mean working in nearby states, or even in Washington, DC, the heart of the federal government. The SBA's 8(a) program in particular provides resources and opportunities for Native firms. However, the program needed unique regulations and statutory authority to meet the specific needs and structures present in Indian Country. These are needs and structures that do not exist in the same manner as an individually-owned company may experience. Many of the specific rules governing community-owned entities in the program are the result of recommendations made from the Reagan Commission on Reservation Economies. Select passages of the report have been attached to this testimony to highlight the need and beginning of these unique provisions of the program.

The revenue earned from these firms flows back to the Native community. Tribal leaders or the Board of Directors determines the best way to reinvest this revenue back into the community. For example, according to the report "The Economic, Social & Cultural Impacts of the Native 8(a) Program" commissioned by NACA in 2008 cites that more than $1 11 million in benefits flowed to Native communities from the 8(a) program while impacting more than 109,000 jobs across the country. The impact of the program reaches far beyond the beneficiaries of the profits derived from the 8(a) program.

Advancing the Needs of the SBA 8(a) Program in Indian Country

NACA is making several recommendations for the Committee to consider as part of its work to strengthen economic development in Indian Country. These recommendations are based on policy priorities adopted by NACA's Board of Directors.

Parity for Tribes, ANCs, NHOs

Congress should enact legislation to establish parity for tribes and NHOs in the 8(a) program. The Alaska Native Claims Settlement Act (ANCSA) provides that ANCs shall be considered economically disadvantaged for purposes of federal programs. Since this legislation only impacts Alaska Native communities, neither tribes, nor NHOs currently enjoy the same presumption via federal statute. The SBA has created regulatory direction that tribes must only prove their status one time and subsequent firms need not prove their economic disadvantage for certification. NHOs have yet another authority, and must overcome burdensome reviews of their organizations to maintain their economic disadvantage status every year.

Congress should empower tribes and NHOs by providing the same statutory presumption of economic disadvantage.

Native American Set-Aside

The Federal Government must currently set aside 23 percent of its federal procurement dollars for small businesses. There are subsequent set-aside programs under this umbrella, such as socially disadvantaged businesses, HUBZone, woman-owned small businesses, Service Disabled Veteran-Owned Small Businesses, etc. Native contractors can be certified under these different programs, each of which has a specific goal associated with the program. However, there is not a single "Native American" set-aside program.

There is a suite of programs that facilitate Native contracting. The 8(a) program has unique rules for tribes, ANCs, and NHOs but the term "Native 8(a)" is colloquial to describe these provisions, as there is not a specific set-aside for such entities. Tribes also can participate in Historically Underutilized Business Zones (HUBzone), as all reservations are considered to be part of HUBzones.

There is also the Buy Indian Act and the Indian Incentive program. However, each of these programs are limited in scope. The Buy Indian Act only applies to the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS). Similarly, the Department of Defense (DOD) is the only agency for which Congress provides funding for the Indian Incentive Program. Each of these programs contains further shortcomings. For example, other agencies or bureaus outside or even within the Department of the Interior (DOI) that directly touch Native Americans are not required to set-aside contracts for Native firms. The Office of Special Trustee, for example, is not required to use the Buy Indian set-aside, despite its mission being tied directly to Native Americans. Funding for the Indian Incentive Program is $15 million each year. While this generates substantial subcontracting revenue for Native subcontractors, there is a growing backlog of claims for incentive payments to prime contractors utilizing the program. Lengthy delays, uncertain appropriations and the growing backlog create disincentives for prime contractors to maintain relationships with Native subcontractors.

While there are several programs that are available to Native contractors, they do not fit well together, nor are they designed for maximum use by Native firms. They represent a disjointed approach to address economic development through federal contracting. These past efforts should be commended, but the time has come for a comprehensive program. Congress should enact legislation that creates a specific set-aside, providing specific focus to advance economic development in Indian Country. This could be done under the government-to-government relationship, which provides a unique legal basis for such a program. Creating a Native American set-aside would facilitate more economic opportunities for Native firms.

Conclusion

I appreciate the opportunity to submit written testimony. NACA's members play a key role to advance the economic interests of Indian Country. As the Committee works on legislation to this end, NACA urges the Committee to facilitate and enhance Native contracting programs, and look to the future by establishing a Native American set-aside program. We look forward to being a partner with you in this endeavor.

PREPARED STATEMENT OF HON. TERRI PARTON, PRESIDENT, WICHITA AND AFFILIATED TRIBES

Dear Senator Lankford:

My name is Terri Parton and I am the President of the Wichita and Affiliated Tribes. I thank you for this opportunity to provide written testimony on behalf of the Wichita and Affiliated Tribes. I applaud the efforts that have been made during this administration to advance economic development, selfgovernance and self-determination. However, while many tribes across the country and on the other side of Oklahoma see many of the benefits of the great things that this administration is doing to promote economic development, self-governance and self-determination, the tribes in the southwest part of Oklahoma have not been able to fully take advantage of these opportunities due to our unique land situations and the inability to get the needed legal infrastructure in place to move forward. Our tribes on this side of the state have struggled for many years. A lot of the issues revolve around the inability for our tribes to successfully succeed at economic development to provide for our people. This inability leads to internal tribal tunnoil which hinders the economic future for our tribes here.

I would like to thank you for having the Oversight Field Hearing on "Advancing Economic Success in Indian Country." While we appreciate the hearing there were some views that were expressed by the panel that we don't necessarily agree with. Some of those issues are addressed in this testimony. Below are some successes, struggles and barriers that we face.

History

The Wichita and Affiliated Tribes is the only tribe that claims Oklahoma as its aboriginal homeland. We were always here. Our people once roamed from the area around Wichita, Kansas, Oklahoma and all the way down to around Waco, Texas. While we used to inhabit these lands freely, in the late 1800s we were forced to move to this reservation area that we now share with the Caddo and Delaware Tribes. Jointly we have over 2,500 acres of land. The Wichita and Affiliated Tribes does have a constitution and our governing document is a Governing Resolution. We have a tribal council that is made up seven elected officials who are authorized to transact business on behalf of the Tribe.

Economic Successes

The Wichita and Affiliated Tribes has enjoyed some limited economic success over the years. The limited success that we have achieved had many hurdles that continue today as we continue to diversify our tribal economy.

8a Companies

In 2003, the Wichita and Affiliated Tribes became 51 percent owner of Anadarko Industries. Anadarko Industries is an 8(a) company that is located in Houston, Texas. Anadarko has seen much success and graduated from the 8(a) program in 2012.

In 2011, the Wichita and Affiliated Tribes became 51 percent owner of Wichita Tribal Enterprises which was a duplication of Anadarko Industries. Wichita Tribal Enterprises has faced many hurdles. In 2015, the Tribe under the Wichita Tribe Industrial Development Commission purchased the remaining 49 percent ownership in the company and now is the 100 percent owner.

Sugar Creek Casino

In 2008, the Wichita and Affiliated Tribes opened the Sugar Creek Casino in Hinton, Oklahoma.

Wichita Tribal Smoke Shop

In 2008, the Wichita and Affiliated Tribes opened the Wichita Tribal Smoke Shop in Hinton, Oklahoma.

Wichita Travel Plaza

In 2013, the Wichita and Affiliated Tribes opened the Wichita Travel Plaza in Anadarko, Oklahoma.

In addition, the Wichita and Affiliated Tribes has a Wichita Housing Authority, Wichita Tribe Industrial Development Commission, Wichita Tax Commission, Wichita Gaming Commission and Wichita Tribe Sports Commission. We also recently purchased a hotel.

Economic Struggles and Barriers and Challenges

WCD Lands-Land Exchange and Consolidation

WCD stands for the Wichita, Caddo and Delaware Tribes. While we read many great stories about tribes all over the United States and the Department of Interior consolidating and restoring land back to tribes, we wonder why this cannot be done for our Tribe, the Delaware Nation and the Caddo Nation. Thousands of acres of our aboriginal homelands taken during allotment were later returned to joint trust ownership among three separate tribes. These lands are virtually useless to us without agreement among each of the three tribes and approval of Mt United States. In 2007, the Tribes agreed to exchange some of the trust lands among themselves so that each would have individual control of some acreage. The tribes have resolutions approved to set-aside land for each tribe. We have tried continuously since 2007 to consolidate 600 of the jointly shared lands into parcels for each tribe so each tribe would have lands to exercise jurisdiction, exercise self-governance, exercise selfdetermination and pursue economic development. We spend all of our resources on attorney fees because we can't get a decision out of our Regional Office. We truly believe that the Secretary has the authority to approve this land exchange that benefits all three tribes. Yet, for over eight years since the resolutions were passed and with the emphasis on trust acquisitions and land consolidation in other parts of the Country, we still sit here hoping that one day we will enjoy the benefits that other

tribes have who don't have to worry about jurisdictional issues because they share lands.

WCD-Lease With the Regional Office

WCD Enterprises, Inc. has had a lease that has expired that the Southern Plains Regional Office leases that we have been unable to get a new lease with. The lease expired many years ago and then there were one year renewals made. We would like to get the lease issue resolved. It is part of our economic development. The lease has remained at the same rate while costs have gone up to maintain it.

Land Acquisitions

We read many great stories about tribes all over the United States and even other areas in Oklahoma approving their land into trust applications. However, we find here that it is very difficult to acquire land into trust, particularly for direct service tribes in the Southern Plains Region. Processes that should take a few weeks, regularly take years to accomplish. Trust applications are often deemed incomplete or removed from consideration based upon the errors or ever changing requirements of BIA personnel. It seems that where the effort in other areas of the Country is to find ways to streamline the approval process, the effort here is to delay the approval process.

HEARTH Act

We were pleased to be one of the first Tribes to obtain federal approval of a tribal leasing ordinance and appreciate your assistance. However, if we are unable to acquire and govern our own trust lands exclusively, and develop the corporate infrastructure to manage them, I am afraid the tribal leasing ordinance will be of little use to us. That should not be the case. We urge you to focus manpower here in Western Oklahoma to resolving these issues immediately so that we and our neighbor tribes can enjoy the same exciting new opportunities that those elsewhere enjoy.

Federal Charter

In December of 2012, the Wichita and Affiliated Tribes submitted a Federal Charter. Contrary to the current goals and priorities to improve and enhance economic development in Indian country, the BIA has refused to approve our federal charter. The BIA insists we must hold a secretarial election, even though the law does pennits all tribes to adopt a charter the way we have, and even though the BIA has permitted our neighboring tribes to do so. We urge you to find out why tribes cannot get Federal Charters approved in this area.

Thank you again for allowing the Wichita and Affiliated Tribes to submit written testimony.

PREPARED STATEMENT OF JAMES K. BYRD, MEMBER, MUSCOGEE (CREEK) NATION

Senator Lankford

Thank you for the opportunity to provide comment on "Advancing Economic Success in Indian Country." I am pleased that this Committee is elevating the issue of economic success in Indian Country.

Clearly, elements for success were revealed in the live testimony by the witnesses that testified at Anadarko High School. Success can be enhanced by using programs from government entities such as the Small Business Administration and using the expertise of local technical institutes. Individual desire is also imperative in order to capitalize on economic opportunity which presents itself in a myriad of ways.

Business preparation is essential but it is business opportunity that is of more value. It is in this light that I submit my comment.

Leases on federal lands, both on-shore and off-shore, for mineral exploration, recovery, transport and distribution that are administered by the Federal Government, i.e. the Bureau of Land Management (BLM), should contain a utilization clause exclusive to Indian business. The clause should direct the leasee to utilize Indian businesses to the maximum extent possible. This clause should be similar to the small business utilization clause in government contracts. The leasee should be required to develop an Indian business utilization plan. In addition, the leasee should be required to report the utilization rate of Indian business to the BLM. In turn, the BLM can use this data for enforcement of the clause.

The mineral resources of this country have much value. Indian businesses have successfully participated in this industry, but are not widely entrenched in this vast market. This business opportunity has great promise for advancing economic success in Indian Country. As the Federal Government receives large lease payments and mineral royalties, so to can Indian businesses flourish from the opportunity to

participate in these federally controlled endeavors. This approach is not designed to control the mineral exploration industry, but to enlighten them on the need to be inclusive of the original mineral owners of this great country.

PREPARED STATEMENT OF GEORGE P. TIGER, PRINCIPAL CHIEF, MUSCOGEE (CREEK) NATION

Dear Senator Lankford, Chairman Barrasso, Vice-Chairman Tester, and Esteemed Members of the Senate Committee on Indian Affairs:

It is my pleasure to offer testimony on "*Advancing Economic Success in Indian Country*." First of all, thank you to the Committee for holding a hearing on this extremely important topic of achieving success for not only native and tribally owned enterprises but for everyone located in Indian Country and the United States. We are appreciative of the support from members of Congress, such as this Committee and our Oklahoman Congressmen Tom Cole and Markwayne Mullin. 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 and is a forerunner in industries such as health and gaming. Our Nation has built upon our experience over the years, but like many businesses in America sometimes special programs and services are necessary for them to achieve economic success. For that reason we offer the following input for your consideration:

1. Secure Land and Natural Resources of the Muscogee (Creek) Nation

The Muscogee culture, like so many other indigenous peoples, is land based. By that we mean, our people thrived for hundreds, if not thousands, of years subsisting off the land and still have great numbers of plants, wildlife, and herbs that we consider essential to maintain our culture, spirituality and traditions. Maintaining and preserving our culture is a major concern of Muscogee people because of the loss of habitat and access to these necessary natural resources we are already experiencing. Ceremonies that are sacred and absolutely necessary spiritually to

us require certain herbs and plants that we can only find and harvest in the wild. General developments such as for residences, commerce, industry, manufacturing, utilities, and transportation threaten the habitat supporting wildlife, plants, herbs and other natural resources. Many of the plants and wildlife required to express, maintain and protect our spirituality, traditions, culture, heritage and ceremonies are continually destroyed by deforestation, the draining of wetlands, conversion of natural meadows into grazing or overgrazed lands. Limiting the availability to ingredients vital to our religion and culture means our teachings and traditions will go extinct in just a few more generations. The rights of indigenous people to maintain, protect and strengthen their culture, traditions, spirituality and political status are one of the many adopted by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Articles 5 & 8. (Please see Attachment 1: Written Statement to the Special Rapporteur of the United Nations, dated May 3, 2012) You can help us protect our culture by mandating *meaningful consultation* by state and federal agencies with Indians and Indian Nation representatives on any development of lands currently or previously held by the tribes and known as aboriginal, reserved or treaty lands.

As part of our distinct status as Muscogee, our native people historically and presently worship, pray and hold ceremonies at what we call "Ceremonial Grounds." Upon removal, we were forced to leave behind not only our ancestors' graves and cemeteries, but also the lands we used for spiritual reasons such as praying, fasting, and performing ceremonies. We maintain our ceremonial grounds and places of worship are as hallowed and sacred as any sanctuary held in esteem by other Judeo-Christian religions. Our ceremonial grounds and those we have left behind in burial grounds in the Southeast United States are now vulnerable to developers and builders. We currently have a situation in Alabama, where those claiming ancestral ties to our native people have desecrated a sacred place, called "Hickory Ground" by digging up the bones of our ancestors and building a casino on top of the ceremonial grounds and cemetery. Having no jurisdiction or legal basis to stop such desecration our nation has expended funds on expensive litigation in Alabama. Also, following our removal our ceremonial grounds' fires were rekindled in Indian Territory, now known as Oklahoma, and continue to exist today. But due to allotment our people do not own title to these ceremonial grounds, most lease with the private owner and do not have any protections against future access or desecration. We call upon Congress to help us secure and protect these lands we left behind and those we use now for our future generations by passing an Act to protect "sacred sites" and "sacred places" such as these as they are an integral part of our peoples' heritage, culture and traditions.

The Muscogee people are a communal society, our predecessors' structure of government was in the form of tribal towns and the conglomeration of tribal towns was referenced as the Creek Confederacy. Each tribal town was a society of families that shared in communal agriculture, hunting and gathering and operated under a traditional form of government. Removal and allotment destroyed our communal base and confederacy that once was the greatest strength of our people. Our nation has, over the years, attempted to restore the concept and political distinction of tribal towns by chartering Indian communities and allowing them autonomy to develop economic opportunities. However without a land base or security in land interests, their success is extremely limited. Article 9 of the UNDRIP states that indigenous people have a right to community involvement and participation. We urge you to consider programs offering federal financial participation toward purchasing land and securing the natural

resources for tribal nations to shore up communities' economic development efforts. Industries such as agribusinesses, shared crops, cooperatives, livestock, manufacturing goods and customer service companies are flourishing in Oklahoma; fostering a community based enterprise would result in a grassroots movement toward self-sufficiency.

We at the Muscogee (Creek) Nation ask the federal government to secure for the Indian Nations, our natural resources such as air, water, mineral interests, timber, grazing, agricultural and other surface interests, as well as wildlife and plant life. Access and security to our natural resources is a human and civil right agreed upon by the United States within the UNDRIP. Many treaties guaranteed most of these resources to our Nations in perpetuity, but rarely do Indians have unquestioned title to secure them for us. Often states, counties, cities and private developers encroach on the rights associated with our guaranteed reserved rights regularly. Because of the granting of title in fee simple here in Oklahoma during allotment, there is a widely held belief that no title to the interests as described above rests with the Indians; even though they are reserved to Indian tribes by treaty and legal precedent exists to the contrary. This misconception results in costly and timely litigation between parties, draining tribal resources in the process, resources that could go toward economic development efforts and business success. We ask for federal guidance and rulemaking to direct an agency to protect the natural resources for tribes' who need them to develop economics.

2. Rectify the Damaging Effects of Allotment

The allotment era unequivocally destroyed the land base, communal society structure and political base of the Five Civilized Tribes including that of the Muscogee (Creek) Nation. As you know, land that previously was held in common for the benefit of the people as a whole was parceled out in fee simple tracts to individual Indians. Allotment resulted in a quagmire of complex issues surrounding our Indian lands. For one, "fractionated" ownership of allotted lands results in lost opportunities for leasing, royalties, and other economic benefits land owner(s) might enjoy. Fractionation weakens the ability of our tribal citizens, Indian people, and Indian nations to give free and informed consent to the use of personal property for the purposes of financial and economic advancement. Second, allotted lands were stolen by greedy developers and non-Indians with unscrupulous and sometimes murderous methods while the people who were entrusted to look out for our best interests allowed it. For that reason, we ask for assistance in gaining some accounting methodology and retribution for lands lost in this manner. And third, allotted lands may currently be in fee, restricted or trust status, each one treated differently for tax and economic development reasons. The term known as "checker boarding" describes the plats of land that is situated side by side but having a different status of title. This land issue leads to lost interest in businesses and industries because of the complexity of taxes, jurisdiction and ownership.

One of the major impediments to land developments of our Muscogee (Creek) tribal nation surrounds the one caused by restricted lands. Restricted lands are qualified as such based on blood quantum requirements and the restrictions create obstacles for families and land owners to lease, convey, or bequeath their own property. The overly complicated and burdensome probate procedures required in restricted land cases are timely and costly, not to mention the tribal nation has absolutely no input or say so over the distribution or disposition of restricted

lands. Also, once an owner's blood quantum falls below 50% the restriction is lifted and lands often fall into non-Indian hands through tax deed sales. We also have questions about whose version of the 50% blood quantum is applicable since the BIA, DOI and tribes do not have a singularly acceptable definition. Once the restriction is lifted those lands are taken off the nation's land base records and often the family loses the lands by sale or devise over a period of time. We suggest as a solution that all restricted lands recorded as of September 1, 2015, be converted by Congressional Action to that of a trust status and the status of "restricted" lands be stricken. Doing so would provide stability to the land owner and give the tribal nation more involvement in decisions concerning lands within our jurisdiction.

The 1947 Act, which only applies to the Five Civilized Tribes and persons of 50% blood quantum Indian or more, cripples our nation's ability to effectively conduct business and pursue economic development on a regular basis. As a federal law, it is disastrous to our nation's sense of self determination, tribal sovereignty, our land base and tribal jurisdiction for many reasons. It weakens our self-determination, self-governance and tribal sovereignty by giving state court jurisdiction over our tribal citizens' real property and probate affairs. Under the '47 Act, we as a tribal nation cannot determine heirship for our own citizens in our own tribal courts and have little to no input in to the decisions concerning the same. Because of the blood quantum requirement, restrictions are lifted on lands of persons having less than 50% Indian blood, property taxes become due leading to the family to sell, convey or gift the property to someone outside the nation, reducing the nation's land base. The '47 Act creates division and confusion in the process of land ownership, property rights and probate processes to the detriment of our nation and our tribal citizens' opportunities for economic development. For these reasons we strongly encourage Congress to a) repeal the '47 Act as contrary to the purpose of acting in the best interest of our tribal nations; b) to comply with the provision for a free and informed consent within the UNDRIP; and c) convert restricted lands to lands in trust for the benefit of our tribal citizens and tribal nation.

One of the means introduced by the Department of Interior to address the tribes' land base loss through allotment is the "Land Buy Back Program for Tribal Nations." However, so far only two Indian nations in Oklahoma have been afforded any consideration via the buyback program, the Quapaw, with a published benefit to 20 individuals, and just recently the Osage. To my knowledge, not one nation of the Five Civilized Tribes is even in negotiations with the DOI to acquire lands lost by allotment in the Program. The initial list of prioritized nations to be included in the Land Buy Program had the Muscogee (Creek) Nation as number twenty-four (24), in 2013 we dropped to number fifty-one (51) and by 2014 our nation is listed as number one hundred eighty-one (181). We have not been provided any reasoning or given opportunity to address the reasoning of the DOI to lower the priority of our Nation's inclusion in the Land Buy Back Program. We request a mandate for more transparent and inclusionary process to engage in the Land Buy Back Program especially since there are only three and a half years left on the Settlement's enforcement. Further, compared to the devastation of the tribal nations' land base due to the allotment system, we respectfully request additional appropriations by Congress to further the intent and purpose of Land Buy Back Program beyond the Cobell Lawsuit Settlement funds.

3. <u>Restructure and Reduce Oversight of the Bureau of Indian Affairs</u>

The Bureau of Indian Affairs is an organization based on concepts of an outdated hierarchy. One hundred years ago, field agents and regional superintendents served as the front line communication between Indians and the higher ups in offices in Washington DC. With advances in technology and information systems, not to mention the ease of travel, the division and regional approach of yesteryear led to levels of bureaucracy within the BIA that thwarts rather than helps economic development in Indian Country today. Lengthy delays in the processing of information by the BIA and getting required approvals up and down the chain of command results in lost economic opportunities to tribal nations on a daily basis. Virtually any proposal submitted to the BIA takes months if not years to come to any type fruition and possible resolution. Also there is a clear lack of consistency among regions as to interpretation of federal laws and regulations as applied to Indians. For instance in some regions the federal recognition, land into trust processes and the approval of leases and royalties are far less rigorous than that the Muscogee (Creek) Nation experiences. We propose the BIA have a centralized approach where our own nations, those who are capable and proven of financial culpability, make their own decisions concerning management of lands, resources and funds held in trust with an appropriate level of audit and oversight from the DOI.

In our experience, the process of having the Bureau of Indian Affairs take land into trust on behalf of Indian tribes is extremely rigorous, overly cumbersome and laborious. We have had individual parcels of land have been in the trust process for many years some as far back as the late 1990's. Also, for five years the Muscogee (Creek) Nation has been attempting to get the property formerly known as the Fountainhead State Lodge put into trust. The BIA Regional Office has had the trust application since 2011 and we have complied with every request in a timely manner, and the longer it drags on the more our opportunity is lost. Congressman Dan Boren introduced legislation in 2010 to have this property put in trust on behalf of the Creek Nation, only to have it pass the House but languish in the Senate. The Creek Nation purchased the State Lodge property in 2008 and has been unable to develop it for any purpose due to the delay in getting the lands put into trust. We see this as our number one priority in economic development for McIntosh County in Eastern, Oklahoma. Our studies show there is a significant need for a recreational, lodging, restaurant, conventions and most of all employment opportunities in McIntosh County, Oklahoma where this property lay. We ask for Congressional intervention to transfer eighteen (18) acres owned by the Army Corps of Engineers and the forty-eight (48) acres known as the Fountainhead Property into trust to grow the economy in a region that is severely lacking in jobs and recreational services. We also ask that a review of the Regional bottleneck of trust applications be addressed to have the backlog timely processed to facilitate economic development. We believe nations should experience a lot less rigors in BIA's interpretation of taking land into trust and Congress should allow tribal nations' to determine their own compliance with land into trust regulations at a local level with central office review and approval.

Another area of concern within the Bureau of Indian Affairs involves royalties, leasing, rental income and the processing and distribution of those funds to the beneficiaries. We believe the negotiations done by the BIA for royalties or income from leasing, renting or other contracting may not be in the best interest of the nations or land owners. Rates of interest, royalty interests, bonus payments, and the like are negotiated with little to no input from the land

owner or the tribal nation. Sometimes when our nation reviews proposed contracts, leases or agreements negotiated by the BIA, we refuse to consent to the terms because it is not the highest best use. In addition the lengthy process and time it takes to negotiate and get a lease or royalty interest approved by the BIA results in lost revenue and economic development by the tribal citizen or the nation. Furthermore, even after the aforementioned agreements are made, income from rentals, leases or royalties do not reach the beneficiaries for months due to the levels of bureaucracy that payments go through. Beneficiaries or lessors have lost income and real opportunity for financial investments due to the delays in getting paid from the BIA. Due to a lack of system integrity, we also question how accurate the payments are that are provided by the BIA because we have requested an accounting of these funds many times to no avail.

The last issue concerning the BIA is related to the lack of transparency and communication. Free and informed consent under the UNDRIP and our own premises of liberty and freedom require full disclosure of any data and information pertinent to our cultural, societal, communal, political, financial and economic security. Our requests for information from the BIA results in limited guarded answers and we feel they skirt the issues to divert our attention from the subject matter at hand. Accessing information systems of the BIA is to date still practically non-existent for tribal nations so that we do not have full and accurate data to make decisions concerning our own nation and our own citizens. Again the hierarchy of the BIA is not conducive to communications between the Indian Nations and the decision makers within the US Government. Tribal sovereignty assures our nation a relationship that to date has not been honored within the BIA, communication may flow up the chain, but none of significance is shared downward with tribal nations. We request Congressional influence to address the bureaucratic levels of government within the BIA that stifle communication and economic development.

4. Provide Access to Records of Accounting and Transfer Judgment and/or Settlement Proceeds

The Muscogee (Creek) Nation is a party to, and/or the successor in interest to, the signatories of certain Indian treaties with the United States and is the beneficial owner of certain monies currently or previously held in trust for us by the United States allocated from settlement or judgments based on those treaties. In addition to the judgment/settlement funds, there are certain land and other trust assets, which are held in trust for our Nation and all financial accruals and interest is solely maintained by the BIA. Natural resources held in trust or restricted and managed by the United States BIA, include, among others: surface rights, mineral rights, water rights, air rights and a variety of natural reserves. Our trust holdings include real property and land, which in Oklahoma is extremely valuable to commercial and residential real estate, hunting, grazing, agriculture and energy industries. Passing the HEARTH Act was an excellent start to streamline leasing regulations, and we commend Congress for passing this important legislation in 2012. However, we encourage Congress to further advance tribal self-determination and self-governance by requiring less burdensome rules and regulations overall to develop, use, lease, and/or rent all the resources held in trust for us. Congress alone can transfer the authority to decide for ourselves how we want to control, not only real property and land, but also cash and interest on deposit in some financial institution for the betterment of our tribal citizens.

The Tucker Act, 28 U.S.C. § 1491 and the Indian Tucker Act 28 U.S.C. § 1505 involved claims brought by an Indian tribe for money damages arising, under the Constitution, laws, treaties and regulations of the United States, Executive Orders of the President and federal common law governing the administration and management of property and assets held by the United States in trust. Funds appropriated in Settlement or Judgment Funds from the Indian Claims Commission Dockets 21 & 275 that are held in trust and invested by the Secretary for the benefit of the Creeks should be given to the Nation for their own financial management and directing the investment portfolio. The Indian Claims Commission directed judgment funds deposited in the US Treasury for the interest to be distributed to the Nation on an annual basis. We have proven by our handling of our own internal "Permanent Fund" to be capable of managing our own funds as we have grown those funds at a higher rate than the US Treasury's rate of return. The Permanent Fund was initially a judgment settlement to the Creek Nation in the early '70's. We legislated then that only the proceeds from interest could be used for tribal operations and administration. Today our Permanent Fund is doing amazingly well and our Nation's portfolio is performing better if not outperforming most privately held trusts in Oklahoma. At the very least, our nation should be consulted and given a chance to choose how to invest any and all settlement and judgment funds awarded by the Indian Claims Commission or other legal body. We believe and maintain that all funds held in "trust" and managed for us could be better invested and accounted for by us than by the Office of the Special Trustee and the Bureau of Indian Affairs.

The US Department of Interior and Department of the US Treasury have never rendered a full, accurate or timely audit or accounting to our Nation's trust assets, or provided with a clear statement as to the origin or use of all of the funds in each of these accounts. The BIA have kept and continue to keep the Muscogee (Creek) Nation, who is the trust beneficiary, uninformed as to: (A) the trust property, trust funds and trust resources it owns or owned, (B) the income and interest that is currently owned and previously owned trust property, resources and funds have produced, and (C) what disposition, if any, has been made of that income; and (D) whether the United States has properly managed Nation's trust assets." We believe the United States has failed to obtain and continues to fail to obtain the maximum investment return possible on our Nation's trust funds and deposits. This breach of fiduciary duty has caused and continues to cause monetary loss to the Muscogee (Creek) Nation. We maintain that our nation is capable of fiscal responsibility to the point that we should and could take over the administration and operations of trust properties, trust funds and trust resources with general oversight by the US Government and strict accounting and auditing procedures.

Lastly under this section, the *Keepseagle v. Vilsack* Settlement was first distributed in 2011. Since that time it has been determined that approximately $380 Million remains in the settlement fund, even though a second round of distributions were approved. The lawsuit claims that the USDA denied thousands of Native American farmers and ranchers across the US the same opportunities to get farm loans or loan servicing that were given to white farmers and ranchers. Plaintiffs also claim that the USDA did not do outreach to Native American farmers and ranchers or provide them with the technical assistance they needed to prepare applications for loans and loan servicing. Pursuant to the current Settlement Agreement, those funds may only be given to non-profit organizations which provide services to Native American farmers and ranchers and Native Americans seeking to become farmers and ranchers. Of which we can

only think of one such non-profit offering such a service, and it is not located in Oklahoma. We propose that the remaining balance of the funds be equally distributed to the 31 Tribal Conservation Districts that have Memorandum of Agreements in place with the USDA. The recognized Tribal Conservation Districts and MOA's that are valid should provide the court adequate proof of the need in Indian Country to put Indian Lands back into production for the local, regional and national agri-business related use and development.

It is our contention that general oversight and strict use of audits and accounting procedures would fulfill the trust responsibility toward protecting our nation's resources and is in the spirit of the UNDRIP. Article 32 of the UNDRIP provides: 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources; and 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. We are thankful for Congressional consideration of this matter to perhaps start a pilot program and application process for Indian Nations to prove the expertise and abilities to manage our own property for our own benefit. As we believe that we, ourselves, hold a higher fiduciary duty to our citizens than the BIA has shown to deliver for us.

5. Level the Field of Financial and Governmental Programs for Tribal Nations

During the years of 2007 and 2008 the United States faced a great recession that required federal bailouts to financial institutions and new programs in the form of the Emergency Economic Stabilization Act; however none of those programs and funds was made available to Indian nations. Our tribal governments and people faced the same recession conditions as other people across this nation, but were not afforded any program or service equal to others who got assistance or "bail outs". Even though our Indian people are historically documented as one of the worst socio economic disadvantaged groups in the US, we are routinely left out of any incentives to revitalize the economy. Some of the major disadvantages tribal nations have in economic development are due to geographies, land loss, culture shock, intergenerational trauma, and lack of federal appropriations to meet need. We request that Congress consider a similar type Indian Economic Stabilization Act to facilitate Indian Nations' recovery from years of recession and socio-economic weaknesses and spur economic development in distressed areas. We Indian Nations do not ask for a simple handout, we want to participate, just as others in the business world, in a vital economy that will benefit all citizens in the long run, and ourselves in the process.

Tribal nations could benefit greatly from having financial institutions, savings and loans, and credit unions improved upon and perhaps new services initiated to address the unique needs of tribes and tribal members. Currently tribal nations only recourse for acquiring debt or financing are commercial banks which do not offer the best rates or finance packages due to limited competition. Tribal nations are stuck negotiating for rates and deals with commercial banks that are not the absolute most lucrative outcomes resulting in lost opportunities for

economic development due to lost buying power. That same premise goes for the small business owner too. Currently the limited funding of federal small business loan based programs for tribal citizens is not enough to cover the necessary startup costs of a new business. The small business owner is caught in an area of no financial means available to them to buy inventory or even get past a few months in operation due to the minimal start up loans they receive. They can't get a commercial loan due to not having financial history to rely upon and can't get enough small business loans to guarantee enough funds to last long enough to see net profits for economic success. Tribal nations look to Congressional support to help us access financial institutions and banking industries tailoring programs that offer funds, debt, loans, financing, savings and other programs in non-traditional means for the Indian tribal businesses and tribal business owners.

The most troublesome of tax incentives are the two different tax programs that are problematic to Indians economic development in Oklahoma. For one, there are tax credits that are offered to companies for hiring Indians on former or current Indian lands. That program is offered in 2/3rds of Oklahoma, but Indian tribes themselves are not eligible for the tax credit. The other, the Hire Indian Act, is a tax incentive to employ native people, with the caveat that the employee must be hired at minimum wage and the annual salary must not exceed $26,000; this program maintains the depressed socioeconomic status of Indian labor. Both tax programs are meant to draw economic development to Indian Country but neither one benefits those who need it most, Indian tribes. We ask Congress to exert some influence and respectfully ask for action to have our Indian tribes included in these same or similar programs to spur economic development efforts in Oklahoma.

In sum, the Muscogee (Creek) Nation has a firm belief that diversification into any of the fastest growing businesses in US would be of great benefit to the tribal nations, our state and country. Federal programs offering financial, managerial, or in-kind incentives for Indian Nations or tribal citizens to enter the industries of Health Care Provider, Restaurants, Recreational Services, and Heavy Construction or the top industries in Oklahoma of Agriculture, Manufacturing, Mining, and Customer Services in Indian Country would assist in that endeavor. What the nations lack are the financial means including access to institutions, lending and loans, tax credits, cash matches or other type programs that would foster economic development through diversification. Our nations are strong natured and strong willed and resilient, we only seek a level playing field in the business world to get the stability we need to succeed economically for years to come.

Thank you again for your interest in advancing economic success in Indian Country.

Attachment 1: Written Statement to the Special Rapporteur of the United Nations by the Muscogee (Creek) Nation dated May 3, 2012

Written Statement to the Special Rapporteur
of the United Nations
by the
Muscogee (Creek) Nation
Tulsa, Muscogee Nation
May 3, 2012

The Muscogee (Creek) Nation has worked over thirty years to protect and preserve the sacred site, and significant cultural site, of "Oce Vpofv" [often translated into English as "Hickory Ground"] and has taken every available avenue to resolve the dispute.

The Muscogee (Creek) Nation must and shall follow the traditional practices that have allowed us to sustain our existence for thousands of years, from the very beginning, through removal from ancestral homelands, and to our current existence.

The people of Oce Vpofv have been working with the Muscogee (Creek) Nation Government since 1980 in an effort to protect the ancient site of Hickory Ground located in modern day Wetumpka, Alabama. The Hickory Ground members are a direct matrilineal descendent of the old Hickory Ground in Alabama, this relationship does not exist with any member of the Poarch Band (themselves claiming to be "Creek Indians"), the current owners.

The very fact that the Poarch Band has excavated and disrupted the sacred site of old Hickory Ground suggests that this group is now so far from Muscogee culture and tradition that our tribal government has terminated any government-to-government relationship with them excepting negotiations to protect this site. Even tribes or cultures that are bitter enemies have enough respect for one another to not desecrate a burial site for the sake of economic development or tourism.

The Hickory Ground people of the Muscogee Nation have objected verbally and in writing to various Federal entities that have oversight authority of the Poarch Band, regarding the desecration of the Hickory Ground site in Alabama.

These efforts have fallen on deaf ears and blind eyes; the Bureau of Indian Affairs grants the Poarch Band authority to remove and repatriate the human remains and items of cultural patrimony of the Muscogee people. This administrative position appears to be solely based upon the designation of the Old Hickory Ground Land Title, and that title being held for the Poarch Band of Creek Indians in Trust by the United States of America. Our tribal government questions both the nature of their acquisition and the legal authority for Trust status, which has been overturned by federal courts.

The treatment of human remains and objects of cultural patrimony is held in high regard by every tribal culture in North America. In 2007 many Muscogee citizens traveled to the Hickory Ground site in Wetumpka, Alabama. The moment that their feet touched the ground on this sacred site they felt connected to its creation and those who once lived and thrived there.

The feeling didn't last long, as they learned that the remains discovered by archaeologists were wrapped in old newspapers and stored in 5 gallon plastic buckets, stored on site within a 5 foot by 8 foot cargo trailer. It was heartbreaking to each of us to see this treatment of Muscogee people, but solidifies my previous statement about the dis-association the Poarch Band has with Muscogee tradition, culture, and pride.

Throughout this unconscionable treatment of ancestors of the Muscogee people, the Secretary of Interior has been aware of the concerns and desires of the only matrilineal descendants of Hickory Ground. The first desire was to have the site preserved in perpetuity and never have it disturbed in any form. After it became known that the site was excavated, it became priority to the

Hickory Ground people to have their ancestors and the items lovingly buried with them reinterred in the exact location that they were discovered.

These desires have been neglected. The efforts to preserve and protect this site were not only demonstrated by the Hickory Ground people, but also the Muscogee (Creek) Nation and various individual persons; the Alabama Historical Preservation Society also lobbied the protection of this site.

There was a restriction issued during the conveyance of the acreage, this stipulated that for a period of 25 years the land shall remain intact as it was at the time of conveyance. However, the Poarch Band had other thoughts and plans in place for the Hickory Ground Sacred Site. This planning took place several years before the expiration of the stipulated transfer of the land. Most indigenous cultures understand the importance of moving on from this existence and making an eternal journey, most grant the utmost respect to the passing of its people and demonstrate this by laying loved ones in their final and permanent resting place.

The Muscogee Nation pleads with the United Nations Special Rapporteur to conduct its own inquiry of facts and report findings. For many, many generations the people of the Muscogee have protected all that is important to us, this act of desecration on behalf of the Poarch Band is unprecedented and beyond any bounds of human dignity in destroying the sacred site that to this day has impact on the Muscogee people and our way of life.

In many ways the conduct of the Poarch Band is more detrimental to the way of the Muscogee, it is a clear defection of responsibility that Native American cultures understand and practice. We are taught to be good stewards of all of our natural resources, including all living things as well as respecting those who have gone before us. Maintaining thoughts of the generations not yet born is a practice that has kept the Muscogee people thriving since time immemorial.

The strong sense of being is still evidenced in our youth today, the demonstrated practices of culture that have allowed our people to sustain our way of life. The language of the Muscogee is still alive, the songs of our ancestors still live and the basic concepts of being good stewards of all resources are still practiced within our culture.

The Muscogee people understand the need for both commercial and public development....the Poarch Band feel no attachment to this concept.

For Muscogee people, history and culture are inextricably linked to the land; forced removal denied the Muscogee people access to much of our cultural and historical inheritance. When asked to remove, the one great plea of our leaders was that we not be separated from the graves of our ancestors I again plead to the Special Rapporteur of the United Nations to take this in consideration when finding its own facts related to the Hickory Ground sacred site.

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While the above comments address a particular crisis at a sacred site, the Muscogee Nation also needs to respond to the broader issues raised by the Special Rapporteur. However, as Muscogee-European contact spans nearly 500 years, and our government-to-government treaty relationship with the United States dates to 1790, the following description of issues should be considered a synopsis, at best, of the major aspects of this history. The documentation of each item discussed below would be feasible only with a massive commitment of resources and time.

RESPONSE TO ISSUES WITHIN THE RIGHT TO PURSUE TRIBAL SOCIAL DEVELOPMENT.

Food sovereignty and environmental protection.

The Muscogee people are one of many indigenous nations removed from ancestral lands. Our removal was 175 years ago, but was in violation of our 1832 Treaty with the United States. While some of our people did migrate voluntarily, a large number were removed when the consent of our leaders was obtained through duress, and a larger number was removed by armed force. Removal parties were fed by the lowest bidder, and when those supplies were infested with insects, they were not rejected by military authorities. Disease and fatigue took such a toll that one-quarter to one-third of our population perished in transit. No time was allowed for proper burial, and our people buried their friends and family by wrapping them in quilts or blankets and rolling logs over them to try to keep them safe from wild animals.

This resulted in new lives in a new climate, a new topography, new soils, and 800 miles of distance between our people and the wild plants they used as medicine. There is no federal guarantee that our people can travel to ancestral lands to gather medicine for use or for propagation. The Muscogee are a land-based culture, deprived of the lands and resources that the culture was built upon.

Federal flood control projects in the 20th century not only flooded individual lands and sacred sites, but also permanently inundated the best soils for growing corn, a staple of our diet for centuries before European contact. Agencies of the federal government generate power from waters impounded in our territory, but none of that revenue is shared with our tribal government.

Our tribal government is not seriously consulted on environmental issues, and tribal positions on environmental issues have been ignored by federal, state, and local agencies.

The federal government, whose laws recognize a tribal right to the use of water necessary for sustaining our tribal economy, has done nothing to help our nation or our people implement that right in fact.

The federal government, whose treaties with us recognize in words our rights to hunt, fish, and gather wild plants (for food or for medicine) in tracts which extend, interrupted, from the Gulf and Atlantic coasts and the Tennessee valley into the foothills of the Rocky Mountains, but there is no federal legislation nor executive rules which defend those rights or explain to state governments how to recognize them properly.

Education, Health, and Economic Rights

As a central and deliberate part of its coercion and duress to force our people to abandon our ancient cultural foundation of the common ownership of real property, the United States closed our tribal schools. Eight years later, as part of an effort to terminate our government (which failed in law but was carried out nonetheless by federal bureaucracy and state officers), those school grounds and buildings and their equipment was sold, and the proceeds of those sales divided among the members of the tribe to fund a legal obligation that the federal government had set for itself but did not want to expend.

Although the federal government assumed health responsibilities when its treaties "took [us] under [their] protection," actual health protection efforts were sporadic at best (consisting of immunizations when nearby or downstream "white" populations could be threatened), even after federal adoption of the Snyder Act in 1927. Only limited and underfunded health facilities have been provided since that time, and existing health facilities in the Muscogee Nation were established through tribal efforts and with limited federal support. Expenditures on health care and related facilities remain the principal expense of our tribal government's unobligated funds.

Credit associations established under federal programs in the 1930s never had sufficient capital to have a significant economic effect within our nation. There is no federal legislation regarding

recognition of or protections for tribally chartered banks, savings and loan associations, or credit unions.

Federal management of "restricted" lands after allotment in severalty consisted of leasing individual lands to non-members for the grazing of cattle instead of promoting the agricultural development of those lands for their highest and best use by the individuals themselves. The Muscogee Nation still fights this ridiculous concept of management that the BIA has now practiced for 100 plus years. Need any member of Senate or Congress be reminded of how difficult it is to place land into Trust or simply transfer the allotted lands to the Nation for perpetual protection.

To accomplish the successful land transfer of Restricted Indian Land to United States Trust for the benefit of the Muscogee Nation, we must first have a State of Oklahoma District Court hear the action and then request the Restrictions from alienation be lifted, thus making the lands that were to be protected by the United States Government fee-simple and subject to state taxation and jurisdiction. This follows the tragic law written in 1947 by a member of Oklahoma Congressman George Stigler; the "Stigler Act".

Indian Child Welfare and removal of Indian Children from communities and families.

Prior to the adoption of the Indian Child Welfare Act, a large but unknown number of Muscogee orphans were lost through the Bureau of Indian Affairs acting as an adoption agency to non-member households. There are no records that tell our tribal government where those persons have gone, or who they are, or how we can reconnect them to their culture, history, and families.

Barriers to Religious and Social practices and activities.

While federal allotment in severalty of common lands set aside some (not all) cemeteries and many (but not all) church grounds as "reservations" (the church ground reservation titles actually being given to state county commissions as trustees), no provision was made to protect the ancient and honorable ceremonial grounds of our people. As a result, about three-quarters of those traditional religious sites are abandoned or destroyed, several others continue on their original sites only through the grace of a non-member landowner, and only two have been saved for our future by outright purchase by our tribal government.

However, the principal barrier to the traditional life of Muscogee people comes from the allotment of our common lands into severalty, individual alienable title, and the purposeful breakup of established communities and their social organization. While neighboring tribes suffered the same break-up of lands, some of them were able to keep common lands where tribal lifeways could continue.

THE RIGHT TO FREELY PURSUE TRIBAL CULTURAL DEVELOPMENT

Language, protection of sacred ties, and ceremonial grounds.

The Muscogee language has continued to be an important part of the culture of many tribal families, despite the Interior Department's selection of using the native language as an adverse criteria in determinations of whether an individual Indian was "competent" to conduct legal affairs without Department supervision. Federal government's boarding schools prohibited the use of the language and the state's public schools historically did not teach or promote the use of tribal languages. While the federal Congress attempted to require the use of printed voter registration materials and ballots in tribal languages under the Voting Rights Act, except those which were "historically unwritten," federal officials were silent when the state Election Board ruled that since, in ancient times all tribal languages were unwritten, that no native languages in Oklahoma would be used for printed materials or ballots. The Special Rapporteur must be advised that Muscogee

has been in written form, using the "roman" alphabet, since the 1830's, was widely printed in local newspapers, hymnals, "readers" for students, and law books prior to statehood, and was an essential element of a successful bilingual public school system closed by force of law of the United States.

Smaller language groups within our confederacy have had less success. Perhaps two handfuls of people still speak the Yuchi language, although the Yuchi people struggle to maintain a language instruction program. Other languages have disappeared here entirely: Hitchiti is only spoken on the Miccosukkee and Seminole reservations in Florida; Alabama is only spoken among the Alabama people in Texas; Quassarte is only spoken among the Coushatta people of Louisiana.

When the United States declared its airwaves to be sovereign property and a common asset of the American people, it made no attempt to set aside frequencies for native nations nor to compensate us for our loss of such a valuable asset. In recent years, the United States has reallocated frequencies and band-space with no regard for tribal communication needs and has benefited significantly from its sale of assets in which tribal governments have a clear interest.

The United States and the several states which now extend through our aboriginal territory have not and do not protect the sites where our people were buried or the earthworks our people constructed to mark sacred places. The looting of Muscogee burials in the southeast is routine and endemic, and no laws constrain the sale of items of cultural patrimony whether intrastate, interstate, or international.

The few laws which attempt to protect sites on federal property are of little use. The United States Corps of Engineers has approved mining of clay from the surface of a significant cultural site containing burials in Macon, Alabama, and the Tennessee Valley Authority has approved the sale and development of confirmed cultural sites containing burials on its own lands. The actions above were taken without any restrictions or protective covenants whatsoever. And the federal law which protects native cultural sites on tribal lands has been twisted, in the name of "development," to allow the Poarch Band to utterly destroy the important Muscogee cultural site of Hickory Ground in Wetumpka, Alabama, as we have detailed separately today.

Since our ceremonial grounds were not accorded a status similar with Christian churches during the allotment of common lands, their struggle to maintain land tenure has been overwhelming. Only a quarter of the ceremonial grounds we had a hundred years ago still remain active today, and some of those have had to move to maintain their social organization and traditions. Those still active still struggle with tenure issues when faced with non-member ownership or when land falls into heirship and an heir is not Muscogee and/or is not tolerant of the ancient religion. While our Nation was able to purchase one ceremonial ground from a non-member in an atmosphere of mutual respect, a different landowner demanded an exorbitant price, and began cutting trees that shaded family camps when the Nation questioned the price asked.

<u>Access to cultural and religious resources, feathers, plants, other items.</u>

The Muscogee culture is a land-based culture. The destruction of our ancient law of common land ownership was unnecessary and has reduced us from one of the richest people on the planet only a hundred and twenty years ago to a nation with daily economic struggles for survival and advancement. We blame this single factor alone for unemployment rates that average four times that of our neighbors and underemployment estimated at twice our number of unemployed.

As a result of our loss of land title, access to sacred plants has become severely limited. And, since those plants mostly depend upon undisturbed ground, and few people purchase land to leave it undisturbed. Deforestation, the draining of wetlands, conversion of natural meadows into grazed or overgrazed lands as well as general development for residences, commerce, industry, utilities and transportation have all destroyed habitat for sacred plants. As we are not the only

tribal culture that uses these plants, our traditional people often find known sites already harvested before they arrive.

While federal laws prevent the hunting of many birds of prey and migratory birds, the permit process established for native access to feathers only covers eagles; other feathers are actually of greater importance in our own traditional religion. Although our state has a greater native population than any other, the only federal feather repository is in Idaho.

And the native plants which our culture used for thousands of years are eight hundred miles away in our aboriginal lands, and no federal or state laws protect or promote our access and use, nor any program to attempt to propagate those plants for our people's use here. One biologist has claimed that, of the hundreds of native plants with medicinal uses in the southeast, the Muscogee "were already using all of them."

Other items of immense and ancient cultural value are nearly unobtainable. Certain shells from the gulf coast are of species which have been overhunted since our removal, and international trade in them is prohibited or constrained. This prevents tribal artists from trying to learn to replicate some of the most emblematic items of our ancient culture.

Our greatest cultural resource is the lands we were forced from in the southeast, not only by American expansion, but also by the displacement of other tribal peoples forced from their own homelands. The river valleys of the southeast all have sites which contain burials and items of cultural patrimony. The United States Tennessee Valley Authority owns many of those sites. The Muscogee Nation is not represented on any board or cultural committee of the Tennessee Valley Authority, and the TVA prioritizes development over the preservation of our sacred sites.

Respect for Tribal ways, names, intellectual properties, songs, performances.

The ways our tribal culture is misunderstood, misinterpreted, or misrepresented are too many to mention. It is common for state and federal bureaucrats and politicians to misrepresent our history for their own purposes -- It's like a tradition they have held to for almost 400 years. Tribal representatives are often "corrected", even in public -- sometimes in the pronunciation of our own language and sometimes in the interpretation of our own history and culture.

The results of anthropological interviews about our culture, classified as "ethnology," are copyrighted by the United States.

Traditional songs which were recorded on Edison wax cylinders are slowly deteriorating in federal storage. Tribal requests for information about them or for the preservation of what information may be recoverable from them have gone unanswered in the past.

The written records of our own tribal government prior to statehood have been confiscated by the United States and turned over to the Oklahoma Historical Society, which has lost one volume of judicial proceedings.

The dominant culture wants to view our dances as performances, but they are actually sacred expressions of our ancient religion and deserve the protection from exploitation that we try to give them.

THE RIGHT TO FREELY PURSUE TRIBAL ECONOMIC DEVELOPMENT

Federal, State and Judicial impediments to economic development.

Major impediments to economic development all evolve from the allotment of tribal common lands in severalty and made alienable.

In order to force tribal "agreement" to allotment, the United States closed our courts, made tribal laws unenforceable, closed tribal schools, and set up a legal framework that would have allotted our lands without our consent if no agreement had been reached.

In the very close plebiscite to ratify the agreement, three of our towns, equivalent to precincts for this purpose, determined that they had no authority to consider such an issue, and their opposition was not counted as negative votes. For international reference, within our culture, silence signifies the absolute opposite of "consent."

The agreements themselves have been unilaterally modified by the United States. For example, our agreements set aside certain roles that only our own citizens could perform, such as the purchase of any surplus lands, or the guardianship of properties of widows or orphans or persons who had insufficient education to manage complex legal affairs. The United States quickly extended those restricted privileges to all U.S. citizens, and an industry of professional guardianship quickly arose, with estate management fees averaging five hundred percent that of surrounding states, and some estates looted absolutely with no judicial oversight. The estate probate, descent and distribution which had previously been handled by our tribal courts were turned over to state courts. State courts valued the opinions of guardians over the direct testimony of property owners. Any partial heir to a piece of property could demand its division against all other heirs, and state courts would routinely sell the land and divide the proceeds rather than preserve individual land tenure, and valuable mineral interests were most often sold along with surface title.

Whereas crude petroleum reserves were already in production prior to the allotment of lands, and nearby tribes secured the reservation of mineral title as common property even as surface title was allotted, the federal government insisted on the division of our common mineral estate along with the surface. This led to the poorest management ever experienced by the Muscogee People of our minerals and Natural Resources; performed by the Bureau of Indian Affairs

Sovereignty over natural resources, including water.

Tribal law development efforts to expand the role of tribal government in assuring our people a strong economic role within what our treaties with the U.S. call a "permanent tribal homeland" through taxation, zoning, regulation of the production of minerals, chartering of public utilities, and the proper allocation of resources such as water have been stalled by recent U.S. Supreme Court decision which, although we ourselves see many reasons we should be differentiated from due to specific treaty guarantees and prior court decisions, we acknowledge a distinct risk of being applied to us nonetheless and thus losing those necessities of sovereignty altogether, because the Supreme Court now ignores treaties which establish precise boundaries of territoriality and instead relies instead upon the proportion of land ownership, as if our own people had selected this path instead of being forced into it. If our people had been informed that any time a tract of land was sold to an outsider that our nation could lose powers of sovereign government over that tract, no allotment agreement would ever have been ratified by popular vote or by our National Council.

Sustainable development.

In order to sustain development, our land-based culture requires large tracts of common lands, with our Nation, in alliance with our communities, able to make decisions regarding residential, commercial, public utility and transportation infrastructure, governmental, and agricultural uses.

We have been an agricultural people for thousands of years. The rise of agriculture in China and the Fertile Crescent is on the same time horizon as that of the Tennessee Valley and nearby areas where our culture grew and expanded. The agricultural achievements of our people are too many to list here, but our ancient crops now help feed a hungry world. One scientists said

that, of the hundreds of plants in the southeast that have a medicinal use, the Muscogee were already using all of them. The central ancient medicinal philosophy of our culture that diseases come from animals was dismissed for hundreds of years but has now been proven true to the satisfaction of the rest of the world and its notion of modern science.

Common lands are necessary to allow our people to make their own cultural choices in a complex economy. We need the cultural flexibility that allows families to make the choice of competing in contemporary and future varieties of American and world culture on one end of the spectrum or any other alternative, including that of retreating into the quiet of ancient and self-sustaining ways of life.

Business entities and civic organizations.

The Muscogee Nation has worked hard to establish tribal charters for community organizations which include opportunities for participation by all tribal members, regardless of religion or religious denomination. For over 30 years, we have seen these community charters as a necessary tool for providing opportunities for leadership development as well as economic and social development, giving people the chance to participate in making hard choices and seeing the direct consequences and political accountability that results when those choices succeed or fail. Our planning efforts have always been community based.

Other than tribal community organizations, Muscogee people also have opportunities to be active in leadership roles at our ceremonial grounds and churches, as well as public school Indian Parent Committees.

Muscogee people generally participate in many of the civic organizations of the general population around us with negligible discrimination. However, Muscogee children are commonly bullied on their way to and from public schools, and occasionally within school grounds themselves. The United States has dropped its enforcement of requirements for on-site hearings about discrimination in public schools, perhaps as a reaction to a ruling obtained by the Muscogee Nation that school systems must make a good-faith effort to implement parental priorities expressed there regarding expenditures of federal funds.

Federal and state taxation of individual,private sector, and tribal businesses.

The Muscogee Nation is a government, and, as such, is exempt from taxation. Our tribal constitution, approved under federal law, clearly says that all tribal assets, both real and personal, are exempt from taxation. The state claims that this exemption only extends to lands held in trust (and has even wrongfully alleged that unallotted tribal lands were not "held in trust"), while the federal government not only routinely delays tribal requests to place lands in trust, but also has delayed approval of a special tribal charter permitted under federal law which would clarify the Nation's ability to place our own tribal land into trust status by simply filing a deed with the county courthouse.

However, our state government keeps trying to expand taxes upon Muscogee people and tribal enterprises. Federal law initially only allowed state taxation of "surplus" inherited lands, meaning lands which exceeded an individual's 160 acre allotment of tribal lands. The state's taxation powers have been expanded to include individual lands which are not "restricted from alienation" under federal law. In "exchange" for tribes in this state being recognized under federal policies to strengthen tribal governments in the 1930's, the state was granted power to tax the production of minerals on tribal and individual land. However, this tax is not apportioned according to the percentage of royalty interest in a property but is assessed solely against the landowner, meaning one-quarter to one-half of the landowner's royalty is taken by state tax, but none of the revenue of the oil company or other investors that actually extract the minerals.

Although the state has this power to tax some individual real property and some mineral

production, the state obliges tribal members to pay taxes which have never specifically been authorized by any federal legislation. This includes taxes or licenses on income, sales, communications, fuel, utilities, automobiles, and boats, notwithstanding the fact that some of these activities take place exclusively within our treaty boundary.

What is just as important, however, is the suppression of tribal taxes by federal law in1906 without compensation. The United States "repealed" our existing system of tribal permit taxes unilaterally and without tribal consent. The Nation has never been compensated. Since the reconstitution of tribal government in 1979, there has been no federal effort to help our Nation establish and collect revenue from the economy within our boundaries and make expenditures that support tribal government and improve the quality of life for all residents.

Protection of tribal intellectual properties, names, designs, songs and performances.

Aside from our traditional religion, our most important tribal intellectual property is the vast array of items of cultural patrimony which have been buried with our ancestors in our aboriginal lands. Many of these items are looted, some for individual profit alone, others for warehousing in museums in order that scholars may analyze them and profit from publication of their opinions. Items which were looted by individuals or stolen from or deaccessioned by museums find their ways into national and international markets, and are lost forever to our people. Even public and university museums do not exhibit or display these objects here where our people and our neighbors can see the artistic achievements of our ancient civilization, nor do they post video or photographic files online for our citizens to simply view.

The next most significant intellectual properties are the written records of our constitutional tribal government before statehood, which have been placed, without compensation, into the sole custody of the Oklahoma Historical Society, which has in fact lost an important volume of judicial proceedings.

Another significant intellectual property is the federal records of treaty and agreement negotiations.

Federally sponsored scholars collected tribal songs early in the 20th century that were stored on wax cylinders, which are currently deteriorating with no federal effort to preserve them.

IMPLEMENTATION OF THE DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES.

Free prior and informed consent; treaty making.

Since the adoption of the U.N. Declaration of the Rights of Indigenous Peoples, the Muscogee Nation has been engaged in no negotiations with the United States other than our continuing struggle for approval of a special federal charter. We are adequately represented in these negotiations by legal counsel far better informed on the legislative history and departmental intent behind this type of charter that it is the federal officials who are less informed and thus stalling approval which has been routinely granted to other tribes in the past, although their charter applications were almost all prepared by federal employees and not by the tribes or their attorneys.

However, past relationships with the United States have not been so even-handed. The last treaty that was freely negotiated between two equal parties was our first American treaty, in 1790. Since that time, federal officers have been dictatorial and, when denied the lands they requested, unrelenting in their efforts.

Principle of Non-Discrimination.

While we acknowledge that our people are discriminated against in public schools, in public and private employment, and in access to general government services (including law enforcement) as well as the administration of justice, where we are often easy targets for harassment, civil and criminal, with limited means for adequate representation.

However, another significant problem is legislative and judicial discrimination against our tribal governments' status as governments. Federal legislation has failed to integrate tribal governments into the federal system, leaving us outside major aspects of governance as specific roles are assigned to states, local governments, and federal agencies. When our legal teams carefully rely upon established legal precedent to assert tribal rights, the judiciary (especially at the highest levels) "moves the goalposts" by establishing new standards which, somehow, magically, tribes cannot achieve, or inventing interpretations of law which are in direct conflict with the legislative history of the statute(s) in question.

Similarly, federal courts routinely apply standards of American or English common law to controversies involving native people and our governments, totally ignoring the fact that we have common law of our own which is the beginning point for any assessments of our rights.

Another example of discrimination against our tribal government has been the practice of cities and counties and state and federal agencies claiming that the rights-of-way established by tribal-federal agreement prior to the issuance of allotment deeds were "abandoned" by our nation and were subject to closure and conversion to other uses.

Federal law also discriminates among our people by a concept called "degree of blood." While our traditional society accepted all persons born of our women as equal citizens, the federal government has created a complex legal maze, based upon its own biased criteria of race and "racial purity," that has affected the legal status of our lands and individual eligibility for federal services.

Federal adjudication of tribal claims in the past has also been discriminatory. Upon the rare occasion that a claim is actually awarded by the United States, it is valued as of the date of taking and then paid on face value with no adjustments for interest or changes in the value of currency and, in fact, subject to the deduction of "offsets" claimed by the United States, which are usually expenditures which the federal government would have made whether the initial loss had been sustained by the tribe or not. The federal government does not treat corporations in the same way.

Furthermore, federal agencies attempt to hide tribal socio-economic statistics from our people, the American people, and the world at large by categorizing our statistics as "other" when other ethnicities are defined, blending the unemployment and low income in tribal areas with the achievements of America's many successful Asian communities into a single statistical heap.

<u>Restitution, Right of Recovery of lands, territory, and resources.</u>

The Muscogee Nation has four outstanding claims for lands east of the Mississippi, prior to our removal to the Indian Territory.

The United States claims to have taken lands from the Muscogee people along the gulf coast from Mobile to St. Augustine, despite the fact that those lands were under the flag of Spain at that time and were not ceded by Spain to the United States for several years thereafter. The United States have settled a claim for aboriginal lands with the Seminole people, and, except for a ten-mile strip from Mobile to Pensacola previously ceded by the Muscogee Nation to Great Britain, the aboriginal title of the Muscogee people to the remaining lands has not been terminated.

The Muscogee Nation also claims that lands taken by the United States at the conclusion of Andrew Jackson's intervention into a civil war between Muscogee people (called the Creek War

of 1813-14), some allied with Great Britain, were protected from seizure by provisions of the Treaty of Ghent between the United States and Great Britain.

The Muscogee Nation also claims undivided interest and unterminated title in lands in western Tennessee and Kentucky which were common hunting lands of several tribes, which the United States claims to have purchased from two tribes alone without the consent of the others.

The Muscogee Nation has claims for the loss of human life and for the inhumane suffering our people were subjected to during a forced removal in violation of our 1832 Treaty. Under that document, which our leaders negotiated to prevent removal, and under the duress of subjection to state courts where our people were disqualified as jurors and witnesses, federal agents divided our common lands among heads of households and placed conveyance approval in state courts where blatant fraud quickly divested our people of their homes and crops. Disputed titles aroused violence by all aggrieved parties, and federal troops quickly occupied our territory. Under threat of force, some leaders assented to removal. But those who clung to our ancient homeland were rounded up (with federal troops entering Cherokee lands to pull intermarried Muscogee men and women from their homes and families) and held in stockades until they could be escorted on foot by armed forces, marched relentlessly through malarial swamps, and fed along the way though federal contracts to the lowest bidder, most often political allies of the sitting administration. The loss of life is estimated as a quarter to a third of our people, some five to seven thousand lives. No mercy was shown to families who lost a loved one, and they were quickly wrapped in quilts and fallen timber pulled over them to attempt to prevent access by wild animals. Removed parties arrived in a land different from federal descriptions; instead of clear waters the streams were muddy, instead of deep rivers they found "rivers of sand." They had no way of knowing that federal maps, when legislation allowing this removal was passed, showed this area as "uninhabitable desert."

The Muscogee Nation has claims against the states of Texas and Arkansas for the militia dispatched into our territory in the fall and winter of 1861, which pursued and harassed a column of over 10,000 armed neutrals until they overran the civilian camp and slaughtered around 3,000 men, women and children, leaving them to try to make their way to Kansas. And the Muscogee Nation has claims against the United States for the same events, ignoring a solemn treaty promise to protect our people from all enemies in the lands we were removed to by claiming that protection was only available if we left our homes and marched to Kansas. The United States provided no protection for this migration nor any ammunition so we could protect ourselves, directly allowing casualties at Confederate hands, indirectly causing another thousand deaths as survivors tried to complete the journey lost in wilderness and ice, then neglecting to supply the refugees with shelter or food – another thousand of our people dying in federal camps while federal contractors slaughtered bison a few hundred miles west and shipped the skins back east, leaving the meat to rot.

The Muscogee Nation has a claim to three-and-a-quarter million acres of lands taken by the United States at the end of the American Civil War. Although a minority faction, mostly our citizens who had abandoned traditional life to adopt plantation agriculture and chattel slavery, did ally themselves with the Confederacy, the vast majority of our people attempted to prove their loyalty to their treaties and preserve their claims to hold the land promised by treaty. They suffered greatly for that faith in the federal government's solemn promise, as outlined above. But no Confederate state which actually seceded and raised armed forces and fought a prolonged war with the American Union had half its real property taken from it. No state, Confederate or Union, moved with the speed and surety to integrate their black populations into political life that our people did, with full representation in our Council and positions in law enforcement and judiciary that continued until the federal bureaucracy dismantled the institutions of our tribal government and itself divided our people on racial lines against the principles and practices of our nation.

The Muscogee Nation has a claim to the lands allotted in severalty before statehood. The

agreements reached were only because of duress: our courts were closed, our laws were declared unenforceable, our schools were closed despite the fact that they had achieved a greater rate of literacy than in any surrounding state. These agreements were ratified only because failure to accept them would have meant the allotment of our lands without our consent and the loss of the few provisions our leaders were able to secure for the protection of our citizens.

And these few provisions themselves were quickly swept aside by federal legislation. While it was significant that we were promised that only our citizens could purchase surplus lands remaining after allotment, and that right was taken from us, it it much more significant that the restriction our leaders insisted upon that only our tribal members would be allowed to act as guardians for other tribal members was quickly and unilaterally changed, allowing the growth of a veritable industry of professional guardians who took control of individual property whether that person was indeed competent or not, draining estates of their assets, selling off lands and minerals to their business associates, and converting precious assets to their own use with little or no regard for the individuals entrusted to their trusteeship, and with little or no accountability to state courts that ratified their every action.

The agreement secured the promise that no doctrine of laches would ever be applied to allotted lands, but the United States has since added a provision of adverse possession, which is a doctrine of laches, to apply to our lands. In fact, the United States has constructed a body of law that does not protect the property rights of an allottee or their heirs, but, instead, guarantees that the ultimate purchaser secures good title.

And, while we claim that the allotment itself was fraudulent, we also claim that the administration of those individual properties was negligent, and that surface and mineral estates were never administered to their highest and best use but were seen only as assets available for outsiders to exploit.

No legislature or court in America would dissolve a corporation by simply dividing its assets among its shareholders, especially if the true value of the division were unknown (as ours was with the discovery of crude oil reserves under our lands). That was what was done to us. Deeds were issued with little regard for the residence of the allottee unless they had pre-existing improvements, and the allocation of land was not accompanied by any capital for the improvement of the land. Surface and mineral resources were leased by federal agents with no regard for the long-term needs of the allottee or heirs.

Another example of the inconsistencies of this allotment are the federal allotment maps themselves along the Arkansas River. Property lines and legal descriptions exclude the river itself, leaving it as unallotted tribal lands -- in fact, allottees who could not have a full quarter-section along the river were allocated other lands elsewhere to resolve the deficiency. Then, when the value of minerals under the river became evident, competing parties including riparian claimants, the state government, and the federal government (both on its own behalf and, opposing itself, on behalf of our tribe) wound up in front of a court claiming title with the final ruling being that, despite all these parties litigating for ownership, the river had "no value," and belonged to the riparian claimants.

Based upon the claims above, any estimate of adequate restitution would need to be based upon transferring to tribal common title the preponderance of surface and mineral properties within our boundaries, securing ownership of public utilities and infrastructure to support economic activity and development in those lands, federal guarantees that tribal laws and taxes will be enforced throughout our territory and compensation for the wrongful suppression of those treaty rights, returning to tribal ownership our sacred sites in the southeast including the burial places of our ancestors, securing to us all items of cultural patrimony whether in public or private custody, transferring to us tracts of land which contain all representative ecologies of aboriginal lands which we claim along the gulf coast, under the Treaty of Ghent, in western Tennessee and

Kentucky, and in the "last reservation" in Alabama from which we were driven by legal duress and armed force, full compensation for each life and all property lost during our removal and during the American Civil War, and full compensation for those claimed resources which the United States chooses not to restore to us, with interest and with adjustments for values of currency.

OTHER ISSUES PERTINENT TO THE DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES

The laws of the United States regarding native nations are based upon rulings from two hundred years ago where native people were not involved in the proceedings, in many cases were not parties to the dispute, were not represented or did not participate in the court's selection of an "advocate" for native rights, and include gross misinterpretations of native culture, native life, and native common law.

This body of law has culminated in federal assertion that there is a plenary (absolute) power of Congress over native rights and property, and that plenary power is subject to no other constitutional standards whatsoever, nor even common standards such as fairness nor equity.

Until the United States abandons not only the assertion of plenary powers but provides restitution of resources lost and compensation for loss of use, restores territoriality, and knits the sovereignty of native nations into the whole fabric of the American federal system, the full expression of native peoples' rights in the United States cannot be achieved.

JOINT PREPARED STATEMENT OF KAY BILLS, OSAGE; PAMELA STANDING, CHEROKEE; AND KRISTI DANIELS-LONG, COEUR D' ALENE

Chairman Lankford, thank you for hosting the first field hearing on achieving economic success in Indian Country. That is an innovation in itself.

As individual entrepreneurial business owners, we are often overlooked by federal committees that focuses exclusively on tribes, which we agree is a government-to-government relationship and certainly appropriate. However, we believe that a critical and core element of achieving economic success will depend on building, not just tribal businesses, but strong American Indian & Alaska Native entrepreneurs at the same time.

This white paper is a result of a growing coalition of American Indian & Alaska Native businesses, higher education, and professional organizations working together to see the long delayed implementation of the Buy Indian Act of 1910. We have traveled to Minnesota and New Mexico. We have presenting our information in Oklahoma. This work is a compilation of many activities over the past two years.

We believe the Bureau of Indian Affairs and the Indian Heath Service are aligned much like the United States Department of Veterans Affairs. The model for delivery of service to American Indian & Alaska Native, like the model for our Nations Veterans, is in distress. The past and future investment by the government to our communities must be maximized. We feel that to sustain any progress in the face of constrained budget an examination from top to bottom of the procurement practices of these two agencies is critical.

We share your concerns about federal budgets and believe that empowering American Indian & Alaska Native companies to participate in delivery of goods and services to our own communities is a positive step. Like our Veterans, American Indian & Alaska Native businesses, tribal or individual, know best how to serve our tribal members.

We submit 7 Steps to Transparency, Accountability & Economic Parity for your consideration.*

PREPARED STATEMENT OF JAMES RAY, PROJECT DIRECTOR, MBDA BUSINESS CENTER—TULSA, NATIVE AMERICAN AND ALASKA NATIVE PROGRAM

Economic development on trust land is problematic for investors and lenders because of sovereign immunity issues and court jurisdiction that sometimes has proven to get complicated. Tribes that have U.C.C. regulations in place would be can-

*The information referred to has been retained in Committee files and can be found at *http://www.ncai.org/MSP–15–008*_Rec_and_Reso.pdf

didates for an expanded guarantee program that would ensure that the investment was protected beyond the collateral of the real estate. Tribes with U.C.C. and the ability to lease could attract projects to land either in trust or owned fee simple with the added step of a loan guarantee pool enhanced through re-insurance to mitigate potential losses. Underwriting for such projects would need to be open to adequate due diligence, but would create an attractive model for Foreign Direct Investment and Domestic Direct Investment in Indian Country. This could alleviate issues that might prevent New Market Tax Credit investors to get involved in a project as well.

This concept could be utilized with adequate fees derived from the project to administer and create a "no cost to the government" model. The current BIA Loan Guarantee could be authorized for a larger allocation to enhance opportunities for tribes to develop opportunities not previously covered. The amount of authorization should be at least 1 billion dollars as opposed to the current 100 million dollar level. If the United States holds the land in trust for the tribes, then they can only remove barriers and lay the ground work for ensuring the highest and best use with the greatest benefit to the tribe and the community members of the tribe.

Some level of fast tract for regulations would need to be implemented to avoid excessive delays.

There are 56,000,000 acres of land held in trust and fee simple by tribes in the United States.

A portion of the incentive to locate projects in Indian Country would be to fund the guarantee from the tribe. The resulting jobs and economic activity could make the investment from the tribal perspective attractive.

Future federal settlements to tribes could very easily include a provision to further investment opportunities in Indian Country by providing funds to self-insure economic development projects that create good jobs and further wealth creation for tribal members.

The concept would be similar to Private Mortgage Insurance. In this case maybe Private Lender Insurance. The guarantee could be shared between government and re-insurance with premiums being collected by both.

Other Opportunities to Alleviate Barriers From the Federal Agencies

- Define and streamline the process to put land in trust for tribes.
- Define and develop "highest and best use" parameters to ensure that trust land is allowed to be developed by a tribe with minimum restriction.
- Institute SBA advocates for new 8(a) firms to ensure that they don't burn through 1–2 years of eligibility with minimal or no results. Strong training up front with maximum exposure and advocacy from BDS and PCR. Estimates have been put forth that as much as 85 percent of 8(a) firms never get a contract during their 9 year program.
- Tie performance ratings and associate bonuses and raises and promotion in the contracting community to meeting goals set forth in the Small Business Act. Institute accountability that is simple and measurable.

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