



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

United Keetoowah Band of Cherokee Indians

v.

Director, Eastern Oklahoma Region,  
Bureau of Indian Affairs

Decision

## Background

On June 24, 2009, I remanded the United Keetoowah Band's (UKB) application to have a 76-acre parcel of land taken into trust to the Regional Director to apply the Department's checklist for a categorical exclusion under the National Environmental Protection Act (NEPA). I instructed the Regional Director that if she found that the proposed fee-to-trust acquisition satisfied the checklist, she should hold the application pending resolution of my authority to take the land into trust. In my June 24 decision, I left open the question of my authority to acquire the land in trust pending further consideration in the wake of the Supreme Court's decision in *Carcieri v. Salazar*, 2009 LEXIS 1633, 555 U.S. \_\_\_\_ (February 24, 2009).

On July 9, 2009, the Cherokee Nation of Oklahoma (CNO) filed a motion for reconsideration and withdrawal of the June 24 decision. This motion, in part, requested that I suspend implementation of the June 24 decision pending the reconsideration. On July 15, 2009, I provided the UKB with an opportunity to submit a brief no later than July 22, 2009, addressing the arguments made by CNO regarding the sole issue of suspension of the June 24 decision. The UKB filed a timely brief in response.

On July 30, 2009, I declined to withdraw or suspend my June 24 decision and set a schedule for the parties to brief "the issue of the import, if any, of the *Carcieri v. Salazar* decision." I requested the parties to "include a complete analysis of the successor-in-interest theory, as well as any other theories" the parties believe to be pertinent. The UKB, CNO, and the Regional Director all filed briefs.

After careful consideration, and based on the briefing provided in this matter, I conclude that the Regional Director should allow the UKB to amend its application in one of the following ways: 1) continue to invoke my authority under Section 5 of the Indian Reorganization Act but seek to have the land taken in trust for one or more half-blood members who could later transfer their interest to the UKB; 2) invoke my authority under Section 3 of the Oklahoma Indian Welfare Act (OIWA) and seek to have the land held in trust for the UKB Corporation; or, 3) invoke my authority under Section 1 of the OIWA and supplement the record with evidence to show that the parcel satisfies the conditions in Section 1.

## Discussion

### *Section 5 Authority*

Under Section 5 of the IRA, I can take land in trust for “Indians.” 25 U.S.C. § 465. Among those Indians for whom I can take land into trust are “persons of one-half or more Indian blood.” 25 U.S.C. § 479. The UKB may amend its application to have the land held in trust for one or more half-blood members. Those half-blood members may then transfer their interest in the trust land to the UKB.

### *Keetoowah Recognition*

The Keetoowah Recognition Act states that: “the Keetoowah Indians of the Cherokee Nation of Oklahoma shall be recognized as a band of Indians residing within Oklahoma within the meaning of Section 3 of the Act of June 26, 1936 [OIWA].” 60 Stat. 976 (Aug. 10, 1946). Thus, Congress recognized the Keetoowah Indians of the Cherokee Nation of Oklahoma as a band eligible to organize under Section 3 of the OIWA.

The legislative history of the Recognition Act shows that Congress intended that recognition of the Keetoowah would allow the band to “secure any benefits, which, under the Oklahoma Indian Welfare Act, are available to other Indian bands or tribes.” H. Rep. 79-447 (Apr. 25, 1945). The Department of the Interior, in a letter to Congress, supported enactment of the bill and concurred that the Keetoowah would be able to organize under a constitution for its common welfare. *Id.* The Department further stated in its letter that congressional recognition would be “conclusive” and “legislative recognition of the Keetoowahs as a band would accordingly enable these Indians to secure any benefits which, under the Oklahoma Indian Welfare Act, are available to other Indian bands or tribes.” *Id.* Congress clearly intended to afford the Keetoowah band all of the benefits and rights as other tribes under the OIWA, which necessarily include the benefit of having land placed into trust under Section 1 or Section 3.

Congressional action was necessary because the Solicitor had previously found that the Keetoowah Society, a group of traditional Cherokee Indians, was not a band within the meaning of Section 3 of the OIWA. Solicitor’s Opinion, July 29, 1937, 1 *Op. Sol. on Indian Affairs* 774 (U.S.D.I 1979). Four years after passage of the Keetoowah Recognition Act, the UKB organized a government and a corporation under Section 3 of the OIWA. See Constitution and By-Laws of the United Keetoowah Band of Cherokee Indians in Oklahoma (ratified Oct. 2, 1950); Corporate Charter of the United Keetoowah Band of Cherokee Indians (ratified Oct. 3, 1950).

### *OIWA*

Section 3 of the OIWA provides: “Any recognized tribe or band of Indians residing in Oklahoma shall have the right to organize for its common welfare and to adopt a constitution and bylaws, under such rules and regulations as the Secretary of the Interior may prescribe.” 25 U.S.C. § 503. Section 3 also authorizes the Secretary to charter corporations and that “such charter[s] may convey to the incorporated group . . . any other rights or privileges secured to an organized Indian tribe under the Act of June 18, 1934[, the IRA].” 49 Stat. 1967

(June 26, 1936). The UKB adopted and the Secretary approved a constitution and a corporate charter in 1950.

Through the UKB corporate charter, the Secretary authorized the UKB Corporation in Section 3(r) “[t]o purchase, take by gift, bequest, or otherwise own, hold, manage, operate, and dispose of *property of every description*, real or personal.” (emphasis added). Section 3 does not explicitly authorize me to take land in trust. But that authority is implicit. If the Secretary has the authority to convey to corporations the authority to hold land in trust as one of the “rights or privileges secure to an organized Indian tribe under [the IRA],” the Secretary must possess the actual authority to take the land in trust. I can, therefore, acquire land in trust for the corporation under Section 3 of the OIWA because that is one of the rights or privileges secured to tribes organized under the IRA and the charter conveys the authority to the corporation the right to own land held in trust, as “property of every description.”<sup>1</sup> The UKB may amend its application to invoke my authority under Section 3 of the OIWA and to have the land held in trust for the UKB Corporation.

Section 1 authorizes the Secretary to take land into trust for a tribe, band, group, or individual Indian, provided that the lands “shall be agricultural and grazing land of good character and quality in proportion to the respective needs of the [tribe].” 25 U.S.C. § 501. Thus, the OIWA provides independent authority for the Secretary to take land into trust for tribes organized under the OIWA. The UKB is such a tribe. The UKB may amend its application to invoke my authority under Section 1 of the OIWA and to supplement the record with evidence that the Community Service Parcel meets the conditions set forth in Section 1.

---

<sup>1</sup> The UKB Government will exercise jurisdiction over the UKB Corporation’s land. Within the UKB tribal structure are the tribal government and the tribal corporation. They are separate entities. Solicitor’s Opinion, 65 I.D. 483 (1958), 2 *Op. Sol. on Indian Affairs* 1846, (U.S.D.I. 1979). The UKB Government represents the UKB in its governmental affairs. And the UKB Corporation represents the UKB in its business affairs. The Internal Revenue Service recognized the tribal character of the corporation in holding that tribal corporations, as a form of the tribe, are not taxable entities: “[t]he question of tax immunity cannot be made to turn on the particular form in which the tribe chooses to conduct its business.” Rev. Rul. 81-295; 1981-2 C.B. 15; 1981 IRB LEXIS 95. The UKB Corporation is merely the tribe organized as a corporation. Its property, therefore, is tribal property. Tribal property is subject to the governing authority of the UKB Government. Thus, any land placed into trust for the UKB Corporation would necessarily be under the governmental jurisdiction of the UKB Government.

**Conclusion**

Because I do not decide this issue based on the UKB's status as a successor, I withdraw those portions of the June 24, 2009 decision concerning the successor in interest status of the UKB and the CNO.

I reaffirm my June 2009 decision regarding NEPA and conflicting jurisdiction.

I direct the Regional Director to reconsider an amended application consistent with this decision.

Date **SEP 10 2010**

Signed

A handwritten signature in black ink, appearing to read "Larry Echo Hawk", written over a horizontal line.

Larry Echo Hawk  
Assistant Secretary – Indian Affairs

## DISTRIBUTION LIST

James C. McMillin  
McAfee & Taft  
A Professional Corporation  
10<sup>th</sup> floor, Two Leadership Square  
211 North Robinson  
Oklahoma City, OK 73102-7103

Michael Rossetti  
Akin Gump Strauss Hauer & Feld, LLP  
1333 New Hampshire Avenue, NW  
Robert S. Strauss Building  
Washington, D.C. 20036-1564

Robert Impson  
Eastern Oklahoma Acting Regional Director  
Bureau of Indian Affairs  
3100 West Peak Blvd.  
Muskogee, OK 74401

Michael Black  
Director, Bureau of Indian Affairs  
1849 C Street, NW  
Mail Stop 4606 MIB  
Washington, D.C. 20240

Chadwick Smith  
Chief, Cherokee Nation of Oklahoma  
P.O. Box 948  
Tahlequa, OK 74465-0948

Lloyd B. Miller  
Donald Simon  
Arthur Lazarus, Jr.  
Jennifer J. Thomas  
Sonosky, Chambers, Sachse, Endreson & Perry, LLP  
1425 K Street, N.W. Suite 600  
Washington, D.C. 20005