

QUAPAW TRIBE OF OKLAHOMA



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May 28, 2015

Kevin K. Washburn
Assistant Secretary—Indian Affairs
United States Department of the Interior
1849 "C" Street, N.W. (MS-3642 MIB)
Washington, D.C. 20240

Re: Quapaw Tribe of Oklahoma (the O-Gah-Pah)

Dear Assistant Secretary Washburn:

I want to thank you for taking the time to meet with me on May 5, and for your willingness to discuss various issues of current importance to the Quapaw Tribe of Oklahoma, including the pending fee-to-trust application relating to a tract of 160 acres of land in Pulaski County, Arkansas. The Quapaw Tribe has invested a substantial amount of time in discussing the application directly with local, county, and state leaders. As the support letters provided to the Bureau of Indian Affairs Eastern Region show, we have received very significant support for the application. At the same time, we have become aware that a third party has generated some unwarranted concerns in the community about the Tribe's plans for the land. For the record, and as I stated in our meeting, the Tribe has no intention of changing the use of the tract, and in particular the Tribe has no plans to seek approval to conduct gaming on this land.

The Quapaw Tribe acquired the land at issue primarily because of its cultural and historical significance to our people. Not only does the tract contain Quapaw burial mounds, but it is within our original homeland in Arkansas. Further, this land has been the source of a large number of very significant Quapaw artifacts, many of which we now display at Tribal facilities. Securing this or a similar parcel has been a long-time goal of our Tribe's leadership and membership, and having it returned to the Tribe's Indian land base carries with it a very large symbolic meaning for us.

Following the Tribe's removal to a reservation in the present-day States of Oklahoma and Kansas, the land that is the subject of the fee-to-trust application became part of a privately owned plantation, and it continues to this day to be used solely for light agriculture. We have no plans to change this use to allow for gaming. This is reflected in the fee-to-trust application, and it is an accurate statement of the Tribe's intentions.

Recently, we became aware that the Oaklawn Park horse racing track located in Hot Springs, Arkansas, has been expending substantial resources to generate opposition to the application on the incorrect theory that if this land is taken into trust the Tribe could automatically develop a casino. This misinformation ignores the various requirements of law, including those under the Indian Gaming Regulatory Act of 1988, which impose restrictions on

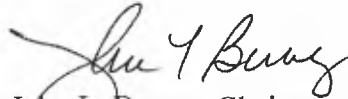
Mr. Kevin Washburn
May 28, 2015
Page 2

gaming on lands acquired into trust after October 17, 1988. Additionally, this activity by Oaklawn has caused unnecessary concern within the local community. Nevertheless, I wanted to provide you with our assurances that the statements in our fee-to-trust application are accurate and the Tribe has no intention to game on this land.

For you information, I am attaching a copy of a letter I have sent to the Eastern Region responding to the recent letter from the County Judge of Pulaski County, which enclosed a memorandum that misstates a number of points of law and fact. We understand this letter and memorandum was sent at the request of Oaklawn Park.

Thank you again for discussing the fee-to-trust application and other matters with me. I will look forward to answering any questions you may have with respect to this matter, or to providing any further information you may request.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Berrey".

John L. Berrey, Chairman
Quapaw Tribe of Oklahoma

JLB/

cc: Quapaw Tribal Business Committee
Randall Trickey, Realty Officer, Eastern Regional Office, Bureau of Indian Affairs

Enclosure

QUAPAW TRIBE OF OKLAHOMA



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May 28, 2015

Randall Trickey, Realty Officer
Eastern Regional Office
Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville, Tennessee 37214

Re: Quapaw Tribe of Oklahoma (the O-Gah-Pah)

Dear Randall:

Recently I was provided a copy of a letter sent to the Eastern Regional Office by Barry Hyde, County Judge of Pulaski County, Arkansas, in opposition to the Quapaw Tribe of Oklahoma's pending fee-to-trust application. Judge Hyde's letter and the enclosed memorandum seriously misstate several factual and legal points relating to the fee-to-trust application, and I feel compelled to provide a response for the record. The Quapaw Tribe's application is complete, and it is consistent with the regulations and with the Bureau of Indian Affairs' previous application of the applicable regulations.

One of the underlying premises of Judge Hyde's letter is an incorrect statement of the language of the key regulation under which the Quapaw Tribe has applied to have its land taken into trust, 25 C.F.R. § 151.2(f). The Tribe's application contains a correct statement of the regulation, which is plainly written and which has a very simple meaning, and it stands on its own merits. Further, § 151.2(f) has been applied by the Bureau to take land into trust in similar circumstances where an acquisition was within a "former reservation," as defined therein. As our application makes clear, the area of Pulaski County in which the land is located is indeed within the Tribe's "former reservation" in Arkansas, and there is a final judicial determination that the reservation area has been disestablished.

The county judge's comments to the contrary rest on two plainly incorrect statements of law. The first is that the Quapaw Tribe had only limited rights to exercise jurisdiction over its former reservation in Arkansas. But the Tribe's Treaty of August 24, 1818, in no way give the Tribe only the rights to live and hunt on its lands, as the commenter suggests. This assertion is silly, as it ignores that Indian tribes have long been recognized as sovereign governments with inherent powers to exercise jurisdiction and to govern their lands, including their treaty lands.

The second contention in the county judge's letter is similarly frivolous. The Court of Federal Claims decisions in the 1950s on their face consist of a final judicial determination that the Quapaw Tribe had lost its reservation lands in Arkansas, and they further awarded sums of money representing a fair payment to the Tribe for those lands. The comments do nothing more than play word games, when it is clear that these federal judicial decisions confirmed that the

Mr. Randall Trickey
May 28, 2015
Page 2

former reservation in Arkansas had been disestablished. Under the logic of the county judge's letter, the Tribe would have an existing reservation in Arkansas, and the fee-to-trust acquisition would therefore be unnecessary for the Tribe to have jurisdiction over the land.

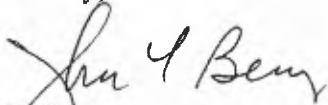
All of the preceding discussion in the commenter's letter amounts to a strained attempt to avoid the application of § 151.2(f) in favor of the off-reservation acquisition regulations. Judge Hyde uses more than 10 pages to argue that the Quapaw Tribe has not provided an analysis of 25 C.F.R. § 151.11, and therefore that the application is incomplete, and/or that the Tribe could not satisfy the requirements of that section. Again, the Tribe's application speaks for itself. We strongly believe the Tribe has made a proper application under § 151.2(f).

As a final matter, the county judge's letter suggests that the Quapaw Tribe should be satisfied with state law protections for the significant archaeological and cultural sites on the tract. This misses the point about the significance of this land and these sites to the Tribe, and also the importance to a tribe of acquiring land in trust. This discussion further ignores the Tribe's actual experience in attempting to protect such sites under state law. The Tribe has an active Section 106 program and a program under the Native American Graves Protection and Repatriation Act, and has encountered extensive problems in its efforts to protect similar sites in the states. Arkansas state law is widely interpreted as giving landowners property rights in artifacts found on land, and the state's grave protection laws have been difficult to enforce. Even to this day, grave robbing and pot hunting are rampant in Arkansas. The Tribe strongly believes this important site will be better protected once it is taken into trust.

For your information, I am enclosing a copy of a letter I have sent to Assistant Secretary Washburn confirming that the Quapaw Tribe has no intention change the use of this tract. I hope the enclosed letter is helpful to the application process.

We appreciate very much your consideration of the Tribe's application. If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,



John L. Berrey, Chairman
Quapaw Tribe of Oklahoma

JLB/

cc: Quapaw Tribal Business Committee
Kevin K. Washburn, Assistant Secretary—Indian Affairs

Enclosure