

OCT 9 1998

Honorable Perry Beaver
Principal Chief, Muscogee (Creek) Nation
P.O. Box 580
Okmulgee, Oklahoma 74447

Dear Mr. Beaver:

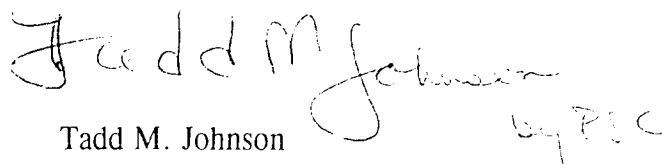
This letter responds to your request to review and approve Ordinance NCA 89-84 and its amendment, Ordinance 98-04, which were submitted on June 24, 1998. Ordinance NCA 89-84, was adopted on June 24, 1989, and amendment NCA 98-04 was adopted on March 28, 1998, by the Muscogee (Creek) Nation. Neither ordinance NCA 89-04 nor the amendment require approval by the National Indian Gaming Commission (NIGC) because the ordinance and the amendment address issues not raised in the Indian Gaming Regulatory Act (IGRA) or the NIGC's regulations.

In addition, the Nation has requested a determination of whether NCA 98-04 constitutes a management contract. NCA 98-04 is not a management contract because the Gaming Operations Authority Board is a tribal governmental agency.

Under the IGRA and the regulations of the NIGC, the Chairman is directed to review ordinances and amendments with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval.

Thank you for submitting the Muscogee (Creek) Nation's amendment for review. If you have questions or require further assistance, please contact Ms. Frances Fragua at (202) 632-7003.

Sincerely yours,

by PIC

Tadd M. Johnson
Chairman



JUL 18 1998

RECONSIDERATION AND APPROVAL OF NCA 98-04 AFTER VETO

I, the undersigned, certify that foregoing "Reconsideration of NCA 98-04" is a true extract from the March 28, 1998, Regular Session Journal of the Muscogee (Creek) National Council.

AND THAT, NCA 98-04 entitled, **AN ORDINANCE OF THE MUSCOGEE (CREEK) NATION AMENDING AND ADDING NEW PROVISIONS TO NCA 89-84, SETTING FORTH THE AUTHORITY AND POWERS OF THE GAMING OPERATIONS AUTHORITY BOARD** was presented to the National Council acting as a Council as a Whole;

AND THAT, Said legislation was approved by the National Council by a vote of **23** in favor, **0** against, **0** abstention;

AND THAT, Said legislation was vetoed and returned by message of the Principal Chief with objections;

AND THAT, Said objections have been entered at large in the Journal of the Muscogee (Creek) National Council.

AND THAT, The National Council placed the item of legislation on the March 28, 1998, agenda for reconsideration.

AND THAT, After reading of the Veto Message, such recommendation in the Regular Session on March 28, 1998, the National Council did receive a two-thirds (2/3) vote of the full membership which consist of Twenty-Six members to override the Principal Chief's veto with **21** in favor, **3** against, **0** abstentions;

AND THAT, **NCA 98-04** shall be recorded as a "**VETO OVERRIDE**" and shall be known as a Tribal Ordinance of the Muscogee (Creek) Nation.

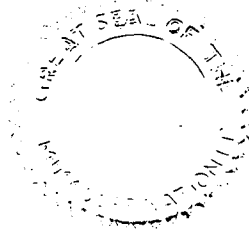
Ruthie A. Burgess
Ruthie A. Burgess, Recording Secretary
National Council
Muscogee (Creek) Nation

CERTIFICATION OF APPROVAL

THEREFORE, BE IT KNOWN, under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 98-04 hereby becomes an Ordinance of the Muscogee (Creek) Nation on this 28th day of March 1998.

FURTHERMORE, under Article VI., Section 6.(c) of the Muscogee (Creek) Nation Constitution, NCA 98-04 shall be stamped with the Seal of Muscogee (Creek) Nation.

IN WITNESS WHEREOF, I, the Presiding Officer of the Muscogee (Creek) National Council have hereto attached my signature this 28th day of March 1998.



Kenneth L. Childers
Kenneth L. Childers, Speaker
National Council
Muscogee (Creek) Nation

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VETO OVERRIDE

NCA 98-04

CODIFICATION #21. GAMING

A BILL OF THE MUSCOGEE (CREEK) NATION AMENDING AND ADDING NEW PROVISIONS TO NCA 89-84, SETTING FORTH THE AUTHORITY AND POWERS OF THE GAMING OPERATIONS AUTHORITY BOARD

Section 100. Be it Enacted by the Muscogee Nation in Council Assembled:

Section 101. **Findings:** The National Council Finds That:

1. The Gaming Operations Authority Board is the governmental agency of the Muscogee (Creek) Nation charged with the responsibility of administering and managing the Nation's gaming facilities, subject to the independent regulatory authority of the Muscogee (Creek) Nation Office of Public Gaming.
2. There is a need to clarify and restate the authority, powers and responsibilities of the Gaming Operations Authority Board, and to set forth the causes and procedures for removal of members of the Board.
3. The business of Indian gaming has grown in complexity and has become increasingly competitive in recent years.

Section 102. **Purpose:**

The purpose of this Act is to amend NCA 89-84 to clarify the general and specific authority, powers and responsibilities of the Gaming Operations Authority Board ("Board"); to authorize the Board to adopt rules, policies and procedures and standards for the operation of the Nation's gaming facilities; to set forth the procedures and rules for the removal of members of the Board; and to set forth certain reporting responsibilities of the Board.

Section 103. **Amendment:**

Subsections A and C of Section 102 of NCA 89-84, "Board Composition" (as amended by NCA 93-103), are hereby amended to read in full as follows:

- A. The Gaming Operations Authority Board shall consist of five (5) members, two of whom shall be appointed by the Principal Chief and confirmed by the National Council by Tribal Resolution and three appointed by the National Council and confirmed by National Council Resolution. There also shall be an Ex-Officio member on the Board to be selected by the Business & Governmental Committee and he shall have no vote. All such appointments shall be for a period of two years to run from the date of confirmation, at the expiration of which the office shall be vacant without holdover. All persons so confirmed shall, within 30 days of confirmation, apply to the

Nation's Office of Public Gaming for a license and undergo a background investigation as a primary management official pursuant to the provisions of NCA 94-95. Any such resolution confirming a nominee to serve as a member of the Board shall be conditional upon his or her applying and qualifying for an individual gaming license as a primary management official and undergoing a background investigation pursuant to applicable federal and tribal gaming laws. In the event that any such person so confirmed fails to apply for such license within said 30-day period, or his or her application is denied by the Gaming Commissioner as a result of the background investigation, then the confirmation of such person shall be null and void "ab initio," as if the nomination had been rejected by the National Council, and the office of the Board for which such person had been nominated shall be vacant.

- C. Vacancies in the membership of the Board may be filled by commission by the appointing authority. No commission shall be valid unless in writing signed by the appointing authority and a copy of such writing is submitted to the National Council no later than 5 days after the date on which this commission is signed by the appropriate authority. In the event that the National Council takes action on the nomination of any such person so commissioned and, after a vote thereon, fails to confirm the nomination, such person shall not be renominated or recommissioned prior to the expiration of one (1) year after the date of such vote by the National Council.

Except as expressly amended herein, Section 102 of NCA 89-84 (as amended by NCA 93-103) shall remain unchanged and in full force and effect.

Section 104. Amendment:

Section 103 of the NCA 89-84 is hereby amended to read in full as follows:

Section 103. General and Specific Authority, Powers and Responsibilities of the Board, and Limitations Thereon.

A. General Authority, Powers and Responsibilities:

1. As the governmental agency of the Muscogee (Creek) Nation charged with the responsibility of administering and managing the Nation's gaming facilities and operations, the primary authority and responsibility of the Gaming Operations Authority Board shall be to establish the policies, procedures, standards and goals for the efficient and profitable management and operation of the Nation's gaming facilities in compliance with applicable provisions of the Indian Gaming Regulatory Act, other federal gaming laws applicable to Indian gaming, the rules and regulations of the National Indian Gaming Commission, the Nation's gaming laws, and the rules and regulations of the Nation's Office of Public Gaming.
2. In addition to the foregoing authority and responsibility, the Gaming Operations Authority Board shall have the authority, power and responsibility to oversee, direct and supervise the activities of the managers of the Nation's gaming facilities, and to assure that, in carrying

out their duties hereunder, said managers are implementing and adhering to the policies, procedures, standards and goals established by the Board.

B. Specific Authority, Powers and Responsibilities:

1. The Gaming Operations Authority Board shall adopt, no later than 180 days after the adoption of this Act, written rules, policies, procedures and/or standards for the efficient and profitable conduct, management and operation of the Nation's gaming facilities, which rules, policies and procedures shall be consistent with all applicable federal and tribal gaming laws, rules and regulations, and shall address, at a minimum, the following matters:
 - a. Codes of conduct for all managers, staff and employees of the Board and the Nation's gaming facilities, in dealing with the gaming public as well as with all gaming managers, staff and employees;
 - b. Personnel policies and procedures to be followed in the hiring, supervision, management, promotion, disciplining and/or termination of staff and employees of the Board as well as gaming facility managers, staff and employees, including provisions for employment appeals and grievances filed by such managers, staff and employees;
 - c. Facilities maintenance, safety and security, subject to and in strict compliance with any security measures or standards required by the Office of Public Gaming;
 - d. Procurement policies and procedures to be used in contracting for and/or purchasing goods, services and gaming supplies, including without limitation rules prohibiting transactions and/or actions which would violate the Nation's laws regarding conflicts of interest;
 - e. Financial management, including accounting and reporting procedures and standards, controls over the use and safekeeping of cash and accounts, and preparation of any reports required by this Act, other applicable laws of the Muscogee Nation, the Office of Public Gaming, the National Indian Gaming Commission and/or any applicable laws of the United States;
 - f. Such other subjects which the Board deems appropriate for the effective management and operation of the Nation's gaming facilities or which may be otherwise required by law.
2. Any rules, policies, procedures and standards adopted pursuant to this Section 103 shall be submitted to the Principal Chief, the National Council, and the Office of Public Gaming no later than 180 days after the enactment of this Act and shall not become effective until the same are approved by duly adopted Tribal Resolution. The rules, policies, procedures and/or standards may be revised by the Board from time to time but all such revisions shall be submitted to the Principal

Chief, National Council, and the Office of Public Gaming and shall not become effective until approved by duly adopted Tribal Resolution. Any rules, policies, procedures and standards of the Board currently in effect which are not otherwise inconsistent with the provisions of this Act shall remain in effect until such new rules, policies, procedures and standards are duly approved by Tribal Resolution.

3. The Gaming Operations Authority Board shall have the power to contract with any person, corporation, partnership or other business entity for goods, supplies and services necessary and/or appropriate for the efficient operation of the Nation's gaming facilities, and this power shall include the power to enter into routine equipment leases. Provided, however, any contract with a term of more than one year shall not be valid unless approved by duly adopted Tribal Resolution. Provided further that the Board may delegate its power to contract for goods, supplies and services to the facility managers provided that any contract exceeding \$5,000 shall not be valid unless first approved by the Board; provided further that the Board may order, by way of written resolution, that such approval shall also be required for contracts of \$5,000 or less.
4. The Gaming Operations Authority Board shall be responsible for the protection, maintenance and proper disposition of all funds, accounts and other property that come under its authority or control or that are used and/or maintained in connection with and pursuant to its authority, powers and responsibilities hereunder. In this connection, the Board shall:
 - a. Provide narratives and financial reports to the National Council and the Principal Chief in accordance with the provisions of Subsection F of this Section;
 - b. Establish an internal auditing system of operations;
 - c. Record and maintain a verbatim copy of the minutes of all meetings of the Board, not including meetings or portions of meetings conducted in executive session;
 - d. Promptly report any theft or misuse of funds or other property under the Board's control to the Lighthorse Police and the Attorney General of Muscogee Nation;
 - e. Whenever requested in writing by the Speaker of the National Council, appear before and answer to the National Council or any Committee thereof so designated by the Speaker, in connection with any investigation into the use or disposition of funds, resources or property within the Board's control or into any other action or inactions of the Board;
 - f. Promptly respond to any lawful inquiry, order or directive of the Office of Public Gaming; and
 - g. Cooperate in any criminal or civil investigation being conducted by the Attorney General and Lighthorse police, including the furnishing of documents, papers or other evidence relevant to such investigation in accordance with applicable law.

5. In addition to the foregoing authorities, powers and duties, the Board shall have the authority, power and responsibility to:
 - a. Hire, supervise, direct, discipline and terminate the managers of the Nation's gaming facilities;
 - b. Hire, supervise, direct, discipline and terminate gaming administrative staff, directors, employees and other subordinate personnel of the Nation's gaming facilities, including without limitation financial managers, assistant facility managers and department heads;
 - c. Operate the Nation's gaming facilities so as to maximize the return on its investment therein, in accordance with the Nation's laws and all other applicable laws, rules and regulations;
 - d. Plan and implement plans for the efficient and competitive operation of the Nation's gaming facilities and the marketing of its gaming services to the public;
 - e. Assure that the Nation's gaming facilities are managed and operated in accordance with the highest standards of integrity, honesty, and fair-dealing;
 - f. Implement, and require all managers and other personnel to implement, the policies, procedures, rules and directives of the Gaming Operations Authority Board;
 - g. Report any theft or misuse of funds or property to the Attorney General and cooperate in any investigation into same by the Attorney General, the Lighthorse police, and/or federal law enforcement agencies;
 - h. Delegate to gaming facility managers any of the authorities, powers and responsibilities set forth in subparagraphs (b)-(g) of this paragraph 5; provided, however, except as otherwise expressly provided herein, no manager or other gaming employee shall have the power or authority to enter into any contract, lease or other transaction, or engage in any other activity referred to in Section 103C(1)-(12) of this Act, unless specifically authorized by the National Council pursuant to duly adopted ordinance.

6. The Gaming Operations Authority Board is further authorized to conduct class II gaming at the Nation's Travel Plaza located at U.S. Highway 75 and Loop 58 in Okmulgee County, Oklahoma, in accordance with the Nation's gaming laws, the rules, regulations and authorities of the Nation's Office of Public Gaming, the regulations of the National Indian Gaming Commission, the Indian Gaming Regulatory Act and/or other federal gaming laws applicable to Indian Gaming; provided, however, the Board shall first negotiate for the use of space within the Travel Plaza with the manager thereof. Any agreement for the use of such space shall be in writing and signed by the Deputy Director of Tribal Affairs and the Principal Chief. After execution, copies of same shall be furnished to the Speaker of the National Council for distribution to its

members. Additional Class II gaming facilities may be opened by the Board only after the approval of new locations by duly enacted ordinance of the National Council.

C. Limitations on the Board's Authority: Without first obtaining approval by the National Council by way of duly enacted ordinance, the Gaming Operations Authority Board shall have no power to:

1. Enter into contracts for the management of any game, gaming operation or any portion thereof licensed by and/or subject to the jurisdiction of the Muscogee Nation;
2. Enter into contracts or agreements with a term exceeding one year or which cannot be performed within one year;
3. Enter into contracts for the construction of buildings or any other improvements to real property or buildings thereon exceeding \$5000;
4. Enter into contracts with any other Indian tribe, Indian tribal gaming authority, commission or agency, or any unit of federal, state or local government, excepting contracts for the provision of water, sewer, electricity and other utilities;
5. Enter into leases, or agreements for the use, of real property or space within any of the Nation's gaming facilities;
6. Borrow money or make, accept, endorse or issue bonds, debentures, promissory notes, mortgages or security agreements or any other instrument of indebtedness or guaranty;
7. Make private or public donations of money or property;
8. Sue or be sued in any tribal, federal or state court; ✕
9. Hire or engage legal counsel;
10. Waive the sovereign immunity of the Muscogee Nation for any purpose whatsoever, or enter into any contract or agreement which contains any provision purporting to waive the Nation's sovereign immunity or which purports to subject the Nation to the jurisdiction of any tribal, state or federal court;
11. Enter into any contract which, by its terms, violates the Nation's gaming laws, the regulations of the Office of Public Gaming, the regulations of the National Indian Gaming Commission, the Indian Gaming Regulatory Act or other applicable Federal laws.
12. Have or attempt to exercise jurisdiction or control over any gaming activities conducted by Chartered Creek Communities.

Any contract which by its terms violates any of the foregoing provisions of this Subsection C shall be null, void and unenforceable ab initio in its entirety.

D. Removal of Board Members

1. The members of the Gaming Operations Authority Board shall not be subject to removal from office at the will and pleasure of the Principal Chief or National Council, but may be removed from the Board only for any one or more of the following causes as set forth in a written petition and proved by a preponderance of the evidence in the hearing provided for in paragraph 3 of this Subsection:
 - a. dishonesty, gross misconduct or incompetence in office;
 - b. willful neglect of duty as evidenced by excessive absences from duly convened meetings of the Board;
 - c. conviction of a felony under federal, state, or tribal law;
 - d. committing any act or engaging in any activity which would constitute a criminal offense involving dishonesty or moral turpitude under federal, tribal or state law;
 - e. directly or indirectly engaging in any activities or transactions constituting a conflict of interest under the laws of the Muscogee (Creek) Nation or any other applicable laws, rules or regulations;
 - f. violation of NCA 81-60;
 - g. willful failure to disclose material information or facts to the Office of Public Gaming in the Board member's application for the individual gaming license as required hereunder; or
 - h. revocation of the Board member's individual gaming license by the Office of Public Gaming in accordance with the Nation's laws and regulations on the licensing of gaming employees and officials.
2. A petition for removal hereunder may be filed by the Principal Chief or any Committee of the National Council with jurisdiction over the Board's affairs upon a majority vote for removal by such Committee.
3. Any Board member accused of any of the foregoing causes shall be given a copy of the petition charging him or her and afforded the right to respond to the charges and present witnesses and other evidence in his or her defense at a hearing convened by the National Council. The Petition shall state the cause or causes for removal with sufficient particularity to put the accused Board member on notice of the nature of the charges against him or her. Both the Petitioner and the Board member so accused shall have the right to be represented by an attorney at the hearing, provided that the Board member shall be responsible for paying his or her own attorneys fees and other expenses in defending the petition. The Petitioner shall be represented by (The Attorney General or, upon the request of the Petitioner, a special prosecutor appointed by the Attorney General pursuant to section 103b of NCA 92-81. The National Council shall preside over the removal hearing and receive the evidence. Removal of the

accused Board member shall require a majority vote of the National Council. The decision of the National Council shall be final and binding on the Muscogee (Creek) Nation and the Board member, and shall not be subject to judicial review.

E. Meetings of the Board

1. Regular meetings of the Gaming Operations Authority Board shall occur monthly at a designated place within the jurisdiction of the Muscogee (Creek) Nation. The date and time of such regular meetings shall be set by the Chairman, provided that proper notice is given according to the provisions herein. The Board shall adopt procedures not inconsistent with this subsection E governing its meetings, which shall address, among other matters, the election of a Chairman and a Vice-Chairman of the Board.
2. The Chairman (or in his absence, the Vice-Chairman) shall give notice of the time and place of any regular monthly meeting of the Gaming Operations Authority Board in writing to each Board member, the Principal Chief, the Speaker of the National Council, and the Office of Public Gaming, at least seven (7) days before such meeting. Service of said notice may be effected by first class U.S. mail, facsimile or hand-delivery, and shall be effective on the date of delivery to the official entitled to such notice or to the office of said official's regular place of business in the case of hand-delivery or facsimile transmission; or, in the case of notice sent by U.S. mail, 2 days after the notice, in a properly addressed envelope with sufficient postage thereon, is deposited in the U.S. mail. The date of the postmark on such envelope shall be conclusive evidence of its date of deposit in the U.S. mail. In addition, such notice of the regular monthly meeting shall be posted in each of the Nation's gaming facilities and at the Tribal Complex in Okmulgee, Oklahoma, at least three (3) days before such regular meeting.
3. Special meetings of the Gaming Operations Authority Board may be held when circumstances require such a meeting. Special meetings may be called by the Chairman, or by a majority of the Board. Notice of special meetings shall be in writing and served on each Board member, the Principal Chief, the Speaker of the National Council, and the Office of Public Gaming, at least forty-eight (48) hours before such meeting. Service of such notices shall be effected by hand-delivery or facsimile and shall be effective upon the date of delivery to the official entitled to such notice or to the office of said official's regular place of business. In addition, such notice of a special meeting shall be posted in each gaming facility and at the Tribal Complex in Okmulgee, Oklahoma at least forty-eight (48) hours before such special meeting.
4. Emergency meetings may only be held in the most extraordinary circumstances. Emergency meetings may be called by giving telephone or facsimile notice to each member of the Board, the Principal Chief, the Speaker of the National Council, and the Office of Public Gaming, provided that no action in an emergency meeting shall have any valid or binding effect unless ratified at the next regular or special meeting of the Gaming Operations Authority Board.

5. All meetings of the Gaming Operations Authority Board shall require a majority of the Board members to be present to constitute a quorum and conduct business.
6. All meetings of the Gaming Operations Authority Board shall be public meetings and therefore open to the public, except for executive sessions. The Board may exclude any person from an executive session except the Principal Chief, Second Chief, Speaker, Second Speaker, any National Council Representative, or the representative of the Office of Public Gaming. The Board may go into executive session only (1) to discuss personnel issues and matters of confidentiality that relate to one or more specific employees, or (2) to meet and consult with the Board's attorney on confidential legal matters. All other matters shall be discussed audibly to all persons in the room in open session. Executive sessions may only be held after they have been posted as an item on the agenda for the meeting in which the executive session is held. The general subject of the executive session must be described in the posted agenda, and no action by the Board may occur in executive session. It shall be unlawful for any person present in a meeting held in executive session to make public, or otherwise disclose or describe to any person not so present, any discussions or statements made during such executive session.
7. Notices of meetings of the Gaming Operations Authority Board, either regular or special, shall contain an agenda which describes each item of business to be conducted. There may be an agenda item for new business which shall only be for those matters that arose since the posting of the agenda. Any gathering of the Board to discuss Gaming Operations Authority Board business shall be considered a meeting subject to the requirements stated herein.
8. Minutes of all meetings of the Gaming Operations Authority Board, other than meetings or portions thereof held in executive session, shall be kept by a recording secretary. In addition thereto, an audio recording of all meetings shall be made, except for that part of the meeting in executive session.
9. Any action taken by the Board during a meeting convened or held in violation of this Subsection shall be null and void.

F. Reporting Requirements Of The Board

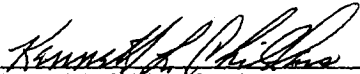
1. The Gaming Operations Authority Board shall make written quarterly reports to the Principal Chief and National Council on the affairs of the Board and those matters they are responsible for. The Board shall also cause to be delivered to the Principal Chief and the Speaker of the National Council, monthly financial reports on all gaming revenues, expenses and expenditures of facilities and/or games subject to the Board's jurisdiction. The Board shall deliver special reports to the Principal Chief and National Council upon the request of either.
2. The Board shall be responsible for any and all reports required of them from the Office of Public Gaming of the Muscogee (Creek) Nation, the rules and regulations of the National Indian Gaming Commission and/or the Indian Gaming Regulatory Act.

Section 105. Severability:

In the event any provision of this Act is determined by a court of competent jurisdiction to be invalid, all other provisions hereof shall be deemed severable and shall be given full force and effect.

ENACTED by the Muscogee (Creek) National Council on this 28th day of February 1998.

IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.


Kenneth L. Childers, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of twenty-six members with Twenty-four members attending this meeting on the 28th day of February 1998, and that the above is in conformity with the provisions therein adopted by a vote of 23 in favor, 0 against, 0 abstentions, and that said Ordinance has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.


Ruthie A. Burgess, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this _____ day of _____, 1998, to the above Ordinance, NCA 98-04, authorizing it to become an Ordinance under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

R. Perry Beaver, Principal Chief
Muscogee (Creek) Nation