

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

WYANDOTTE NATION,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 11-CV-02656-JAR-DJW
)	
KENNETH L. SALAZAR,)	
in his official capacity as Secretary)	
of the United States Department of)	
the Interior,)	
)	
Defendant,)	
)	
and)	
)	
STATE OF KANSAS,)	
)	
Defendant-Intervenor.)	

**STATE OF KANSAS’S SUPPLEMENTAL MEMORANDUM ADDRESSING
THE IMPACT OF *PATCHAK* ON THE SUBJECT MATTER JURISDICTION
ISSUE RAISED IN THE SECRETARY’S MOTION TO DISMISS**

Defendant Kenneth L. Salazar (“Secretary”) asserts in his Supplemental Memorandum that the “*Patchak* decision has no impact on the Secretary’s present motion to dismiss for lack of subject matter jurisdiction”. (ECF Doc. No. 54, p.1). The Secretary’s position is primarily grounded in the fact that, unlike *Patchak*, the “subject matter of this case does not involve the legality of the decision to acquire land in trust for a tribe.” (*Id.* at 2). The Secretary’s conclusion is based on the fact that he has not yet made a decision on the Wyandotte’s application to accept land in Park City, Kansas in trust. (*Id.* at 2-3).

The State of Kansas has already noted that it has never intended its cross-claim to be a contention that the Court should reach the merits of the land-in-trust application of the

Wyandotte Nation in this case. In that regard, the State has indicated its agreement with the position articulated by Secretary that the only proper issue before the Court is whether there has been an unreasonable delay under the APA and that the Secretary's decision-making power cannot be usurped. (ECF Doc. No. 49, p. 2).

Accordingly, the State specifically noted that its cross-claim was asserted prophylactically, in response to the Wyandotte Nation's request in its Complaint that this Court order Secretary Salazar to take the land in trust pursuant to Public Law 98-602, 98 Stat. 3149 (1984) ("PL 602"). (ECF Doc. No. 49, p.2). Indeed, this Court has characterized the Wyandotte Nation's lawsuit as one "seeking an order from this Court compelling the Secretary to comply with his mandatory duty to accept title to certain land and hold it in trust for the nation's benefit, as specifically required by Public Law 98-602, 98 Stat. 3149 (1984) ("P.L. 98-602"). (ECF Doc. No. 53, p. 1).

If the substantive issues relating to the Wyandotte Nation's fee-to-trust application are to be heard in this action, the State of Kansas' position is that any "mandatory duty" under P.L. 98-602 was long ago completely fulfilled when the Secretary mandatorily accepted in trust land in Kansas City, Kansas (the "Shriner Tract") that was purchased by the Wyandotte Nation all of the \$100,000 set aside by P.L. 98-602 for that very purpose. Therefore, the State respectfully suggests that the present case be re-characterized as an effort by the Wyandotte Nation to compel the Secretary to take a second tract of land in trust under P.L. 98-602 despite the use of by the Wyandotte Nation of all of the \$100,000 set aside funds from P. L. 98-602 to purchase the Shriner Tract that was then accepted into trust by the Secretary under the mandatory provisions of P.L. 98-602.

To the extent the Court addresses these substantive issues in this case, the import of the cross-claim filed by the State of Kansas is to the effect that no mandatory duty exists any longer under P.L. 98-602 as a basis to compel Secretary Salazar to accept the Park City land into trust under P.L. 98-602. The mandatory provisions of P.L. 98-602 were fulfilled when entirety of the \$100,000 set aside under that statute for the purchase of land was used to acquire the Shriner Tract that was then accepted into trust by the Secretary under the mandatory provisions of that statute.

The jurisdictional basis for the State's cross-claim is as stated in its response to Secretary Salazar's Motion to Dismiss. (ECF Doc. No. 49, p. 4). The State will have in fact suffered a legal wrong and could be adversely affected or aggrieved as required by the Administrative Procedure Act's waiver of sovereign immunity, 5 U.S.C. § 702 if the Court addresses in this case the substantive issue raised by the Wyandotte Nation as to whether the Park City land must be placed in trust. While the State agrees with the Secretary that this substantive issue has been raised improperly, improvidently and prematurely, one cannot ignore the fact that the Wyandotte Nation is indeed raising it in this litigation.

However, the State of Kansas agrees with Secretary Salazar that the *Patchak* decision has no impact on the issues raised by the Secretary's Motion to Dismiss the State's cross-claim. The State agrees with Secretary Salazar's characterization that *Patchak* is largely distinguishable from the case at bar because the Secretary has not yet made a decision on the Wyandotte's second fee-to trust application under P.L. 98-602 relating this time to the land in Park City, Kansas.

Respectfully submitted,

PAYNE & JONES, CHARTERED

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CERTIFICATE OF SERVICE

I certify that on the ____ day of July, 2012, I caused the above to be filed using the Court's Electronic Case Filing System, which will send notification of such filing to the following parties:

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