



June 8, 2012

Town King Tiger Hobia  
Kialegee Tribal Town  
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Dear Town King Hobia:

This letter is to inform you that after reviewing the materials submitted by you, I am denying your Request for Reconsideration dated May 29, 2012 ("Request"). The Request presents a recent change of circumstance that you contend warrants reconsideration of the May 25 decision, namely the enrollment of Ms. Marcella Giles and Ms. Wynema Capps, the owners of the land at issue, as members of the Kialegee Tribal Town. Further, the Request takes issue with certain aspects of the legal opinion that was adopted as part of my decision on May 25, 2012.

I have concluded that the change in circumstance presented does not alter the May 25 decision. The Tenth Circuit has specifically rejected the proposition that recent enrollment of landowners into a tribe confers jurisdiction with the tribe over the owner's land. *See Miami Tribe of Okla. v. U.S.*, 656 F.3d 1129, 1144-45 fn. 16 (10th Cir. 2011)(finding that the Tribe's adoption of landowners as tribal members did not form a basis for tribal jurisdiction and noting that "[t]he case law does not support the proposition that adoption of landowner by a tribe confers jurisdiction. *See United States v. Mazurie*, 419 U.S. 544, 95 S.Ct. 710, 42 L.Ed.2 706 (1975)"); *see also Kansas v. U.S.*, 249 F.3d 1213, 1230-31 (10th Cir. 2001) (finding that the Tribe's adoption of a tract's owners into the tribe did not alter the fact that the tribe did not have jurisdiction over the tract).

Further, an NIGC Office of General Counsel legal opinion regarding the Iowa Tribe of Oklahoma concluded that an allotment remained within the jurisdiction of the Iowa Tribe of Oklahoma even though some of the owners who inherited interests in the property were members of another tribe. Therefore, the Kialegee Tribe's recent enrollment of Ms. Giles and Ms. Capps does not change tribal jurisdiction over the property at issue. Thus, the recent change of circumstance presented here does not alter the analysis or conclusion of the May 25 decision.

~~In addition, the Request objects to certain conclusions reached in the May 25 decision. The Request asserts that "earlier treaties and relevant sections of the 1832, 1833 and 1866 Treaties . . . mandate that the NIGC conclude that Tribal Towns have treaty rights." Request for Reconsideration at 1 (May 29, 2012). The May 25 decision incorporates a~~

legal opinion drafted by the NIGC Office of General Counsel and concurred in by the Department of the Interior Solicitor's Office. The legal opinion is limited to the question of whether the Kialegee Tribal Town possesses jurisdiction over the Proposed Site and concludes that the Kialegee Tribal Town does not possess legal jurisdiction over the Proposed Site. See Memorandum to NIGC Chairwoman from General Counsel re: Kialegee Tribal Town – Proposed Gaming Site in Broken Arrow, Okla., at 11-12 (May 24, 2012).

Further, the report “The Kialegee Indian Town and the Creek Treaty of February 14, 1833: Historical Context and Significance” (“Report”) submitted by the Tribe as part of the request for reconsideration does not change the conclusion set forth in the May 25 decision. The Report acknowledges that “no minutes or proceedings survive for the treaty council of February, 1833, at Fort Gibson.” Further, the Report explains that the purpose of the Treaty of 1833 “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.” Report at 5. The Report purports to identify participants in the 1833 treaty council and compares language among various treaties with the “Creek Nation of Indians.” However, rather than identifying a basis of legal jurisdiction for the Kialegee Tribal Town, the Report supports the conclusion that fee title to the lands in Oklahoma vested in the Muskogee (Creek) Nation and that subsequent treaties were with the Muskogee (Creek) Nation. The Report states that the Kialegee Tribal Town is a political successor in interest to the signatories of the 1833 Treaty without any meaningful analysis. While the Town is historically part of the Creek Nation and organized pursuant to OIWA as a recognized band, the Muskogee (Creek) Nation, the tribal political entity that signed the 1833 Treaty, still exists. *Harjo v. Andrus*, 581 F.2d 949 (D.C. Cir. 1978); *Indian Country, U.S.A. v. Oklahoma*, 829 F.2d 967 (10th Cir. 1987).<sup>1</sup>

The request asserts that the May 25 decision’s “reliance on the distinction between the Muskogee (Creek) Nation and Kialegee Tribal Town constitutions to assert that absent a specific reservation of rights the Kialegee cannot assert jurisdiction over treaty lands is misplaced.” Request for Reconsideration, *supra* at 5. The request cites to *Williams v. Clark*, 742 F.2d 549 (9th Cir. 1984) to assert that “multiple tribes can share treaty-reserved jurisdiction at a single reservation.” Request for Reconsideration, *supra* at 6. . However, that case is distinguishable from the present matter on several grounds. First, the Quileute Tribe was specifically named in the Treaty of Olympia along with the Quinaults. *Williams*, 742 F.2d at 553 (citing Treaty of Olympia, Art. 1, 12 Stat. 971.). Second, the Supreme Court had recognized the Quileute Tribe’s “rights in the Quinault Reservation such that its members were entitled to allotments there.” *Id.* at 552 (citing *United States v. Payne*, 264 U.S. 446 (1924)). Third, the Court noted “that the Quinault Indian Nation Bylaws have not been approved by the Secretary of the Interior.” *Id.* at 554

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<sup>1</sup> The Request contends that the Indian canon of construction must be used in this instance to interpret the treaties at issue. However, the Request does not explain how application of the canon of construction would change the outcome here. See, e.g., *Chickasaw Nation v. U.S.*, 534 U.S. 84, 94 (2001) (Indian canon of construction not used where statute was not fairly capable of two interpretations). As previously explained, the courts have affirmed that title to the lands within the former Creek reservation in Oklahoma vested in the Muskogee (Creek) Nation. *Indian Country, U.S.A. v. Oklahoma*, 829 F.2d 967 (10th Cir. 1987).

n.5. By contrast, the Muscogee (Creek) Nation's Constitution, duly reviewed and approved by the Secretary, expressly encompasses the Proposed Site within its territory. The jurisdictional reach of the Muscogee (Creek) Nation's Constitution is consistent with settled law. *See Indian Country, U.S.A. v. Okla.*, 829 F.2d 967, 971-72, 974 (10th Cir. 1987). Further, the Ninth Circuit expressly limited its holding to whether the Quileute Tribe should qualify as a "tribe in which the lands are located for purposes of . . . [25 U.S.C. § 464]." *Id.* at 555. The Court stated that "we do not consider the extent of the Quileute Tribe's jurisdiction over Quinault Reservation." *Id.* at 555 n.8.

Finally, the request asserts that some of the case law cited in the May 25 decision speaks only to the relative rights between the Muscogee (Creek) Nation and the State of Oklahoma. However, the applicable case law confirms the Muscogee (Creek) Nation's jurisdiction as set forth in treaties and statutes. The Kialegee Tribal Town has not provided any case law confirming the Kialegee's legal jurisdiction over the Proposed Site.

Accordingly, the Tribe's request for reconsideration of the decision is denied.

Sincerely,



Tracie L. Stevens  
Chairwoman

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