JUL 28 2005

Richard Meyers
Assistant Solicitor
Division of Indian Affairs
Office of the Solicitor
Department of the Interior
1849 C Street NW, Mail Stop 6458
Washington, D.C. 20240

Dear Mr. Meyers:

The National Indian Gaming Commission (NIGC) has examined the Indian lands status of fee land in North Tulsa, Oklahoma, and of trust land in Bartlesville, Oklahoma, on which the Osage Nation (Tribe) plans to conduct gaming. We understand that the Tribe intends to begin gaming on at least one of the parcels on August 3, 2005. We believe that the Tribe may conduct gaming on the parcels because they lie within the Tribe's reservation. Our opinion relies on several previous Department of the Interior documents that reference the Osage Nation Reservation. Consequently, we would appreciate your concurrence on our determination that the parcels are within the Osage Nation's reservation.

As you know, the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.* confirms a Tribe's right to game on lands within the Tribe's reservation boundaries. Based on the information we obtained, the following parcels meet the IGRA requirements for gaming.

DESCRIPTION OF THE OSAGE GAMING PROPERTIES

The North Tulsa property is owned in fee by the Tribe and is legally described as follows:

> NE/4 NE/4 of Section 15 and Lot 1 (NW/4 NW/4), Lot 2 (SW/4 NW/4) and Lot 3 (NW/4 SW/4) of Section 14, Less the South 228.5 feet of Lot 3, all in Township 20 North, Range 12 East, Osage County, State of Oklahoma.
>
> AND
>
> A tract of land located in Section 15, Township 20 North, Range 12 East of the Indian Base and Meridian, Osage County, Oklahoma, described as follows:

> Commencing at a point 410 feet East of the Northwest corner of the SE/4 NE/4; Thence South and parallel to the West line of the SE/4 NE/4 and the NE/4 SE/4 a distance of 2190 feet; Thence East and parallel to the South line of the NE/4 SE/4 a distance of 30 feet; Thence South and parallel to the West line of the NE/4 SE/4 353 feet East of the Southwest corner of the NE/4 SE/4 a distance of 300 feet; Thence West and parallel to the South line of the NE/4 SE/4 a distance of 150 feet to a point on the South line of the N3/4 SE/4 363 feet East of the Southwest corner of the NE/4 SE/4; Thence in a Northeasterly direction on a straight line a distance of 631.7 feet to a point 370 feet West and 228.5 feet North of the Southeast corner of the NE/4 SE/4; Thence East and parallel to the South line of the NE/4 SE/4 a distance of 370 feet to a point on the East line of the NE/4 SE/4 a distance of 228.5 feet North of the Southeast corner of the NE/4 SE/4; Thence North along the East line of the NE/4 SE/4 and the SE/4 NE/4 a distance of 2411.5 feet to the Northeast corner of the SE/4 NE/4; Thence West along the North line of the SE/4 NE/4 to the Point of Beginning.

The Bartlesville property on which the Tribe proposes to conduct gaming is held in trust for individual tribal members and is legally described as follows:

> Lots 2, 3, and 4, S/2NWSESW/4 and N/2N/2S/2SESW/4 Section 30, T26N, R12E, (all lying East of Osage County Highway No. 70) containing 116.17 acres, more or less.

DESCRIPTION OF THE OSAGE RESERVATION BOUNDARIES

The boundaries of the Osage Reservation were set out in the Act of June 5, 1872, ch. 310, 17 Stat. 228 (An Act to Confirm to the Great and Little Osage Indians a Reservation in the Indian Territory):

> [i]n order to provide said Osage tribe of Indians with a reservation, and secure to them a sufficient quantity of land suitable for cultivation, to following-described tract of country, west of the established ninety-sixth meridian, in the Indian Territory, be, and the same is hereby, set apart for an confirmed as their reservation, namely: Bounded on the east by the ninety-sixth meridian, on the south and west by the north line of the Creek country and the main channel of the Arkansas River, and on the north by the south line of the State of Kansas;

Congress appropriated the funds for purchase of the reservation set out in the 1972 Act in its Act of Mar. 3, 1873, ch. 228, 17 Stat. 530, and in its Act of Mar. 3, 1883, ch. 143, 22 Stat. 603, 624 (Sundry Civil Appropriations; Indian Affairs). The deed for the land from the Cherokee tribe granted land in trust to the United States for the Osage Tribe of Indians "with a proviso that said Great and Little Osage tribe shall permit the settlement within the limits of said tract of the Kansas tribes of Indians". Deed from the Cherokee Nation, Through its Delegates, to the United States in Trust for the Use and Benefit of the Osage and Kansas Indians, 6 Indian Deeds 476 (June 14, 1883). The following land was conveyed:

> Fractional township twenty-four, (24,) twenty-five, (25,) and twenty-six, (26,) range two (2,) east; fractional townships twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) twenty-nine, (29,) range three, (3,) east; fractional townships twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) and twenty-seven, (27,) township twenty-eight, (28,) and fractional township twenty nine, (29,) range four, (4,) east; fractional townships twenty-three, (23,) and twenty-four, (24,) townships twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) and fractional township twenty-nine, (29,) range five, (5,) east; fractional townships twenty-two, (22,) and twenty-three, (23,) townships twenty-four (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) and fractional township twenty-nine, (29,) range six, (6,) east; fractional townships twenty-one, (21,) and twenty-two, (22,) townships twenty-three, (23,) twenty-four (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) and fractional township twenty-nine, (29,) range seven, (7,) east fractional townships twenty-one, (21,) and twenty-two, (22,) townships (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) and fractional township twenty-nine, (29,) range eight (8) east; fractional townships twenty, (20,) and twenty-one, (21,) townships twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) and fractional township twenty-nine, (29,) range nine, (9,) east; fractional township twenty, (20,) townships twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) and fractional township twenty-nine, (29,) range ten, (10,) east; fractional township twenty, (20,) townships twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) and fractional township twenty-nine, (29,) range eleven, (11,) east; fractional townships twenty, (20,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) and twenty-nine, (29,) range twelve, (12,) east;

The following land in the conveyance was set apart for the Kansas Indians:

> Fractional townships twenty-seven, (27,) twenty-eight, (28,) and twenty-nine, (29,) range three, (3,) east; fractional township twenty-seven, (27,) township twenty-eight, (28,) and fractional township twenty-nine, (29,) range four, (4,) east; the west half of section three, (3,) ten, (10,) fifteen, (15,) twenty-two, (22,) twenty-seven, (27,) and thirty-two, (32,) and sections four, (4,) five, (5,) six, (6), seven, (7,) eight, (8,) nine, (9,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-eight, (28,) twenty-nine, (29,) thirty, (30,) and thirty-one, (31,) of townships twenty-seven, (27,) north, range five, (5,) east; the west half of sections three, (3,) ten, (10,) fifteen, (15,) twenty-two, (22,) twenty-seven, (27,) and thirty-four, (34,) and sections four (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-eight, (28,) twenty-nine, (29,) thirty, (30,) and thirty-one, (31,) of township twenty-seven, (27,) north, range five, (5,) east: the west half of sections three, (3,) ten, (10,) fifteen, (15,) twenty-two, (22,) twenty-seven, (27,) and thirty-four, (34,) and sections four, (4,) five, (5,) six, (6,) seven, (7,) eight, (8,) nine, (9,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-eight, (28,) twenty-nine, (29,) thirty, (30,) thirty-one, (31,) thirty-two, (32,) and thirty-three, (33,) of township twenty-eight, (28,) north, range five, (5,) east; the west half of sections fifteen, (15,) twenty-two, (22,) twenty-seven, (27), and thirty-four, (34,) and sections sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-eight, (28,) twenty-nine, (29,) thirty, (30,) thirty-one, (31,) thirty-two, (32,) and thirty-three, (33,) of township twenty-nine, (29,) north, range five, (5,) east; containing an area of one hundred thousand, one hundred and thirty-seven and thirty-two hundredths acres, (100,137.32) . . . .

Thus, the description of the Osage reservation above does not include townships twenty-seven, (27,) twenty-eight, (28,) and twenty-nine, (29,) range three (3) east; or townships twenty-seven, (27,) twenty-eight, (28,) and twenty-nine, (29,) range four (4) east as these portions of the description were later set apart for the Kansas Indians.

All lands in the Osage Reservation were allotted to tribal members except as otherwise provided in the allotment act for, several schools, government buildings, cemeteries, forty acres containing three dwellings, and the mineral rights which were reserved to the Osage Tribe. *Id.*

PERTINENT DOCUMENTS

We have examined several documents that indicate the Department of the Interior continues to recognize the Osage Reservation. These documents are as follows:

1. Memorandum to the Commissioner of Indian Affairs from Nathan R. Margold, Solicitor. 1 Opinions of the Solicitor 591-92 (December 17, 1935).

This letter examines whether the state has jurisdiction over land owned by Osage tribal members. It refers to a 1913 murder on the "Osage Reservation" and states that jurisdiction in the matter at hand depends on whether the lands in question "may be regarded as within the limits of the Indian reservation". The Solicitor determined that the lands are "tribal lands within the reservation boundaries" and further noted that "[s]o far as I am advised no act of Congress has severed these lands from the reservation. In the absence of such Congressional action they not only remain within the reservation but also qualify as 'Indian country' under the rule that 'Indian country' remains such until the Indian title is extinguished unless other wise [sic] provided by Congress."

2. Letter from Harold D. Cox, Associate Commissioner for Support Services, to Honorable Henry L. Vellman, dated Mar. 9, 1971.

This letter is in response to Senator Vellman's query as to the BIA's marking on a map of Osage County, Oklahoma as the Osage Reservation. The author notes that official BIA maps have depicted the Osage Reservation as the only reservation in Oklahoma for over 35 years, although some maps depict former reservations for other tribes in the state. Mr. Cox notes that the Osage Tribe did not sign a cession treaty as other state tribes did and that the 1906 treaty reserved the mineral rights to the tribe as a whole. This reservation of mineral rights led to the BLM including an Osage Reservation on a map of the United States. The author states "[i]n reviewing the situation, we have not found any Act of Congress which expressly or otherwise terminated the reservation status or operated to remove the boundaries thereof."

3. Map of Indian Land Areas published by the U.S. Department of the Interior Bureau of Indian Affairs (BIA) in 1992.

The map shows the Osage lands depicted as "Federal Indian Reservation" while every other tribe in Oklahoma is depicted as "Federal Indian Groups Without Reservation".

4. Oklahoma Enabling Act of 1906, Pub. L. No. 59-234, 34 Stat. 267.

The 1906 Act (Act) refers to Indian Territory several times. However, Chapter 3335, Section 2 distinguishes between these and the Osage lands on four occasions. In one instance, the Act appears to clearly distinguish the Osage lands from the rest of Indian Territory: "*Provided further*, That in said Indian Territory and Osage Indian Reservation . . . ." Sec. 2 (emphasis in original). Additionally, the Act later refers to "the Indian Territory and the Osage Reservation and within any other parts of said State which existed as Indian reservations on the first day of January, nineteen hundred and six." Sec. 3 (referring to limitations on intoxicating liquors).

The Act does mention other reservations by name[1], although none are separated out as is done with the Osage. Indeed, Section 21 orders the state constitutional convention to "constitute the Osage Indian Reservation a separate county, and provide that it shall remain a separate county until the lands in the Osage Indian Reservation are allotted in severalty and until changed by the legislature of Oklahoma, ..."

5. Letter to Honorable Robert S. Kerr, Jr. from Tim Vollman, Regional Solicitor, Southwest Region, Albuquerque, New Mexico, dated Feb. 15, 1994.

This letter advises the Oklahoma Water Resources Board that it "has no jurisdiction or authority to adjudicate the rights of the Osage Tribe to use the waters appurtenant to its reservation, or the derivative rights of restricted Osage Indian allottees and their heirs."

6. October 22, 1997, Oklahoma Gubernatorial Proclamation (recognizing October 25, 1997 as Osage Day)

The proclamation begins with the statement that "[w]hereas, the Osage Reservation covering all of Osage County is the only federally recognized reservation remaining in Oklahoma . . . ."

7. Business Lease between the Osage Tribe and John J. Allen, et al., approved by the Acting Superintendent, Osage Agency, Bureau of Indian Affairs, on April 1, 2004.

The sole purpose of this lease of the Bartlesville site is "for the purpose of conducting Class II gaming in compliance with the Indian Gaming Regulatory Act (hereinafter called IGRA), P.L. 100-497, as amended, with associated concessions and non-tobacco venting [sic] machine sales." Art. 5.

The Tribe asserts that the BIA approval of a business lease on this site for IGRA gaming indicates BIA recognition of the Tribe's right to game on the site.

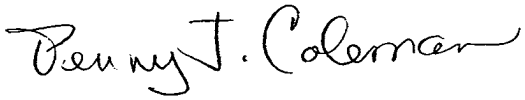
CONCLUSION

Based on the above documents, we understand that at least some offices within the Department of the Interior have concluded that the Osage Nation Reservation has not been disestablished. Since gaming on fee land or trust land within the boundaries of the reservation is lawful gaming on Indian lands under the IGRA, we conclude that gaming

[1] Sec. 6 ("the Osage and Kansas Indian reservations") ("comprise all the territory now constituting the Cherokee, Creek, and Seminole nations, and the Indian reservations lying northeast of the Cherokee Nation"); Sec. 7 (Sulphur Springs Reservation); Sec. 8 ("the Cherokee Outlet, the Tonkawa Indian Reservation, and the Pawnee Indian Reservation").

on the two parcels is authorized. Please advise us immediately if your office disagrees with our understanding of the status of the Tribe's reservation.

Sincerely,



Penny J. Coleman
Acting General Counsel

cc: Bridget Virchis, Branch of General Indian Legal Activities