



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

FEB 18 2011

Honorable Kimberly M. Vele
Tribal President
Stockbridge-Munsee Community
N8476 Moh He Con Nuck Road
Bowler, Wisconsin 54416

Dear President Vele:

I want to thank you and your representatives for meeting with me and representatives from my Department and the Department of Justice on February 3, 2011, to discuss the Stockbridge-Munsee Community, Band of Mohican Indians' (Tribe) proposed settlement agreement with the State of New York, Madison County, New York, and the Town of Stockbridge, New York. I also appreciate the Tribe's providing us with a letter in advance of that meeting detailing your views on why the United States should support that settlement agreement. While, as we noted at our meeting, the United States takes issue with the Tribe's characterizations of the discussions regarding a possible agreement, the letter was helpful to allow us to more fully understand your views and concerns.

In its present form, the settlement agreement names the United States as a party to the agreement and contemplates that the Secretary of the Interior will execute the agreement on behalf of the United States. The purpose of our meeting was to discuss the United States' position that it will not be a party to the settlement agreement. I am writing to confirm that this remains the position of the United States. Though discussed during our meeting, I would like to restate and summarize the various bases for this position, which include the following reasons.

The Indian Trade and Intercourse Act (the Nonintercourse Act), 25 U.S.C. § 177, generally requires a clear expression of congressional approval for any alienation of a Tribe's interest in real property. Mere federal executive approval, as envisioned in this settlement and unsupported by statutory authorization, is insufficient to validate transfers of interests in Indian lands. Federal approval must generally be demonstrated by showing a clear and specific act of Congress that is intended to extinguish Indian title. To the extent that the Tribe has a valid land claim, therefore, any alienation of that claim as envisioned in this settlement requires congressional ratification. Nor is there an argument in this context that the settlement would be binding based on court approval of a settlement or dismissal of the complaint with prejudice, since the United States is not a party to the case and is, as you know, not prepared to become a party for multiple reasons. Moreover, the settlement cannot finally waive any legitimate land claim that the Tribe may have unless and until legislation is adopted. We have serious concerns about supporting a settlement that purports to extinguish a land claim where the underlying land claim would not be finally extinguished absent congressional approval.

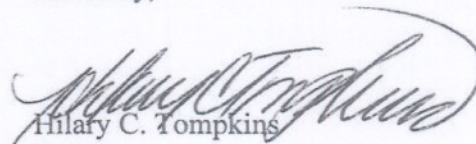
We acknowledge the Tribe's contention that the United States could support this settlement without taking an express position on the validity of the Tribe's underlying land claim. Nonetheless, the United States has serious concerns about participating in a settlement where questions exist as to the viability of the underlying claims at issue.

Furthermore, we do not believe that 25 C.F.R. § 292.5(b)(1) compels a different result merely because this section of the regulation does not refer to any need for congressional approval. The fact that section 292.5(b)(1) does not *itself* require congressional approval does not – and could not – mean that it obviates the need to satisfy the requirements of the Nonintercourse Act. Section 292.5(b)(1) does not create a process divorced from the requirements of the Nonintercourse Act.

As you know, on December 18, 2010, the Bureau of Indian Affairs concluded tribal consultation regarding the current gaming policies under the January 3, 2008, guidance memorandum and section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. § 2719. Any decision in this area would be premature at this time. Moreover, as you know, the January 3, 2008, guidance memorandum is the subject of litigation involving the Tribe and the Department. For these reasons and the reasons stated above, the Secretary cannot execute this settlement.

Thank you again for meeting with me on these matters. I know that this decision will not be easily received by the Tribe. Please know that I understand the great importance of these issues to the Tribe, and am committed to working with the Tribe on its future economic endeavors.

Sincerely,


Hilary C. Tompkins
Solicitor

cc: Ethan Shenkman, Deputy Assistant Attorney General
Environment and Natural Resources Division, DOJ