



March 3, 2017

Mekko Jeremiah Hobia
Town King
Kialegee Tribal Town
100 Kialegee Drive
Wetumka, OK 74883

Re: Facility License Notification

Dear Mekko Hobia:

Thank you for your January 23, 2017 letter notifying the National Indian Gaming Commission of the intention of the Kialegee Tribal Town ("Tribe") to issue a license for a new Class II gaming facility, to be located on approximately 7.2 acres of restricted fee land that the Tribe is in the process of purchasing from the current owner. Once purchased, you indicate that it is the Tribe's intention to apply to the Bureau of Indian Affairs to place the parcel in trust for the Tribe. To your knowledge, there is currently no tract number assigned to the property from the BIA's Land Title and Records Office. The mailing address of the current owner's home, which is located on the 7.2-acre parcel, is (b) (6). This will be the Tribe's first gaming facility.

Your notification was submitted to us in compliance with NIGC regulations, 25 C.F.R. § 559.2(a), which require that a tribe submit notice to the NIGC at least 120 days prior to opening a new gaming facility. The NIGC received the Tribe's notification by mail on January 25, 2017, and, therefore, the 120-day notice period ends on May 25, 2017.

Thank you for your notification. If you have any questions or require any additional information, please feel free to contact me at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink that reads "Katherine L. Zebell".

Katherine L. Zebell
Staff Attorney



June 12, 2017

Via Email Only

Penny Coleman
4601 N. Fairfax Dr.
Suite 1200
Arlington, VA 22203
colemanindianlaw@gmail.com

RE: Kialegee Tribal Town Facility License Notification - Request for Title Status Report ("TSR") and Additional Information

Dear Ms. Coleman,

By letter dated January 23, 2017, Mekko Jeremiah Hobia informed the NIGC that the Kialegee Tribal Town proposed to construct a gaming facility on lands more particularly described in Mekko Hobia's letter and supporting documentation. To help ascertain whether the new gaming facility will be located on Indian lands, a requirement of the Indian Gaming Regulatory Act, please provide explicit information on the status of the land. Specifically, I request that you obtain a TSR from the Muscogee (Creek) Nation Realty Trust Services. A contact at the Realty Trust Services office is Lou Ann Smith, who can be reached by phone at (918) 732-7713 and email at lousmith@mcn-nsn.gov.

Separately, to further assist our review, please advise whether the current owner, Mr. Bim Stephen Bruner, is or has ever been a member of the Muscogee (Creek) Nation and if so, the date when he became a member. Also, please advise when Mr. Bruner became a member of the Kialegee Tribal Town. Please advise whether Mr. Bruner is currently or has ever been a member of any other federally recognized tribe. Please provide any supporting documentation relevant to these requests.

Lastly, please provide any other information or documentation that you believe is relevant to our office's Indian lands opinion. If you have any questions, please feel free to contact me at (202) 632-7003 or by email at steven_iverson@nigc.gov. Thank you for your time and assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve Iverson", is written over a blue horizontal line. The signature is stylized and somewhat abstract.

Steve Iverson
Staff Attorney



June 27, 2017

Via First Class Mail and Email

Penny Coleman
4601 N. Fairfax Dr.
Suite 1200
Arlington, VA 22203
colemanindianlaw@gmail.com

Dear Ms. Coleman,

You plan to represent the Kialegee Tribal Town ("Town") before the National Indian Gaming Commission ("NIGC") regarding the Town's efforts to conduct gaming in Oklahoma. You served as Acting General Counsel and Deputy General Counsel at the NIGC from 1994 to 2010. The NIGC issued two Indian lands opinions for the Town in May 2012 and July 2013, after you left the NIGC. You do not recall working on the opinions prior to you leaving the NIGC, and the NIGC has no documents or records reflecting that you worked on those opinions or that they were prepared under your supervision.

Nonetheless, out of an abundance of caution, you asked for a waiver of any actual or potential conflict of interest caused by your representation of the Town. To the extent there is an actual conflict or a potential conflict of interest, I conclude that there are no significant risks to the NIGC's detriment with respect to your representation of the Town. Therefore, I hereby consent to your future work for the Kialegee Tribal Town.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonodev O. Chaudhuri".

Jonodev O. Chaudhuri
Chairman

**The Kialegee Indian Town and
the Creek Treaty of February 14, 1833:
Historical Context and Significance**

Report submitted to

Dickinson, Wright, LLP
International Square
1875 Eye Street, NW, Suite 1200
Washington, DC. 20006

Stephen Dow Beckham
1389 SW Hood View Lane
Lake Oswego, OR. 97034-1505

May, 2012

Introduction:

The following report was written for the Kialegee Tribal Town, a federally-recognized Indian tribe pursuant to the Oklahoma Indian Welfare Act (1936). The Kialegee adopted their Constitution and By-Laws on June 12, 1941, and ratified their Corporate Charter on September 17, 1942.

My assignment was to examine the historical context of the Creek Treaty of February 14, 1833. This meant looking briefly at the protocols of treaty councils with Native American tribes, the situation of the Creeks in Indian Territory in 1833, the participants in the treaty negotiations, the prior experience of the tribal leaders in dealing with treaty phrases and understandings, and Kialegees' succession in political authority to the Creeks whose reservation was defined in the treaty of 1833.

No minutes or proceedings survive for the treaty council of February, 1833, at Fort Gibson. I have, however, drawn upon treaties, biographical data, correspondence, the summary report of the Stokes Treaty Commission, and other notes that document this report.

Stephen Dow Beckham
Pamplin Professor of History, Emeritus
Lewis & Clark College
Portland, Oregon

Contents

"The *Creeks* and *Cherokees* have now an undisputed title to land, in quality fertile, in location convenient and desirable, and in quantity adequate to the wants of the respective nations."

Stokes Commission Report, 1833 (*House Report No. 474:79*).

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Protocols of Treaty Councils:

Throughout the treaty-making decades negotiations between Euro-Americans and Native Americans followed common standards and procedures. For a treaty to be binding, normally the Euro-American negotiator had to have been given "treaty-making powers." This usually meant the negotiator or his team served as a member of a Treaty Commission, a Superintendent of Indian Affairs, or, less commonly, as an Indian Agent. On some occasions, governors, such as in Washington Territory, were involved in treaty negotiations.

The tribal representatives were commonly chiefs and leading men of the Indian community. These individuals were recognized for their probity, judgment, speaking skills, and leadership in peace and war.

The European powers and the American government, successor to colonies and lands claimed by "right of discovery" in North America found it expedient often to hold treaty councils at forts or to have a strong military presence as part of the setting. The military, dressed in uniform and bearing flags, invariably was well-armed and buttressed the image of the numerical and technological might of those seeking agreements for rights-of-way, trade, or cession of lands.

Treaty councils followed common protocols. The rituals of treaty-making included the establishment of an atmosphere of friendly exchange. Often the hosting party (those seeking the treaty) provided food for the gathering. Other elements of treaty councils sometimes included singing and dancing to foster a situation of psychological unity, a feeling further enhanced by the mutual exchange of gifts. Gifts, such as those to the Creek chiefs in the treaty of 1790 or at the Creek councils for the treaties of 1826 and 1827, included commemorative medals bearing the likeness of the king or president and engraved with words affirming peace and friendship. Other gifts included flags, pipes, gorgets, wrist bands, clothing, and tobacco (Prucha 2000:4-5, 54, 73; Prucha 1988[4]:239).

Speeches were a pivotal element of councils. The oratory addressed mutual obligations. Speeches also often invoked images of relationships such as references to the "Great Father, the President" or the "brothers" who met in the council. Council sessions were often concluded with the ritual smoking of a pipe—a sacred ceremony of

public affirmation of the understandings agreed upon (Prucha 1988[4]:238-244; Prucha 1994).

Western Creeks in the Vicinity of Fort Gibson

The Creek Treaty of 1833 was the consequence of a council held at Fort Gibson, a primary military post on the eastern edge of the Indian Territory. Founded in 1824 by five companies of the Seventh Infantry, the post was surrounded by a stockade of 300 feet with two blockhouses. Additional facilities included a sutler's store, sawmill, hospital, stables, and log houses. The fort was on the route to the Osage and Creek agencies and stood in a bottom near the confluence of the Verdigris, Arkansas, and Grand rivers (Foreman 1924:120-121).

Members of the Creek Nation, a confederation of between fifty and eighty "towns" (discrete tribal communities with their own leaders), began their migration west of the Mississippi River pursuant to the Creek Treaty of 1826. In 1829 an estimated 1,200 followers of Chief William McIntosh, a Creek leader assassinated on April 30, 1825, because of his agreeing yet again to cede Creek lands, and nearly the same number of other Creeks emigrated to land on the Arkansas River near its confluence with the Verdigris (Meserve 1932:316; Foreman 1934:147).

Colonel Auguste P. Chouteau operated a trading house on the lower Verdigris adjacent to the territory settled by the Creeks. He wrote: "The country abounds in wild game, such as the buffalo, elk, deer, antelope, bears, and furred animals; wild horses are found to the north-west in numerous herds." Chouteau also noted:

"The timber of the country is the oak, black walnut, hickory, ash, hackberry, locust, mulberry, pine, cedar, pecan, cherry bois d'arc, and other kinds Numerous fruits are found in the greatest abundance; they consist in a variety of fine grapes, plumbs, black haws, straw and black berries, pawpaws, persimmons, may apples, and a species of pome-granite, which is much esteemed for its flavor. Roots used as food are also abundant; and the rivers furnish an ample supply of good fish" (Foreman 1934:148).

Between 1829 and 1833 the Western Creeks had established farms, planted gardens and orchards, fenced fields, and settled in comfortably without the incessant pressure from Euro-Americans in Georgia and Alabama. Chouteau wrote about the situation in the early 1830s:

"They have good log houses, many of which are double, and fields according to the means of the individual. I know some who have under fence and culture about 150 acres of land. They raise all the kinds of grains and vegetables common to that latitude; patches of cotton and tobacco and of upland rice, are common to them. Spinning wheels and looms are in use. Stocks of cattle, horses, hogs, sheep and goats, are owned by these people. They have poultry, to-wit: chickens, turkeys, ducks, and geese. Their women ride on side saddles, and dress according to their respective means to do so in the manner and fashion of the whites; the same remark will apply to the dress of the men" (Foreman 1934:149).

During his preliminary exploration of Indian Territory in 1832, Henry Leavitt Ellsworth passed through the country occupied by the Creek Indians. He wrote on November 3: "Saturday — very cold rainy day — We arrived at the north fork of the Canadian — hit a good ford, and crossed without difficulty — the land had now become much better and good for cultivation — post oak up land & large bottoms There is much good land, on the North Fork — we rode to day 20 miles" (Ellsworth 1937).

This was the situation of residency and acculturation exhibited by the Western Creeks whose leaders came to Fort Gibson in February, 1833, to hear proposals to settle a boundary dispute created by conflicting boundary descriptions in the Creek and Cherokee treaties of 1826 and 1828.

Stokes Commission

Congress on July 14, 1832, authorized a three-member commission to travel to the newly-created Indian Territory and establish relations between the tribes and the United States. The commissioners were Montfort Stokes of North Carolina, Henry L. Ellsworth of Connecticut, and Rev. John F. Schermerhorn of New York. Three companies of mounted rangers under Captains Jesse Bean, Nathan Boone, and Lemuel Ford were assigned to the commission. Other tag-alongs included Washington Irving, an American writer, Charles J. Latrobe, an English naturalist, and Count Albert Alexandre de Portales, an Swiss aristocrat (Steffen 2012).

The treaty with the Creeks signed on February 14, 1833, was the first of several negotiated by the Stokes Commission. Its purpose was to define the boundary between the Creek and Cherokee Nations in the Indian Territory and to affirm the sovereignty of the Creeks within their reservation. In March, 1833, the Stokes Commission assigned lands to the Seneca and Shawnee refugees from Ohio. In May the commission identified lands for the Quapaw. At this point the commission attempted to deal with the western tribes, those whose lands and trade were encroached upon by the Indian Territory. Before agreements were made, the commission's treaty-making powers ended in July, 1834. In April, 1835, the Stokes Commission was renewed with the addition of Major Francis W. Armstrong, superintendent of Indian affairs for the Western Territory, and General Matthew Arbuckle, commander at Fort Gibson. The new commission renewed treaty negotiations and secured agreements with the Comanche, Wichita, Osage, and Kiowa (Steffen 2012).

The participants in the treaty council at Fort Gibson in February, 1833, included the following:

Commissioners:

Montfort Stokes (1762-1842)

A veteran of the Revolutionary War, Stokes was a North Carolina planter who led an active public life. From 1804-38 he was a trustee of the University of North Carolina and three times its president. He served in the United States Senate, 1816-23, the North Carolina house

and senate, and resigned as the state's governor in 1832 to take the appointment by Andrew Jackson to head the treaty commission in Indian Territory (Mesersve 1935:338-340).

Henry Leavitt Ellsworth (1791-1855)

A graduate of Yale University in 1810, Ellsworth studied law and practiced in Connecticut. In 1811 he made an extensive trip to the Western Reserve in Ohio. For a number of years he was president of the Aetna Insurance Company of Hartford. Ellsworth gained appointment in 1832 to the Stokes Commission. He served from 1835-45 as the first director of the U.S. Patent Office, Washington, D.C. (Ellsworth 1937:xii-xiii).

Rev. John F. Schermerhorn (1786-1851)

A native of New York, Schermerhorn graduated from Union College and Andover Seminary. A clergyman for the Dutch Reformed Church, he was active in Indian affairs from 1832 to 1837. He served as one of three commissioners in the Indian Territory, 1832-34, and in 1835 negotiated a Cherokee removal treaty. In 1837 he was working on removal of the Six Nations from New York, but was removed from office (Hoven 1988[4]:680).

Chiefs and Headmen:

Roly McIntosh

"Roly" [Roderick] MacIntosh was born about 1790 at Coweta, Georgia. William MacIntosh (1745-1794), a Scotch trader, and the son of Captain John MacIntosh, married at least two Creek woman. By one wife he had a son, Chief William MacIntosh (1778-1825) who was murdered for ceding Creek lands in Georgia. By another wife he had a son, Roderick, commonly known as "Roly."

Following the death of his first wife, Roly MacIntosh married Susannah Rowe, the widow of his murdered half-brother. In 1828 Roly McIntosh became chief of the Lower Creeks, a position he held for 31 years. He participated in the Creek meeting on 22 June 1829 at Fort Gibson with Colonel Arbuckle and Sam Houston where he

delivered a nine-page protest against Colonel John Crowell, the eastern Creek agent. In 1833 Roley MacIntosh signed the treaty defining the boundary between Creek and Cherokee lands in Indian Territory. MacIntosh owned many slaves and a large plantation at the forks of the Verdigris and Arkansas rivers. He retired as chief in 1859 and moved to Texas, in part because of his pro-Confederate sympathies. His home plantation was destroyed during the Civil War. He died in 1863 and was buried near Jefferson, Texas (Meserve 1932:313-314, 318-319).

Roley McIntosh on 25 October 1831 signed a letter with other leaders of the "Western Creek Nation" to "Our Father the President." The signatories informed the president they had met with W. McKoy, "the gentleman you sent to run and lay off the lines between the Creeks, Cherokees, & Choctaws." The letter continued: "We told him we would except [sic] the Territory between the Verdagriss and Canadian and its contents, but in case it should be out of the power of the President to give us that we then told him we would exchange with the Cherokees and take the lands north of the Verdagriss and with the Arkansas river to Fort Smith then bounded on the north by the state of Missouri and if that could not be done the lands west of the Old Territorial line we hold by treaty" (McIntosh et al. 1831).

Chilly McIntosh, a Baptist minister, was a nephew of Roly McIntosh and son of William McIntosh who was murdered in Georgia in 1825. Chilly McIntosh departed with 700 Creeks on an exodus from Georgia in 1827. Roly McIntosh did not sectarian bickering and competition. Between 1836 and 1844 he banned missionaries from Creek territory. At that time Roly McIntosh became a Christian and subsequently a Baptist (Skinner 2012).

On 1 March 1832 Roley McIntosh, Chilly McIntosh, and fifteen other Creek chiefs and men of the Verdigris River region executed a power of attorney to appoint Colonel A. P. Chouteau as their attorney to assist them in securing the "guns, traps, kettles, blankets, &c., which is justly coming to us agreeable to our treaty" (Foreman 1934:149).

On 17 April 1833 Roly McIntosh participated with thirteen "chiefs and headmen of the Western Creek nation" in council to sell five sections of land given by the Eastern Creeks" (*Senate Doc. 512*, Vol. 247, pp. 471-473).

Fuss-hatchie Micoe

On 25 October 1831 "Fushatchy Micco" signed a letter with other Creek chiefs to "Our Father the President." The signatories informed the president they had met with W. McKoy, "the gentleman you sent to run and lay off the lines between the Creeks, Cherokees, & Choctaws." The letter continued: "We told him we would except [sic] the Territory between the Verdagriss and Canadian and its contents, but in case it should be out of the power of the President to give us that we then told him we would exchange with the Cherokees and take the lands north of the Verdagriss and with the Arkansas river to Fort Smith then bounded on the north by the state of Missouri and if that could not be done the lands west of the Old Territorial line we hold by treaty" (McIntosh et al. 1831).

On 17 April 1833 "Fush hate hy Micco" participated with thirteen "chiefs and headmen of the Western Creek nation" in council to sell five sections of land given by the Eastern Creeks" (*Senate Doc. 512*, Vol. 247, pp. 471-473).

In April, 1833, the Creek Indian Agent compiled a "Valuation of Improvements, Western Creeks," on lands that fell east of the boundary with the Cherokee by the treaty of 1833. Benjamin Perryman "On Verdigris" had 2 houses valued at \$22, a corn crib at \$7, a house (for daughters) \$9, 11 acres cleared, \$33, 1 crib \$20, 35 peach trees \$13.12 ½, rails \$37, and 200 rails and 1 house "on Grand River" \$17.00 (Schermerhorn 1833).

In 1838 "Fushhatche Micco," Roley McIntosh, and twenty-two other Creek chiefs reported in June they had good prospects for a crop harvest in spite of the late spring and lack of adequate tools. Their views were published in the *Arkansas Gazette* (Foreman 1934:155).

Benj[amin] Perryman (Steek-cha-ko-me-co)

In 1828 Benjamin Perryman joined the Winslett, Porter, and McIntosh families in their removal from Carrollton, Georgia, to Three Forks, a location north of Muskogee. Also known as Steek-cha-ko-me-co, Perryman was a tribal town chief of prominence among the Creeks in Alabama and a proponent of the McIntosh faction of tribal affairs. In 1828 he brought six sons and two daughters to

settle along the lower Verdigris and the north bank of the Arkansas rivers in the Choska Bottoms of Wagoner County (Meserve 1937:166).

On 25 October 1831, "Benjamin Perryman" and other Creek leaders signed a letter to "Our Father the President." The signatories informed the president they had met with W. McKoy, "the gentleman you sent to run and lay off the lines between the Creeks, Cherokees, & Choctaws." The letter continued: "We told him we would except [sic] the Territory between the Verdagriss and Canadian and its contents, but in case it should be out of the power of the President to give us that we then told him we would exchange with the Cherokees and take the lands north of the Verdagriss and with the Arkansas river to Fort Smith then bounded on the north by the state of Missouri and if that could not be done the lands west of the Old Territorial line we hold by treaty" (McIntosh et al. 1831).

On April 17, 1833 Benjamin Perryman participated with thirteen "chiefs and headmen of the Western Creek nation" in council to sell five sections of land given by the Eastern Creeks" (*Senate Doc. 512*, Vol. 247, pp. 471-473).

On September 2, 1834, Perryman represented the Creeks in an intertribal conference with the western tribes at Fort Gibson (Meserve 1937:166). In 1836 George Catlin painted portraits of Benjamin and Samuel Perryman, an eldest son, at Fort Gibson. James Perryman, another son, attended the Union Mission between 1830 and 1835 and worked as a Creek interpreter for Rev. John Fleming. Eventually he aided in translation of two of the first books into the Creek language (Meserve 1937:166-168).

Hospottock Harjoe

On October 25, 1831, "Hospotock Harjo," and other Creek leaders signed a letter to "Our Father the President." The signatories informed the president they had met with W. McKoy, "the gentleman you sent to run and lay off the lines between the Creeks, Cherokees, & Choctaws." The letter continued: "We told him we would except [sic] the Territory between the Verdagriss and Canadian and its contents, but in case it should be out of the power of the President to give us that we then told him we would exchange with the Cherokees and take the lands north of the Verdagriss and with the Arkansas river to Fort Smith

then bounded on the north by the state of Missouri and if that could not be done the lands west of the Old Territorial line we hold by treaty" (McIntosh et al. 1831).

Cowo-coogee, Maltha [Coe Marthla]

On January 22, 1829, "Coe Marthla, Head Chief," signed a letter to "Our Great Father," confirming that he had examined the lands west of the Mississippi River. He said: "We like the country & want our Great Father to appoint him [Mr. Blake] to go with our people & settle the country that our Great Father has given us on the West of the Mississippi" (Collins 1829).

On August 14, 1829, "Coe Marthler," signed a letter to "Dear Father," at Little Rock, reporting on passing White River and plans to ascend Arkansas River by steamboat (Coe Marthler et al. 1829).

On April 17, 1833 "Co-woc-co-chee-emarlo" participated with thirteen "chiefs and headmen of the Western Creek nation" in council to sell five sections of land given by the Eastern Creeks" (*Senate Doc. 512, Vol. 247, pp. 471-473*).

Holthimotty Tustononucky

A signatory to the 1833 Creek treaty, this man was possibly the husband of Lydia Perryman, a daughter of Benjamin Perryman. According to John B. Meserve: "Lydia Perryman married Tah-lo-pee Tust-a-kuk-kee, a town chief, and became the mother of Phoebe [who married Benjamin Edward Porter and Pleasant Porter, first elected chief of the Creeks] (Meserve 1937:168).

Toatkah Haussie

Istauchoggo Harjoe

On October 25, 1831, "Isopoak oak Harjo," and other Creek leaders signed a letter to "Our Father the President." The signatories informed the president they had met with W. McKoy, "the gentleman you sent to run and lay off the lines between the Creeks, Cherokees, &

Choctaws." The letter continued: "We told him we would except [sic] the Territory between the Verdagris and Canadian and its contents, but in case it should be out of the power of the President to give us that we then told him we would exchange with the Cherokees and take the lands north of the Verdagris and with the Arkansas river to Fort Smith then bounded on the north by the state of Missouri and if that could not be done the lands west of the Old Territorial line we hold by treaty" (McIntosh et al. 1831).

Chocoatie Tustonnucky

On October 25, 1831, "Chacotee Tustannugge," and other Creek leaders signed a letter to "Our Father the President." The signatories informed the president they had met with W. McKoy, "the gentleman you sent to run and lay off the lines between the Creeks, Cherokees, & Choctaws." The letter continued: "We told him we would except [sic] the Territory between the Verdagris and Canadian and its contents, but in case it should be out of the power of the President to give us that we then told him we would exchange with the Cherokees and take the lands north of the Verdagris and with the Arkansas river to Fort Smith then bounded on the north by the state of Missouri and if that could not be done the lands west of the Old Territorial line we hold by treaty" (McIntosh et al. 1831).

On April 17, 1833 Cha-cotee-Tustanuggee participated with thirteen "chiefs and headmen of the Western Creek nation" in council to sell five sections of land given by the Eastern Creeks" (*Senate Doc. 512*, Vol. 247, pp. 471-473).

Interpreters:

John Hambly

Hambly was a grandson of William and Wilmoth Hambly of London. His father, John Hambly, born ca. 1751, married Maria Mitchell and had six children born 1781-98. In 1788 John Hambly worked as a storekeeper for John Forbes & Company on the St. Johns River, Florida. Starting in the 1790s Hambly was employed frequently by the Spanish governor to carry on "talks" with the tribes and bring information to St. Augustine. In 1794 he made three official trips—two

recorded in diaries. He made another trip in 1795. Hambly murdered Robert Leslie and fled to avoid prosecution. Hambly died before 9 March 1798 (Ross and Chappell 1976:60-61; Murdoch 1956:266).

The book, *As Long as Grass Grows*, mentioned Marquis de LaFayette's visit in 1825 to John Hambly, a grandson, who lived near Fort Benning, Georgia:

Relative peace reigned between whites and Native Americans in the early 1820's. A notable event in the Fort Benning region occurred when the aging Frenchman and Revolutionary War hero, Marquis de LaFayette, journeyed down the Federal Road in March 1825 on his triumphant tour of the country. LaFayette was one of the last, high-ranking officers of the Revolutionary War still alive.

LaFayette's entourage made its first stop on Fort Benning land at a trading post run by an American fur trader. The sky was just clearing after a spring storm when LaFayette's carriage, guarded by the Georgia militia, arrived. Auguste Levasseur, LaFayette's secretary, later wrote that there were two male Indians, "remarkable for their beauty and form," sitting near the doorway of the trading post. The youngest of the pair spoke impeccable English. His name was Hambly (or Hamley), and he was the son of Creek and white parents.

Hambly told the visitors that he had left Indian territory when he was younger to be educated in the United States, but returned to Indian lands because he preferred the native way of life. He had apparently married several Creek women.

Levasseur and another man, known only as George, who were traveling with LaFayette carried on a cordial conversation with Hambly who invited them (and apparently the rest of the caravan) to visit his nearby home. There he demonstrated Indian dances for the visitors. Levasseur reciprocated by performing French dances (Anonymous ??).

John Hambly served on April 17, 1833, as "acting interpreter" for the "chiefs and headmen of the Western Creek nation" meeting in council. The council agreed to sell five sections of land given to the

Western Creek nation by the Eastern Creeks. John Campbell, Creek agent, was a witness. Fifteen "chiefs and headmen" participated in the council (Senate Doc. 512, Vol. 247, pp. 481-473).

John Hambly served on August 14, 1835, as an interpreter at the treaty with the Comanche and Wicketaw, Camp Holmes, I.T. He was identified as "Interpreter for the Creeks," not parties to the agreement. (Kappler 1904).

William Hambly, another brother in the family, worked as a representative of John Forbes & Company, his father's employer. On 25 May 1804 he sought a land purchase at Chiska Talofa on the Chattahoochee River, Alabama. He worked in 1810 as interpreter for John Forbes & Company, and continued to do so in 1816 (Register n.d.). William Hambly on July 4, 1825, filed an affidavit with Thomas Triplett, Acting Agent, Creek Nation, Georgia. Hambly stated: "he is the public interpreter, duly qualified and sworn, for the Creek Nation, that he has acted in that capacity about Five years; that he has resided among the Creeks rising twenty years, is perfectly acquainted with their character, customs, laws, and language, that he has uniformly acted as public interpreter in the public councils of the Nation . . ." (U.S. House of Representatives 1827:393-399).

Alex Brown, Cherokee interpreter

Alexander Brown served as the Cherokee interpreter. Brown, born ca. 1779, was enumerated on the Creek Emigration and Reservation Rolls of 1817. Brown is identified as the father of Judge James Brown and lived among the Cherokee Nation East at least until 1835 (Fornia 2007).

Witnesses:

S. C. Stambaugh, commission secretary

M. Arbuckle, colonel, 7th Infantry

John Campbell, Creek agent

George Vashon, Cherokee agent, West

N. Young, major, US Army

Wilson Nesbitt

W. Seawell, lieutenant, 7th Infantry

Peter A. Carns

Colonel S. C. Stambaugh, secretary for the council proceedings, wrote on February 18, 1833, to Secretary of Interior Lewis Cass that "The proceedings in Council, with the Report of the Commissioners therein, will be made out and forwarded to the Department with as little delay as possible." The "council proceedings," however, are not found in any archive (Stambaugh 1833).

Key Phrases in 1833 Treaty

The Creek Treaty of February 14, 1833, contained language and content already familiar to the leaders of the tribe. The following phrases and concepts stated in 1833 were used in earlier treaties with the Creeks made between 1826 and 1832.

~ Treaty of 1833: “. . . to establish boundary lines which will secure a country and permanent home to the whole Creek nation of Indians . . .” (Preamble). These words made clear that the Creek Reservation in northeastern Oklahoma was to be the “permanent home to the whole Creek nation.”

- 1832 Creek treaty (7 Stat. 366) provided:

“The Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them” (Article 14). [Emphasis supplied.]

“. . . as soon as the boundaries of the Creek country West of the Mississippi are ascertained, [Congress shall] **cause a patent or grant** to be executed to the Creek tribe” (Article 14). [Emphasis supplied.]

- 1827 Creek treaty (7 Stat. 307) provided:

“. . . the object of said Treaty being to embrace a cession by the Creek Nation, of **all the lands owned by them** within the chartered limits of Georgia . . .” (Preamble). [Emphasis supplied.]

- 1826 Creek treaty (7 Stat. 286) provided:

“The Creek Nation of Indians cede to the United States all the land belonging to the said Nation in the State of Georgia . . . also, another tract of land lying within the said State . . .” (Article 2). [Emphasis supplied.]

- 1825 Creek treaty (7 Stat. 237) provided:

“ . . . that **the United States will give, in exchange for the lands hereby acquired, the like quantity, acre for acre,** westward of the Mississippi, on the Arkansas river, commencing at the mouth of the Canadian Fork thereof . . .” (Article 2).
[Emphasis supplied.]

~ Treaty of 1833: “. . . the Muskogee or Creek country west of the Mississippi **shall be embraced by the following boundaries . . .**” (Article 1).

- 1826 Creek treaty (7 Stat. 286) provided cession of “And, also, another tract of land lying within the said State [of Georgia], **and bounded as follows:** Beginning at a point on the western bank”

[Emphasis supplied.]

- 1825 Creek treaty (7 Stat. 237) provided cession of “. . . **all lands lying within the boundaries** of the State of Georgia, as defined by the compact hereinbefore cited . . .” (Article 1).

[Emphasis supplied.]

- 1821 Creek treaty (7 Stat. 215) provided cession of “that **tract or parcel of land, situate, lying, and being, east of the following bounds and limits, viz. . .**” (Article 1). [Emphasis supplied.]

~ Treaty of 1833: “The United States will grant a patent, in fee simple, to the Creek nation of Indians for the land assigned said nation . . .” (Article 3).

- The 1832 Creek treaty (7 Stat. 366) provided that individual Creeks selecting lands “**shall receive patents therefor in fee simple,** from the United States (Article 4). [Emphasis supplied.]

- The 1832 Creek treaty (7 Stat. 366) provided “. . . as soon as

the boundaries of the Creek country West of the Mississippi are ascertained, [Congress shall] **cause a patent or grant** to be executed to the Creek tribe" (Article 14). [Emphasis supplied.]

~ Treaty of 1833: ". . . [the Creek reservation] shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned them" (Article 3).

- 1832 Creek treaty (7 Stat. 366) provided:

"The Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them" (Article 14). [Emphasis supplied.]

~ Treaty of 1833: ". . . that the land assigned to the Muskogee Indians, by the second article thereof, shall be taken and considered the property of the whole Muskogee or Creek nation . . ." (Article 4).

- The 1832 Creek treaty (7 Stat. 366) provided:

[the] "Creek tribe of Indians **cede to the United States all their land,** East of the Mississippi River" (Article 1). [Emphasis supplied.]

- 1832 Creek treaty (7 Stat. 366) provided:

"The Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them" (Article 14). [Emphasis supplied.]

~ Treaty of 1833: “. . . that the country hereby provided for the Creek Indians, shall be taken in lieu of and considered to be the country provided or intended to be provided, by the treaty . . . on the 24th day of January, 1826, under which they removed to this country” (Article 8).

- 1832 Creek treaty (7 Stat. 366) provided:

“The Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them” (Article 14). [Emphasis supplied.]

Understandings of the Treaties of February 14, 1833

The Stokes Commission (Montfort Stokes, Henry Leavitt Ellsworth, and Rev. John Schermerhorn) articulated a clear and unequivocal understanding of the guarantees of the United States in the Creek and Cherokee treaties of February 14, 1833. In their report to the Commissioner of Indian Affairs, they said:

"The conflicting claims of the Western Creeks and Cherokees, so earnestly urged upon the attention and consideration of the commissioners, presented formidable difficulties. Both parties claimed several millions of acres of the same land, under treaty stipulations; both were equally sanguine in the justice of their respective claims, and, at first, unyielding in their opinions. A candid examination, in public council, of all the treaties, of the subsequent proceedings of the respective tribes, and the offer to substitute other land for that relinquished by the Cherokees enabled the commissioners to adjust the matter in a manner mutually satisfactory.

The Creeks and Cherokees have now an undisputed title to land, in quality fertile, in location convenient and desirable, and in quantity adequate to the wants of the respective nations. It is a matter of congratulation that such important changes in the expected locations of these tribes should not have produced any complaint in the mode of adjustment (Stokes Commission 1839:79). [Emphasis supplied.]

The Creeks and the Cherokees—as in previous treaties with the United States—found in the treaties of February 14, 1833, familiar language and concepts. The treaties provided for the establishment of boundaries by metes and bounds descriptions, the prospect of fee-patent or deeding of lands, and—for the Creeks—the establishment of a permanent reservation. The Creek treaty stated:

"The Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them" (Article 14). [Emphasis supplied.]

Creek Reservation, Area 487, confirmed by treaty of February
14, 1833 (7 Stat. 417) (Royce 1899, Map 22).

Kialegee Tribal Town: Political Successor in Interest to the Treaty Signatories of February 14, 1833

The members of the Kialegee Tribal Town became subject to removal to west of the Mississippi River by the terms of the Removal Treaty of March 24, 1832. Upper Creek leaders signed this agreement in Washington, DC.; it ceded all of their lands in Alabama, but reserved the rights for those who wanted to do so to select homesteads that were to be fee-patented within five years. The treaty of 1832 contained the explicit language: "The Creek country west of the Mississippi shall be solemnly guaranteed to the creek Indians" (Kappler 1904[2]:343).

The removals commenced in 1834. Historian Angie Debo in *The Road to Disappearance* wrote: "At the same time [1835] Opothle Yahola announced that the Tuckabatchees, Kialigees, Thloptholoccas, Thlewarles, Autaugas, and Artussees, 'who all burn the same fire and talk with the same tongue,' were preparing to start." In 1835-36 a total of 14,609 Creeks emigrated to their new reservation in Indian Territory (Debo 1941:100-102).

The identity of the members of Kialegee Indian town is repeatedly documented in the historical records. For the nineteenth century see particularly:

<http://freepages.genealogy.rootsweb.ancestry.com/~texlance/records/creekcensusrolls.htm#1867>

- 1832 Benjamin S. Parsons and Thomas J. Abbott Census of Creek Indians. www.us-census.org/native/creek/html
- 1857 Creek Pay Roll, Kia-li-che, pp. 19-28
- 1859 Creek Pay Roll, Kia-li-che, p. 188
- 1867 Dunn Roll of Citizens and Freedmen, Ki-a-li-jas, p. 45
- 1867 Creek Orphan Census. Kia-li-che Town
freepages.genealogy.rootsweb.ancestry.com/!texlance/1867orphans/index.htm
- 1870 Creek Orphan Payroll. Kia-li-che Town

- 1882 Creek (Muskogee) Nation Census. Kia-li-gee Town, p. 172
- 1890 Creek Census, Town Census, Kialigee
- 1890 Creek Authenticated Tribal Roll, Kialegee, p. 127
- 1895 Creek Census, Kialegee
- 1896 Colbert Census, Kialigee

The Indian Claims Commission (1 Ind. Cl. Comm. 546) in its "Opinion of the Commission," Docket No. 21, *The Creek Nation v. the United States*, considered the claim of the "Perdido Friendly Creek Indian Band of Alabama and Northwest Florida." In its opinion, the Commission wrote about its interpretation of the Creek Treaty of February 14, 1833:

"The treaty of Febr. 14, 1833, 7 stat. 417 confirmed the selection of land authorized by the 1826 treaty (Art. VIII), and Article III thereof provided for a patent in fee simple to be issued to the 'Creek Nation.' **Article IV made it unmistakably clear that the land ceded under this treaty in what is now Oklahoma was for the benefit and use of the entire Creek people, for it provided:**

'It is hereby mutually understood and agreed between the parties to this treaty, that the land assigned to the Muskogee Indians, by the second article thereof, shall be taken and considered the property of the whole Muskogee or Creek nation, as well as those now residing upon the land, as the great body of said nation who still remain on the east side of the Mississippi . . .' [Emphasis supplied.]

The 1826 treaty did not, at least by its terms, contemplate a removal of the entire tribe west, but the 1832 treaty discloses a purpose to recognize those who migrated to the west as the main governing body of the tribe since provision was made for enabling individual chiefs and heads of families wishing to do so to remain east and select tracts in their aboriginal land which was reserved for that purpose in said treaty of 1832. This purpose was confirmed by the treaty of 1833, which was made with the Creek Nation at Fort Gibson in Indian Territory, and in

which the territory ceded by the United States was assigned to the whole Muskogee or Creek Nation—those residing east and those residing west of the Mississippi. Thereafter, all dealings with the Federal Government were made with the Creeks in Oklahoma, and we find no treaties, contracts or other transactions with those members of the tribe who remained east, or that defendant ever recognized those remaining east as the Creek Nation (Indian Claims Commission 1951, Docket 21:546-550).

In further affirmation of the succession of political authority in the Creek Nation in Oklahoma, the Indian Claims Commission also noted: **“There are other instances by which the United States recognized the tribal government of the Creeks in Oklahoma, notably the Act of April 16, 1906, 34 Stat. 137, section 28 of which ‘continued in full force and effect for all purposes, authorized by law’ the Creek tribal government”** [Emphasis supplied.] (Indian Claims Commission, Docket 41:550).

The Kialegee Tribal Town is a federally-recognized Indian tribe pursuant to the Oklahoma Indian Welfare Act (1936). The Kialegee adopted their Constitution and By-Laws on June 12, 1941, and ratified their Corporate Charter on September 17, 1942.

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From: colemanindianlaw@gmail.com
To: [Hoenig, Michael](#)
Subject: Kialegee Tribal Town
Date: Friday, April 28, 2017 4:34:21 PM

The Kialegee Tribal Town has requested that I represent them before the NIGC on its quest to conduct gaming on certain allotted lands. I understand that the Tribe submitted a 120 day notice to the Commission. I would like to discuss this with you but first I ask that you check to make sure I did not work on this issue before I left in July 2010. I don't think I did but I want to make sure that there is no conflict.

Thanks very much.

Sent from my iPhone
Penny J Coleman

From: colemanindianlaw@gmail.com
To: [Hoenig, Michael](#)
Subject: Re: Waiver request
Date: Monday, May 1, 2017 11:22:23 AM

Thank you. I would like to talk to you about the Tribe's 120 day notice status as soon as you are comfortable talking to me.

Sent from my iPhone
Penny J Coleman

On May 1, 2017, at 10:44 AM, Hoenig, Michael <Michael_Hoenig@nigc.gov> wrote:

Thanks, Penny.

We will take a look and get back to you ASAP.

From: Penny Coleman [<mailto:colemanindianlaw@gmail.com>]
Sent: Saturday, April 29, 2017 2:08 PM
To: Hoenig, Michael
Cc: Penny Coleman
Subject: Waiver request

Consistent with my earlier email re representing the Kialegee Tribal Town, I am attaching a waiver request for the Chairman.

Thanks for your attention to this matter.
Penny J. Coleman

This e-mail, and any attachments thereto, is intended only for the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by return e-mail and permanently delete the original and any copy of this e-mail message and any printout thereof.

From: colemanindianlaw@gmail.com
To: Hoenig, Michael
Subject: Re: Kialegee
Date: Thursday, May 4, 2017 10:49:09 AM

Great. Thank you.

Sent from my iPhone
Penny J Coleman

On May 4, 2017, at 10:20 AM, Hoenig, Michael <Michael_Hoenig@nigc.gov> wrote:

Sure. How's 3?

On Thu, May 4, 2017 at 9:19 AM -0500, "colemanindianlaw@gmail.com" <colemanindianlaw@gmail.com> wrote:

I would still like to get the waiver just in case. What time would you like to talk on Friday.?

Sent from my iPhone
Penny J Coleman

On May 4, 2017, at 10:14 AM, Hoenig, Michael <Michael_Hoenig@nigc.gov> wrote:

Sure. We are still going through the files for purposes of the waiver (if you think you still need it). We haven't found anything, but are trying to put your email archives back together to run a quick search.

On Thu, May 4, 2017 at 8:36 AM -0500, "colemanindianlaw@gmail.com" <colemanindianlaw@gmail.com> wrote:

Good morning. I understand that you are on travel right now but I was wondering if you will be back tomorrow? I would like to have a brief call with you on the status of the Kialegee Tribal Town.

Sent from my iPhone
Penny J Coleman

From: Iverson, Steven T.
To: ["colemanindianlaw@gmail.com"](mailto:colemanindianlaw@gmail.com)
Subject: RE: Request for document
Date: Monday, June 12, 2017 9:26:55 AM
Attachments: [1615-48.pdf](#)
[1615-49.pdf](#)

Good Morning Penny,

The Beckham Report, originally submitted on behalf of the Kialegee Tribal Town in 2012, is attached. The report is the second attachment and the first is an introduction.

I received your voicemail. I'll be in the office all day, but out tomorrow and Wednesday. Please call when you have a minute.

Thank you,
Steve

-----Original Message-----

From: colemanindianlaw@gmail.com [<mailto:colemanindianlaw@gmail.com>]
Sent: Sunday, June 11, 2017 11:14 AM
To: Iverson, Steven T.
Subject: Request for document

The attached letter references a report about the 1833 treaty. I haven't seen that report. Could you send it to me.

<https://www.nigc.gov/images/uploads/indianlands/Kialegee20120608.pdf>

From: [Penny Coleman](#)
To: [Iverson, Steven T.](#)
Subject: Re: Spelling of your name
Date: Monday, June 26, 2017 11:20:20 AM

Not a problem. One of the former chiefs of staff called me Peggy the whole time he was there. Obviously we were much more unhappy with the peremptory nature of the letter.

Penny J. Coleman

This e-mail, and any attachments thereto, is intended only for the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by return e-mail and permanently delete the original and any copy of this e-mail message and any printout thereof.

On Mon, Jun 26, 2017 at 11:05 AM, Iverson, Steven T. <Steven_Iverson@nigc.gov> wrote:

Penny,

After last week's letter was sent out, I noticed that your name was misspelled in the CC section. As the letter's principal drafter, I want to personally apologize for misspelling your name.

Regards,

Steve Iverson

Staff Attorney

National Indian Gaming Commission

90 K Street NE, Suite 200

Washington, DC 20002

E-mail: steven_iverson@nigc.gov

Phone: [\(202\) 632-7003](tel:(202)632-7003)